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Constitutional and Administrative Law

Third Edition

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Contents

<i>Preface</i>	x
<i>Table of Cases</i>	xii
<i>Table of Statutes</i>	xxiv

PART I GENERAL PRINCIPLES

1 The purposes of constitutional law	3
1.1 Introduction	3
1.2 Three constitutional models: individualism, liberalism and communitarianism	5
1.3 Incommensurables and uncombinables	9
1.4 Individualism and liberalism	12
1.5 Communitarianism	14
1.6 Reconciling liberalism and communitarianism?	16
1.7 Democracy	18
Summary	21
Further reading	22
Exercises	22
2 The character of the UK constitution	23
2.1 The unwritten constitution	23
2.2 Conventions (with contributions by Barry Hough)	24
2.3 The dignified and efficient constitution	36
2.4 The state	37
Summary	41
Further reading	42
Exercises	42
3 The structure of the UK constitution: an overview	44
3.1 Historical development.	44
3.2 Limited monarchy	52
3.3 The legislature	53
3.4 The executive	54
3.5 The judiciary	61
3.6 Citizenship	63
Summary	65
Further reading	67
Exercises	67

4	Constitutionalism: the rule of law and the separation of powers	69
4.1	Introduction	69
4.2	The meaning of the rule of law	70
4.3	Dicey's version of the rule of law	72
4.4	Conflicting versions of the rule of law: the Pinochet case	76
4.5	Disobedience to the law	79
4.6	The separation of powers	80
	Summary	87
	Further reading	88
	Exercises	89
5	Parliamentary supremacy	90
5.1	The basis of parliamentary supremacy	90
5.2	The scope of parliamentary supremacy	94
5.3	The ingredients of an Act of Parliament	95
5.4	Parliamentary supremacy and the rule of law	97
5.5	Legal limits upon parliamentary supremacy?	99
5.6	Delegated legislation	108
	Summary	109
	Further reading	110
	Exercises	110
6	The Geographical Division of Powers	112
6.1	Federal and unitary constitutions	112
6.2	The structure of the United Kingdom	114
6.3	Local government	128
	Summary	137
	Further reading	138
	Exercises	138
7	The UK constitution and the European Union	139
7.1	The nature of the European Union	139
7.2	Community institutions	144
7.3	Community law and national law	152
	Summary	159
	Further reading	160
	Exercises	161

PART II GOVERNMENTAL INSTITUTIONS

8	Parliament	165
8.1	Historical development	165
8.2	The meeting of parliament	169
8.3	The functions of parliament	170
8.4	Parliamentary privilege	173

Summary	183
Further reading	184
Exercises	185
9 The composition of Parliament	187
9.1 The composition of the House of Lords	187
9.2 The composition of the Commons: the electoral system	191
Summary	205
Further reading	206
Exercises	206
10 Parliamentary procedure	207
10.1 Introduction	207
10.2 The Speaker	208
10.3 Legislative procedure	208
10.4 Financial procedure	214
10.5 Parliamentary supervision of the executive	217
10.6 Redress of grievances	223
Summary	226
Further reading	227
Exercises	227
11 The Crown	229
11.1 The nature of the Crown	229
11.2 The Queen	231
11.3 Crown immunities	235
11.4 The sources of Crown power (with contributions by Barry Hough)	238
Summary	247
Further reading	248
Exercises	248
12 Ministers and departments	250
12.1 The Prime Minister	250
12.2 The Cabinet	252
12.3 Ministers	254
12.4 Government departments	255
12.5 Ministerial responsibility	256
12.6 Civil servants	265
Summary	273
Further reading	274
Exercises	275
13 The police and the armed forces	276
13.1 Introduction	276
13.2 Police organisation and control	276
13.3 Police accountability	281
13.4 The armed forces	286

