# Contents

Preface and Acknowledgements  xiii  
List of Abbreviations  xv  
Table of Cases  xvi  
Table of Statues  xxxi  

## Part I  GENERAL PRINCIPLES

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Basic Concepts and Themes</td>
<td></td>
</tr>
<tr>
<td>1.1 Introduction</td>
<td>3</td>
</tr>
<tr>
<td>1.2 Written constitutions</td>
<td>3</td>
</tr>
<tr>
<td>1.3 The differences between written and unwritten constitutions</td>
<td>4</td>
</tr>
<tr>
<td>1.4 The structure of the UK constitution</td>
<td>5</td>
</tr>
<tr>
<td>1.5 Public law and private law</td>
<td>8</td>
</tr>
<tr>
<td>1.6 Constitutional law and administrative law</td>
<td>12</td>
</tr>
<tr>
<td>1.7 The development of the United Kingdom Constitution</td>
<td>14</td>
</tr>
<tr>
<td>1.8 What makes a constitution ‘valid’?</td>
<td>16</td>
</tr>
<tr>
<td>2  The Sources of the Constitution</td>
<td>22</td>
</tr>
<tr>
<td>2.1 Introduction</td>
<td>22</td>
</tr>
<tr>
<td>2.2 The basic principle</td>
<td>24</td>
</tr>
<tr>
<td>2.3 General political and moral values</td>
<td>24</td>
</tr>
<tr>
<td>2.4 Strict law</td>
<td>25</td>
</tr>
<tr>
<td>2.5 Conventions</td>
<td>28</td>
</tr>
<tr>
<td>3  Constitutionalism: The Rule of Law and the Separation of Powers</td>
<td>38</td>
</tr>
<tr>
<td>3.1 Constitutionalism</td>
<td>38</td>
</tr>
<tr>
<td>3.2 The rule of law</td>
<td>39</td>
</tr>
<tr>
<td>3.3 The separation of powers</td>
<td>54</td>
</tr>
<tr>
<td>4  Parliamentary Supremacy</td>
<td>60</td>
</tr>
<tr>
<td>4.1 The doctrine of parliamentary supremacy</td>
<td>60</td>
</tr>
<tr>
<td>4.2 Legal and political supremacy</td>
<td>64</td>
</tr>
<tr>
<td>4.3 The ingredients of an Act of Parliament</td>
<td>64</td>
</tr>
<tr>
<td>4.4 The historical basis of parliamentary supremacy</td>
<td>66</td>
</tr>
</tbody>
</table>
4.5 Legal limits upon parliamentary supremacy?  
4.6 Delegated legislation

5 The Territory of the United Kingdom: Citizenship and Foreign Affairs  
5.1 Federal and unitary constitutions  
5.2 The structure of the United Kingdom  
5.3 The Commonwealth  
5.4 Citizenship  
5.5 Allegiance  
5.6 International treaties

6 The European Union  
6.1 The purposes of the European Union  
6.2 Union Organs  
6.3 Community law and national law  
6.4 The Maastricht Treaty: A Note

Part II PARLIAMENT

7 The Constitutional Position of Parliament  
7.1 The meeting of Parliament  
7.2 The functions of Parliament  
7.3 Parliamentary privilege

8 The House of Lords  
8.1 Historical development  
8.2 The modern law: The Parliament Acts 1911 and 1949  
8.3 The modern role of the Lords  
8.4 The composition of the House of Lords  
8.5 Attendance in the House of Lords  
8.6 Reform of the House of Lords

9 The House of Commons  
9.1 Historical development  
9.2 The electoral system

10 Parliamentary Procedure  
10.1 Introduction  
10.2 The Speaker
10.3 Legislative procedure 169
10.4 Parliament and public finance 174
10.5 Parliamentary supervision of the executive 178
10.6 The redress of grievances 185
10.7 Procedure in the House of Lords 187
10.8 Conclusion 188

