

Contents

Preface to the Third Edition page xiii

Table of Cases xvi

Table of UK Legislation xxxv

Table of UK Statutory Instruments 1

Table of European Instruments lii

Table of Overseas and International Instruments lv

PART I CONSTITUTIONAL REGULATION IN THE ABSENCE OF A CODIFIED CONSTITUTION

1 The Purposes and Characteristics of Constitutions 3
Chapter Outline 3
The Nature and Purpose of Constitutions 3
Characteristics of Constitutions: Does the United Kingdom Have a Constitution? 5
The Content of Constitutions 10
Forms of Constitutions 13
The UK Constitution 17
Practice Questions 21
Further Reading 21

2 The Domestic Sources of the UK Constitution 23

Chapter Outline 23 Introduction: Building a Constitution from Mixed Materials Legal Sources of the Constitution 24

Non-Legal Sources of the Constitution 45

Conclusion 57
Practice Questions 59
Further Reading 59

3 The UK Constitution and International Legal Orders 61

Chapter Outline 67

Introduction: External Sources of Constitutional Law? 61

Public International Law 63

vii



viii Contents

Conclusion 83
Practice Questions 84
Further Reading 84

4 Brexit and the UK Constitution 85

Chapter Outline 85

Introduction: The Awkward Relationship 85

The European Union 86

Brexit: The UK's Withdrawal from the European Union 103

Conclusion 114
Practice Questions 115
Further Reading 115

5 Law, Politics and the Nature of the UK Constitution 116

Chapter Outline 116

Introduction: The Relationship between Law and Politics 117

Two Competing Ideas of Constitutionalism 121

Judges and Political Questions 127

The Differing Responses of Law and Politics Illustrated 135

Conclusion: The Legalisation of the United Kingdom Constitution? 139

Practice Questions 140 Further Reading 140

PART II THE THEORY AND PRACTICE OF THE UK CONSTITUTION

6 Parliamentary Sovereignty 145

Chapter Outline 145 Introduction 145

Diceyan Orthodoxy: The Legally Unlimited Power of Parliament 146
Parliamentary Sovereignty: A Legal or Political Construct? 149

Can Parliament Impose Limitations upon Its Own Legislative Competence? 157

Can Parliament Amend the Primary Legislative Process? 164

The Relationships between Primary Legislation and Other Sources of Law 173

The Human Rights Act 1998 190

The Influence of – and the UK's Exit from – the European Union 193

Brexit: Reclaiming Sovereignty? 203

Conclusion 207
Practice Questions 209
Further Reading 209

7 The Rule of Law 211

Chapter Outline 211

Introduction 211

The Rule of Law's Domain 212

The Core Rule of Law 217

The Extended Rule of Law 230

The Substantive Rule of Law 247



ix Contents

Conclusion 251
Practice Questions 251
Further Reading 252

8 Separation of Powers 253

Chapter Outline 253 Introduction 253

The Theory and Aims of Separation of Powers 255 Governmental Institutions and Functions 259

Separation of Powers in the United Kingdom (I): Partially Separated Institutions? 268
Separation of Powers in the UK Constitution (II): A Partial Division of Functions? 276

Constitutional Checks and Balances 280

Conclusion 283
Practice Questions 285
Further Reading 285

9 Principles of Political and Parliamentary Accountability 287

Chapter Outline 287
Introduction 287

Political and Legal Accountability Distinguished 289

Individual Ministerial Responsibility 294

Sanctions and Effectiveness 302

Conclusion 310
Practice Questions 310
Further Reading 310

PART III CENTRAL GOVERNMENT IN THE UNITED KINGDOM

10 The Executive 315

Chapter Outline 315 Introduction 315

From Absolute Monarchy to the Modern Executive 316
The Composition and Role of the Modern Executive 327
Conclusion 350

Conclusion 350
Practice Questions 35
Further Reading 352

11 Parliament (I): The House of Commons 353

Chapter Outline 353

Introduction: Parliament 353

The Composition of the House of Commons 355

The Role and Functions of the House of Commons 362

The Pre-eminent House of Parliament 372
The Question of 'Elective Dictatorship' 375