Summary	288
Further reading	289
Exercises	289

PART III THE CITIZEN AND THE STATE

14 Judicial review of the executive	293
14.1 The nature and scope of judicial review	293
14.2 Illegality	296
14.3 Irrationality/unreasonableness	302
14.4 Procedural impropriety	304
14.5 The application for judicial review procedure	311
14.6 The exclusion of judicial review	316
Summary	317
Further reading	318
Exercises	318
15 Civil liberties: general principles and the Human Rights Act 1998	321
15.1 Introduction: the common law	321
15.2 The structure of the ECHR	323
15.3 Reasoning methods under the ECHR	327
15.4 The ECHR and UK law	330
15.5 The Human Rights Act 1998	332
Summary	341
Further reading	342
Exercises	342
16 Freedom of expression and competing private interests <i>(by Richard Mullender)</i>	343
16.1 Introduction	343
16.2 Arguments for freedom of expression	345
16.3 Defamation	347
16.4 Breach of confidence	358
16.5 Invasion of privacy	359
16.6 Moral philosophy and the law	361
Summary	364
Further reading	365
Exercises	365
17 Prior restraint and censorship	366
17.1 Introduction	366
17.2 'Prior restraint'	367
17.3 Public order offences	374
17.4 Police powers	382
Summary	387
Further reading	387
Exercises	388

18 Police powers of arrest and search in the investigation of crime <i>(by Michael Haley)</i>	390
18.1 Introduction	390
18.2 Violation of PACE and codes	392
18.3 Pre-arrest questioning	394
18.4 Stop and search	394
18.5 Arrest	399
18.6 Search before and following arrest	404
18.7 Police searches during the investigation of crime	406
18.8 'In the station': an outline	413
Summary	414
Further reading	415
Exercises	415
 19 National security, state secrecy and emergency powers	 417
19.1 Introduction	417
19.2 Government secrecy	418
19.3 Emergency powers	432
19.4 The security and intelligence services	438
19.5 Covert surveillance	440
Summary	444
Further reading	445
Exercises	446
 <i>Bibliography</i>	 448
<i>Index</i>	466

Preface

The aims of this edition remain the same as those of previous ones – namely to offer an account of the main features of the constitutional law of the UK in their historical and theoretical context emphasising topics that are difficult and controversial.

The main standpoint of the book is that constitutional law pre-eminently concerns the management of disagreement. This draws in particular upon the writings of Sir Isaiah Berlin and Jeremy Waldron, advancing the view that disagreement is a permanent and inescapable feature of political and legal processes. As Holmes J famously remarked, ‘the Constitution is made for people of fundamentally different views’, (*Lochner v. New York* (1905), 19 US 45 at 76–7). Hence, in a democracy, the task of constitutional law is provide mechanisms that prevent one set of values from being permanently dominant while at the same time trying to keep order.

The book has been re-cast and substantially rewritten in order to take account of the major constitutional changes that are currently taking place. Some of these comprise deliberate attempts by the government to modernise the constitution. They include devolution, the Human Rights Act, and the unfinished business of House of Lords reform, electoral reform and freedom of information. There have also been measures extending police powers in relation to public order and covert surveillance and further measures of this kind are proposed. Another development has been the increased willingness of senior judges to engage in debate about constitutional principles both in court and in extra-judicial writings, particularly in relation to human rights, the separation of powers, the role of international law and the doctrine of parliamentary supremacy.

Part I discusses the structure of the constitution and general principles including devolution and the relationship between the UK constitution and the European Union. Part I also introduces the ideas of the seminal political thinkers, Hobbes, Locke and Rousseau, whose different perspectives on the nature of government remain important today. Part II discusses the main institutions of government, Parliament, the central executive, the police and the armed forces. Part III concerns the citizen and the state, and includes the fast-developing topic of judicial review of administrative action, freedom of expression (which, in view of its relationship with democratic constitutionalism, is given particular emphasis), police powers, government secrecy and covert operations. The likely impact of the Human Rights Act 1998 is emphasised throughout.

I am grateful to many people who directly and indirectly helped me to produce this edition. These include, pre-eminently, Michael Haley of Keele University who prepared Chapter 18, Barry Hough of Southampton

Institute who recast and updated the material on conventions, ministerial responsibility, executive agencies, and the royal prerogative, and Richard Mullender of Newcastle Law School who wrote Chapter 16. I am particularly grateful to Brigid Hadfield of Queen's University for patiently reading the draft manuscript and for many valuable suggestions and corrections. I am of course responsible for the mistakes that remain. Ann Sinclair checked and updated the bibliography and Anna Leaker prepared the tables of cases and statutes courtesy of Newcastle Law School's student research assistant scheme.

I have tried to be up to date to end-July 1999. Changes to the Freedom of Information bill may be substantial. While the book is in press the government have agreed to reconsider the prejudice test, the exclusion of accident and crime inquiries and the exclusion of background papers to policy advice.