Part III THE EXECUTIVE

11 The Crown 193
11.1 The state, the government and the Crown 193
11.2 The nature of the Crown 194
11.3 The Queen 196
11.4 The functions of the monarchy 197

12 The Powers of the Crown 203
12.1 The sources of government power 203
12.2 Private law powers 203
12.3 Crown Immunities 204
12.4 The Royal Prerogative 207

13 Ministers and Departments 216
13.1 The prime minister 216
13.2 The cabinet 218
13.3 Ministers 220
13.4 Government departments 222
13.5 Ministerial responsibility 223
13.6 Civil servants 228
13.7 Next Steps agencies and Citizens' Charters 233
13.8 The armed forces 237

14 Government Secrecy 242
14.1 Introduction 242
14.2 No duty of disclosure 243
14.3 The Official Secrets Act 1989: The criminal law 245
14.4 Civil liability: Breach of confidence 247
14.5 Public interest immunity 249

15 Ad Hoc Bodies 254
15.1 Introduction 254
15.2 Constitutional justification 256
15.3 Relations with the central government 257
x  Contents

15.4 The courts 258
15.5 Publicity and complaints mechanisms 259

16  Local Government 263
16.1 Local Authority Structure and Functions 263
16.2 Structure 264
16.3 Control by central government 264
16.4 The internal constitution of local authorities 266
16.5 Local government finance 269
16.6 Accountability 270

Part IV  THE JUDICIAL BRANCH

17  The Judiciary 277
17.1 The constitutional position of the judiciary 277
17.2 Security of tenure 277
17.3 Appointments and promotions 278
17.4 Judicial independence and accountability 279
17.5 Judicial lawmaking 281
17.6 Judicial immunity 282
17.7 Contempt of court 283
17.8 Publicity 284

18  Tribunals and Inquiries 286
18.1 Tribunals 286
18.2 Inquiries 289

19  Judicial Review of the Executive 297
19.1 Introduction: The scope of judicial review 297
19.2 The application for judicial review procedure 299
19.3 The grounds of judicial review 303

Part V  CIVIL LIBERTIES

20  Civil Liberties: General Principles 319
20.1 Introduction 319
20.2 Statutory protection of civil liberties 321
20.3 The European Convention on Human Rights 322
20.4 Enacting a bill of rights 326
# Contents

21  **Freedom of Expression**  
21.1 Introduction: prior restraint  
21.2 Censorship  
21.3 Offences involving obscenity and indecency  
21.4 The protection of private interests  
21.5 Contempt of court  
21.6 Attacks on established orthodoxy  
21.7 Public order  

22  **The Police**  
22.1 Organisation of the police  
22.2 The status of a constable  
22.3 Police accountability  

23  **Police Powers of Arrest and Search in the Investigation of Crime**  
23.1 Introduction  
23.2 Pre-arrest questioning  
23.3 Stop and search  
23.4 Reasonable grounds for suspecting  
23.5 Search under section 1  
23.6 Proprieties: sections 2, 3  
23.7 Road checks  
23.8 Serious arrestable offence  
23.9 Arrest  
23.10 Police searches during the investigation of crime  
23.11 Search warrants  
23.12 In the station: An outline  
23.13 Conclusion  

24  **Emergency Powers and National Security**  
24.1 Introduction  
24.2 States of emergency  
24.3 Anti-terrorist legislation  
24.4 The security services  
24.5 Conclusion  

**Appendices**  
1  The Bill of Rights 1688  
2  European Communities Act 1972  
   EC Treaty (as amended by the Maastricht Treaty on European Union)
xi Contents

Treaty on European Union 1992 410
3 Official Secrets Act 1989 412
4 Supreme Court Act 1981 418
5 European Convention on Human Rights 1950 420
6 Public Order Act 1986 424
7 The Commonwealth of Britain Bill 430

Bibliography 439

Index 446