Towards a Rebalancing of Executive/Legislative Relations? 376

Electoral Systems and Electoral Reform 378

The Review of Westminster Constituency Boundaries 383



x Contents

Conclusion 385
Practice Questions 385
Further Reading 385

12 Parliament (II): The House of Lords 387

Chapter Outline 387
Introduction 387
The Composition of the House of the Lords 388
The Role of the House of Lords 395
Reform of the House of Lords 404
Conclusion 410
Practice Questions 411
Further Reading 412

13 The UK Supreme Court and the Office of Lord Chancellor: Towards an

Independent Judicial Branch? 413

Chapter Outline 413 Introduction 413 The Apex of the UK Judi

The Apex of the UK Judicial System Prior to the Constitutional Reform Act 2005 414

The Pressure for Institutional Reform of the Judiciary 418

The Constitutional Reform Act 2005 422

Conclusion 429
Practice Questions 430
Further Reading 430

PART IV DECENTRALISED GOVERNMENT IN THE UNITED KINGDOM

14 The United Kingdom's Devolution Arrangements 435

Chapter Outline 435 Introduction 435

From Union to Devolution 437
Devolution in Practice: Scotland 445
Devolution in Practice: Wales 454

Devolution in Practice: Northern Ireland 461

Brexit and Devolution 471

Conclusion 473
Practice Questions 475
Further Reading 475

15 Devolution and the UK Constitution 477

Chapter Outline 477
Introduction 477
Subordinate Legislatures 478
The English/West Lothian Question 499
Tackling the English/West Lothian Question 504
Conclusion 515



xi Contents

Practice Questions 515 Further Reading 516

PART V ACCOUNTABILITY (I): SCRUTINY, OPENNESS AND GOOD ADMINISTRATION

16 Parliamentary Scrutiny of Government 519

Chapter Outline 519 Introduction 519

Scrutiny in Parliament 521

Reforming Parliamentary Scrutiny: The Wright Reforms 530

Assessing Parliamentary Scrutiny of Government 532

Conclusion 536 Practice Questions 53

Further Reading 537

17 The Parliamentary Ombudsman 538

Chapter Outline 538 Introduction 538

The Work of the Parliamentary Ombudsman 540

Remedies and Redress 547
Efficiency and Effectiveness 550
Conclusion 553

Practice Questions 554 Further Reading 554

18 Freedom of Information 556

Chapter Outline 556

Open Government and Effective Accountability 556 Towards Freedom of Information Legislation 558

The Freedom of Information Act 2000 561

Assessing the Impact of the Freedom of Information Act 573

Conclusion 577
Practice Questions 577
Further Reading 577

PART VI ACCOUNTABILITY (II): THE COURTS

19 Judicial Review of Administrative Action: Theory, Procedure and Remedies 581

Chapter Outline 581

Introduction 581

Judicial Review's Constitutional Role 582
Procedural Elements of Judicial Review 594
Remedies Available under Judicial Review 616

Conclusion 619
Practice Questions 620
Further Reading 620



xii Contents

20 Judicial Review of Administrative Action: Grounds for Review 622

Chapter Outline 622 Introduction 622 Illegality 625 Irrationality 641 Procedural Impropriety **Legitimate Expectations** 671 681 Conclusion **Practice Questions** Further Reading 682

21 The European Convention on Human Rights 684

Chapter Outline 684
Introduction 684
The Nature of Human Rights 685
The Development of the ECHR and Associated Institutions 699
The Rights and Freedoms Protected under the ECHR 706
Human Rights and Trade-Offs under the ECHR 724
Conclusion 738
Practice Questions 739
Further Reading 740

22 The Human Rights Act 1998 742

Chapter Outline 742 Introduction 742 From Civil Liberties to Human Rights 743 Incorporating the Convention The HRA and Legislation 757 Employing the Convention Rights under the HRA Towards a Bill of Rights for the United Kingdom? 780 Conclusion 783 **Practice Questions** Further Reading 785

23 Political Freedoms and Democratic Participation 787

Chapter Outline 787 Introduction 787 Freedom of Expression 789 Freedom of Assembly 799 Liberty 808 Voting Rights 814 Conclusion 819 **Practice Questions** 820 Further Reading

Index 822