Newcastle

JOHN ALDER

Table of Cases

Abdulaziz v. U.K. [1985] 7 E.H.R.R. 471	326, 328
Abrams v. United States [1919] 250 U.S. 616	346
Adam v. Ward [1917] AC 309	355
Adegbeno v Akintola [1963] AC 614	234
A-G v. Antigua Times Ltd [1976] AC 16,	368
A-G v. Associated Newspapers Ltd. [1994] AC 238	87, 295
A-G v. BBC [1981] AC 303	6, 337, 371
A-G v. Blake [1998] 1 All ER 833	331
A-G v. Crayford UDC [1962] Ch 575, 296	296
A-G v. De Keyser's Royal Hotel Ltd [1920] AC 508	244, 246, 247, 432
A-G v. de Winton [1906] 2 Ch 1060	135
A-G v. English [1983] 1 AC 116	369
A-G v. Fulham Corporation [1921] 1 Ch 440	296, 297
A-G v. Guardian Newspapers Ltd [1987] 1 WLR 1048	86, 369
A-G v. Guardian Newspapers Ltd (No2) [1988] 3 All ER 545	327, 331, 337, 357, 366, 428
A-G v. Jonathan Cape [1975] 3 All ER 489	33, 427
A-G v. Leveller Magazine Ltd [1979] AC 400	370
A-G v. News Group Newspapers [1987] AC 40	370
A-G v. News Group Newspapers [1988] 2 All ER 906	369
A-G v. Observer Ltd [1988] 1 All ER 385	369
A-G v. Sport Newspapers Ltd [1992] 1 All ER 503	370
A-G v. Times Newspapers Ltd [1974] AC 273	369
A-G v. Times Newspapers Ltd [1991] 2 All ER 398	369
A-G v. Wilts United Dairies [1921] 37 TLR 884	243
A-G for Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629	301
A-G for New South Wales v. Perpetual Trustee Co. Ltd [1955] 1 All ER 846	277
A-G for New South Wales v. Trethowan [1932] AC 526	103
A-G for Northern Ireland's Reference (No1 of 1975) [1977] AC 105	432
A-G of Trinidad and Tobago v. Phillips [1995] 1 All ER 93	244
Ahmad v. ILEA [1978] QB 36	86
Air Canada v. Secretary of State for Trade [1983] 2 AC 394	430
Airey v. Ireland (1979) 2 E.H.R.R. 305	329
Albert v. Lavin [1982] AC 546	401
Airdale N.H.S. Health Trust v. Bland [1993] 1 All ER 821	10
Alfred Crompton v. Customs and Excise [1974] AC 405	430
Amphitrite Case [1921] 3 KB 500	236
Anisminic Ltd v. Foreign Compensation Commission [1969] 2 AC 147	76, 100, 298, 316
Arrowsmith v. Jenkins [1963] 2 QB 561	376
Ashby v. White [1703] 2 Ld Raym 938	182
Askoy v. Turkey [1997] 23 E.H.R.R. 553	434
Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223	302
Auckland Harbour Board v. R [1924] AC 318	216
Ayr Harbour Trustees v. Oswald [1883] 8 App Case 623	301
B v. France (1992) ECHR Ser.A vol. 232-C	328
Baker v. Carr 369 U.S.186 [1962]	245
Baker v. Oxford [1980] RTR 315	394
Bank Voor Handel en Scheepvaart NV v. Administrator of Hungarian Property [1954] AC 584	58
Barnard v. National Dock Labour Board [1953] 1 All ER 1113	305
Barrett v. Enfield Borough Council [1999] 3 All ER 193	156, 312
Bates Case [1606] 2 St. Tr. 371	243
Bath Society v. Secretary of State for the Environment [1992] 1 All ER 28	300
BBC v. Johns [1965] Ch 32	58, 243
Beach v. Freeson [1972] 1 QB 14	179
Beatty v. Gillbanks [1882] 9 QBD 308	377, 378, 385
Bentham v. Netherlands [1985] 8 E.H.R.R. 1	307, 325, 329
Berman v. Parker 348 U.S. 26 [1954]	40

Bilston Corporation v. Wolverhampton Corporation [1942] Ch 391	176
Birmingham City Council v. 'O' [1982] 2 All ER 356	422
Blackburn v. A-G [1971] 2 All ER 1380	101, 107, 245
Blackpool Corporation v. Locker [1948] 1 All ER 85	434
Blackshaw v. Lord [1984] QB 1	355
Boddington v. British Transport Police [1998] 2 WLR 639	294, 295, 316
Bogner Regis U.D.C. v. Campion [1972] 2 All ER 61	350
Bonnard v. Perryman 1891-4 All ER Rep 965	349
Borgers v. Belgium (1991) ECHR Ser.A 214-B 431	
Bowles v. Bank of England [1913] 1 Ch 57	93, 103, 176, 215
Bowman v. Secular Society [1917] AC 406	380
Bowman v. UK (1998) 26 E.H.R.R. 1	202
Bradlaugh v. Gossett [1884] 12 QBD 271	176
Brandenberg v. Ohio 395 U.S. [1969]	366, 374
Brannigan and McBride v. U.K. [1994] 17 E.H.R.R. 539	79, 392, 417, 434
Bribery Commissioner v. Ranasinghe [1965] AC 172	103
Brind v. Secretary of State for the Home Department [1991] 1 AC 696	86, 295, 302, 304, 330, 331, 332, 335, 369, 382
British Coal Corporation v. R [1935] AC 500	101, 245
British Oxygen Co. v. Minister of Technology [1971] AC 610	275
British Steel v. Granada TV [1981] AC 1096	20, 371
Brogan v. U.K. [1988] 11 E.H.R.R. 117	329, 417, 436
Bromley London Borough Council v. GLC [1983] 1 AC 768	20, 216, 300, 301
Brown Case HC Deb 15 July 1947 Col. 284	181
Brunner v. European Union Treaty [1994] 1 CLR 57	143
Brunyate v. ILEA [1989] 2 All ER 417	133
Brutus v. Cozens [1973] AC 854	299
Buchanan v. Babco [1977] 3 All ER 1048	86, 377
Buckley v. Valeo 424 US 1 [1976] 313	12, 202
Bugdaykay v. Secretary of State [1987] 1 All ER 940	296, 299, 323
Bull v. Chief Constable of Sussex [1995] 159 L.G. Rev 893	401
Bulmer v. Bollinger [1974] 2 All ER 1226	150, 153
Burmah Oil Corporation Ltd v. Bank of England [1980] AC 1090	430
Burmah Oil Corporation Ltd v. Lord Advocate [1965] AC 75	7, 94, 240, 247, 432
Buron v Denman [1848] 2 Ex 167	237
Bushell v. Secretary of State for the Environment [1981] AC 75	20, 268, 306
Bushell's Case [1670] 6 St. Tr. 999	80, 87
C v. S [1999] 2 All ER 343	432
Calverley v. Chief Constable of Merseyside Police [1989] AC 1228	312
Calvin v. Carr [1980] AC 574	306, 307
Carl Zeiss Stiftung v. Rayner & Keeler Ltd (No2) [1967] 1 AC 853	237
Campbell v. UK (1992) 15 E.H.R.R. 137	338
Carltona Ltd v. Commissioner for Works [1943] 2 All ER 560	34, 268
Casada Coca v. Spain (1994) 18 E.H.R.R. 1	330
Case of Proclamations [1611] 12 Co Rep 74	92, 241, 242
Castells v. Spain [1992] 14 E.H.R.R. 445	330, 352, 366, 368, 380
Castorini v. Chief Constable of Surrey [1988] NLJ Rep 180	284, 365, 401, 402
Caswell v. Dairy Produce Quota Tribunal [1990] 2 All ER 434	313
Chandler v. DPP [1964] AC 763	40, 238, 245, 286
Chapman v. DPP [1988] Crim LR 842	401, 404-5
Charge to the Bristol Grand Jury [1832] 5 C & P 261	432
Chatterton v. Secretary of State for India [1895] 2 QB 189	348
Cheall v. Apex [1983] 1 All ER 1130	307
Cheney v. Conn [1968] 1 All ER 779	94, 98
Chief Constable of North Wales Police v. Evans [1982] 3 All ER 156	293, 312
China Navigation Co. Ltd v. A-G [1932] 2 KB 197	64, 239
Christie v. Leachinsky [1947] AC 573	403
Chung Chi Cheung v. R [1939] AC 160	75
Church of Scientology of California v. Johnson-Smith [1972] 1 QB 522	177, 179
CILFIT S & I v. Ministro de la Sanita (1982) 1 CMLR 472	149
Cinnamond v. British Airports Authority [1980] 2 All ER 368	307
City of Chicago v Tribune Co (1923) 307 Ill 595	351
City of London v. Wood [1710] 10 MOD 669	46, 92
Clarke v. Bradlaugh [1881] 7 QBD 38	176
Cocks v. Thanet DC [1983] 2 AC 286	72, 316

xiv *Table of Cases*

Cohen v. Daily Telegraph Ltd [1968] 1 WLR 916	349
Coleen Properties v. Ministry of Housing [1971] 1 All ER 1049	298
Collins v. Wilcox [1984] 1 WLR 1172	394
Commission v. U.K. [1981] ECR 203	143
Commission for Racial Equality v. Dutton [1989] QB 783	381
Commissioners of Crown Lands v. Page [1960] 2 QB 274	236
Commissioners of Customs and Excise v. APS Samax [1983] 1 All ER 1042	150
Coney v. Choice [1975] 1 All ER 979	304, 314
Congreve v. Home Office [1976] QB 629	243, 296
Conway v. Rimmer [1968] AC 910	429, 430
Cook v. Alexander [1974] QB 279	177
Cook v. Sprigg [1899] AC 572	237
Cooper v. Hawkins [1904] 2 KB 164	236
Cooper v. Wandsworth Board of Works [1863] 14 CB (NS) 180	305
Costa v. ENEL [1964] CMLR 425	157
Council of Civil Service Unions (CCSU) v. Minister for the Civil Service [1985] AC 374	34, 41, 244, 245, 294, 296 301, 302, 303, 307, 317, 417
Costello-Roberts v. U.K. [1995] 19 EHHR 112	325, 340
Credit Suisse v. Allerdale DC [1996] 2 All ER 129	294
CREEDNZ Inc v. Governor-General [1981] 1 NZLR 172	300
D v. NSPCC [1978] AC 171	38, 40, 430
D'Souza v. DPP [1992] 4 All ER 545	404
Dallison v. Caffrey [1965] 1 QB 348	404
Dawkins v. Lord Paulet [1869] LR 5 QBD 94	287
Dawkins v. Lord Rokeby [1866] 4F & F 806	287, 348
Day v. Savidge [1615] Hobart 85	93
De Jager v. AG [1907] AC 326	65
De Morgan v. Director General Of Social Welfare [1998] AC 275	245
Defrenne v. SABENA (No2) [1976] ECR 455	154
Derbyshire County Council v. Times Newspapers [1993] 1 All ER 1011	38, 39, 323, 350–1, 367
Dimes v. Grand Junction Canal Co. [1852] 3 HLC 759	87, 308
Dorsetshire East Division Case [1910] 6 O'Mand H22	203
Doughty v. Rolls Royce [1992] IRC 538	155
DPP v. A & BC Chewing Gum Ltd [1968] 1 QB 159	373
DPP v. Clarke and others [1992] Crim LR 60	378
DPP v. Cornish [1997] The Times 25th January	392
DPP v. Fidler [1992] 1 WLR 91	378
DPP v. Hawkins [1988] 3 All ER 673	400, 403
DPP v. Head [1959] AC 83	295
DPP v. Jones [1999] 2 All ER 257	330, 375
DPP v. Jordan [1977] AC 699	373
DPP v. Luft [1977] AC 962	203
DPP v. Whyte [1972] AC 849	373
Dr. Bonhams Case [1610] 8 Co. Rep. 114	92, 293
Duchy of Lancaster Case [1567] 1 P'ow 325	44, 230
Dudgeon v. U.K. [1981] 4 E.H.R.R. 149	329, 330, 368
Duke v. GEC Reliance Ltd [1990] 1 All ER 626	157
Duncan v. Jones [1936] 1 KB 218	385
Dunlop v. Woollahra MC [1982] AC 158	235, 312
Dunlop Rubber Co. Ltd v. Dunlop [1921] 1 AC 637	348
Dunn v. R [1896] 1 QB 116	267
Duport Steels Ltd v. Sirs [1980] 1 All ER 529	50, 84
Dyson v. A-G [1911] 1 KB 410	20, 50, 269
Earl of Antrims Petition [1967] 1 AC 691	188
Edinburgh & Dalkeith Railway Co. v. Wauchope [1842] 8 CI and F 710	92, 94
Edwards v. Bairstow [1956] AC 14	299
Edwards v. DPP [1993] 97 Cr App Rep 301	403
Edwards v. South Carolina 372 U.S. 279 [1963]	374
Ellen Street Estates Ltd v. Minister of Health [1934] 1 KB 590	95
Enever v. R [1906] 3 CLR 969	277
Engelke v. Musman [1928] AC 433	237
Entick v. Carrington [1765] 19 St. Tr 1029	5, 6, 7, 70, 75, 239, 293, 295, 322
Equal Opportunities Commission v. Employment Secretary [1994] 1 All ER 910	159, 284, 312

Everson v. Board of Education	330 U.S. 1	1947	188
Ex parte Canon Selwyn	[1872] 36 JP	54	94, 116
Ex Parte Gilmore, see R. v. Medical Appeal Tribunal			
Ex Parte Kynoch	[1919] 1 KB	176	301
Ex parte Wason	(1869) LR 4 QB	573	348
Faccini Dori v. Recreb	[1995] CMLR	665	155
Factortame v. Secretary of State for Transport [No2]	[1991] 1 All ER	70	107, 157, 159
Farrell v. Secretary of State for Defence	[1980] 1 All ER	66	432
Fayed v. U.K.	[1994] 18 EHHR	393	329
Felton v. Callis	[1969] 1 QB	200	240
Finnegan v. Clowney Youth Training Programme	[1990] 2 AC	407	157
Fisher v. Oldam Corporation	[1930] 2 KB	364	276
Forbes v. Cochrane	[1824] 2 B & C	448	93
Foster v. British Gas	[1990] 3 All ER	897	156, 440
Fox v. Stirk	[1970] 2 QB	463	195
Francis and Francis v. Central Criminal Court	[1988] 3 All ER	775	409, 437
Francombe v. Mirror Group Newspapers	[1984] 2 All ER	408	429
Francovich and Bonifaci v. Italy	[1993] 2 CMLR	66	155, 156
Franklin v. Minister of Town and Country Planning	[1948] AC	87	50, 293, 308
Fredin v Sweden	(1991) ECHR	1-69 327	
G v. DPP	[1989] Crim LR	150	402
Gapper v. Avon and Somerset Constabulary	[1998] 4 All ER	248	400
Garland v. BREL	[1983] 2 AC	751	86, 107, 159
Gaskin v. U.K.	[1989] The Guardian	19th July	417
General Medical Council v. BBC	[1998] 1 WLR	1573	40
Gertz v. Roberts Welch	(1974) 418 U.S.	323	352
Ghani v. Jones	[1970] 1 QB	693	65
Gibson v. Lord Advocate	[1975] SLT	134	102
Godden v. Hales	[1686] 11 St. Tr.	1165	93, 243
Golder v. U.K.	[1975] 1 EHHR	524	328
Goldsmith v. Bhojru	[1997] The Times	20th June	352
Goodridge v. Hampshire Chief Constable	[1999] 1 All ER	896	430
Goodwin v. U.K.	[1996] 22 E.H.R.R.	123	330, 368
Gouriet v. NUPOW	[1978] AC	435	85, 245, 316
Grand Duchy of Luxembourg v. Parliament	[1983] 2 CMLR	729	146
Grant v. Gould	[1792] 2 H Bl	69	287
Grau Gromis, Criminal Proceedings, Case Against	[1995] All ER (EC)	688	149
Grieve v. Douglas-Home	[1965] SC	315	203
Halford v. UK	[1997] IRLR	471	338, 443
Hall v. Hall	[1944] 88 Sol J	383	89
Hall v. Shoreham Urban District Council	[1964] 1 All ER	1	302
Hamilton v. Al Fayed	[1999] 3 All ER	317	100, 175, 177, 179
Hammersmith and Fulham LBC v. Secretary of State for the Environment	[1990] 3 All ER	589	303, 306, 366
Handyside v. U.K.	[1976] 1 E.H.R.R.	737	328, 329, 330, 372, 373, 378
Harper v. Home Secretary	[1955] Ch	238	201
Harper v. Haden	[1933] 1 Ch	298	375
Harris v. Minister of the Interior	[1952] (2) SA	428	103
Harris v. Sheffield United Football Club	[1988] QB	77	385
Harrison v. Duke of Rutland	[1831] 1 QB	147	374
Hazell v. Hammersmith and Fulham London Borough Council	[1992] 2 AC	1	135, 296
Hector v. A-G of Antigua and Bermuda	[1990] 2 All ER	103	367
Helle v. Finland	[1997] 26 E.H.R.R.	159	310
Hellwell v. Chief Constable of Derbyshire	[1995] 4 All ER	473	428
Henn and Darby v. DPP	[1980] 2 WLR	597	150
Hickman v. Maisey	[1900] 1 QB	752	
Hill v. Chief Constable of West Yorkshire	[1989] AC	53	284
Hipperson v. Newbury Electoral Officer	[1985] 2 All ER	456	196
Hirst v. West Yorkshire Chief Constable	(1986) 85 Crim. App. Rep.	143	376
Hoffman-La Roche Ltd v. Trade and Industry Secretary of State	[1974] 2 All ER	1128	83, 176
Holgate-Mohammed v. Duke	[1984] 1 All ER	294	284
Home Office v. Dorset Yacht Company	[1970] 2 All ER	294	284
Home Office v. Harman	[1983] 1 AC	280	322, 371

xvi *Table of Cases*

Homer v. Cadman [1886] 16 Cox CC 51	376
Hone v. Maze Prison Visitors [1988] 1 All ER 321	307, 331
HRH Princess of Wales v. MGN Newspapers Ltd (1993), Unreported 8th November (H.C.)	359
Hubbard v. Pitt [1976] QB 142	375
Humphries v. Connor [1864] 1 7 Ir. CLR1	385
Huntley v. AG for Jamaica [1995] 2 AC 1	338
Hussein v. Chong Fook Kam [1970] AC 952	394, 400
Internationale Handelsgesellschaft v. EVST [1974] 2 CMLR 549	142, 158
IRC v. National Federation of Self-Employed and Small Business Ltd [1982] AC 617	313
IRC v. Rossminster, see R. v. IRC	
Ireland v. U.K [1978] 2 E.H.R.R 25	325, 418
James v. Chief Constable of South Wales [1991]Daily Telegraph 3rd May	401
James v. UK (1998) ECHR Ser-8 No 98	327
Jeffs v. New Zealand (N2) Dairy Board [1966] All ER 863	305
Jersild v. Denmark [1994] The Times 20th October	328, 330, 367, 368, 381
John v. Mirror Group Newspapers [1996] 3 WLR 593	354
John v. Rees [1969] 2 All ER 274	307
Johnston v. Chief Constable of Royal Ulster Constabulary [1986] ECR 1651	
Johnston v. Ireland (1996) ECHR Ser. A vol.112	328
Johnstone v. Pedlar [1921] 2 AC 262	237
Jordon v. Burgoyne [1963] 2 QB 744	377
Joyce v. DPP [1946] AC 347	65, 237
Kawahaja v. Secretary of State for the Home Affairs [1983] 1 All ER 765	299
Kaye v. Robertson [1991] FSR 62	359
Keighley v. Bell [1866] 4 F & F 763	287
Kenlin v. Gardiner [1967] 2 QB 510	394
Kirklees MBC v. Wickes Building Supplies Ltd [1992] 3 All ER 717	156
Klass v. Federal Republic of Germany [1978] 2 E.H.R.R 214	69, 329, 338, 418, 439, 441, 443
Knüller v. DPP [1973] AC 435	371
Kodeeswaren v. A-G for Ceylon [1970] AC 1111	267
Kokkinakis v. Greece [1993] The Times 11th June	340
Kostovski v. the Netherlands (1989)ECHR Ser.A vol.166	431
Kruslin v. France [1990] 12 E.H.R.R. 547	338, 418, 439, 441, 443
Laker Airways Ltd v. Department of Trade and Industry [1977] QB 643	239-40, 246
Lange v. Australia Broadcasting Corporation [1997] BHRC 513	356, 357
Lavender v. Minister of Housing [1970] 3 All ER 871	275, 301
Lawless v. Ireland [1961] 1 E.H.R.R. 15	328, 418, 434
Leander v. Sweden [1987] The Times 25th April	329, 418
Lee v. Bude & Torrington Railway Co. [1871] LR 6 CP 577	46, 93
Leech v. Parkhurst Prison Deputy Governor [1988] 1 All ER 485	306
Lewis v. Cattle [1938] 2 All ER 364	277
Lewis v. Chief Constable of South Wales [1991] 1 All ER 206	403
Liberal Party v. U.K. [1982] 4 E.H.R.R. 106	192
Lindsey v. U.K. [1979] 3 CMLR 166	192
Lingens v. Austria [1986] 8 E.H.R.R. 407	352, 367, 368
Lion Laboratories v. Evans [1985] QB 526	428, 441
Lithcow v. UK (1986) 8 E.H.R.R. 329	327
Litser v. Forth Dry Dock & Engineering Co Ltd [1990] 1 AC 546	157
Liversidge v. Anderson [1942] AC 206	293
Lloyd v. McMahon [1989] 1 All ER 1118	307
Local Government Board v. Arlidge [1915] AC 120	50, 293
Lochner v. New York 19 U.S. 45 [1905]	141
London and Clydesdale Estates Ltd v. Aberdeen District Council [1979] 3 All ER 876	304
Lonrho v. Fayed (No4) [1994] 1 All ER 870	431
Lonrho v. Secretary of State for Trade and Industry [1988] 2 All ER 609	311
Lonrho v. Tebbit [1992] 4 All ER 280	316
Lord Advocate v. Dumbarton District Council [1990] 2 AC 580	236
Lord Advocate v. Scotsman Publications [1990] 1 AC 812	426, 427
Lozidou v. Turkey [1995] The Times 15th April	9
Lunt v. DPP [1993] Crim LR 534	412
Lynch v. Ministry of Defence [1983] NILR 216	432

M v. Home Office [1993] 3 All ER 537	39, 52, 53, 55, 76, 153, 157, 230, 235, 312, 340
McCarthy and Stone Ltd v. Richmond LBC [1991] 4 All ER 897	135, 136, 243, 296
MacCarthy's Ltd v. Smith [1979] 3 All ER 325	107, 150, 159
MacCormick v. Lord Advocate [1975] SC 369	102
MacLaine-Watson v. DTI [1988] 3 All ER 257	86
Mahon v. Air New Zealand [1984] 3 All ER 271	307
Malone v. Metropolitan Police Commissioner [1979] Ch 344	39, 322, 331, 359, 441
Malone v. U.K. [1984] 7 E.H.R.R. 14	329, 441
Mandla v. Dowell-Lee [1983] 1 All ER 1062	381
Manuel v. A-G [1982] 3 All ER 786 (Megarry J.), [1983] 3 All ER 822 (C.A.)	93, 96, 101, 104
Marbury v. Madison 5 U.S. 137 [1803]	24, 69, 158
Marckx v. Belgium [1979] 2 E.H.R.R. 330	327, 328, 329
Marleasing SA v. La Comercial Internacional de Alimentacion SA [1992] 1 CMLR 305	157, 335
Marshall v. BBC [1979] 3 All ER 80	203
Marshall v. Southampton Area Health Authority (No1) [1986] 2 All ER 584	154
Marshall v. Southampton Area Health Authority (No2) [1993] 4 All ER 586	155
Mathieu-Mohin v. Belgium [1987]	187
Maxwell v. Trade Department [1974] 2 All ER 122	307
McCarey v. Associated Newspapers Ltd [1964] 2 All ER 335	353
McIlkenny v. Chief Constable of the West Midlands [1980] 2 All ER 227	38
McInnes v. Onslow-Fane [1978] 3 All ER 211	306, 309
McLaren v. Home Office [1990] IRLR 338	315
McMonagle v. Westminster City Council [1990] 2 AC 716	373
McVeigh v. U.K. [1981] 5 E.H.R.R. 71	435
Mellacher v. Austria (1989) ECHR Ser. A vol. 169	327
Mercury Communications v. Director General of Telecommunications [1996] 1 All ER 575	316
Metropolitan Asylum District v. Hill [1881] 6 App Case 193	312
Metropolitan Properties v. Lannon [1968] 3 All ER 304	309
Mighell v. Sultan of Johore [1894] 1 QB 949	238
Minister of Home Affairs v. Fisher [1980] AC 319	338
Mohammed-Holgate v. Duke [1984] AC 437	402
Monson v. Tussauds Ltd [1894] 1 QB 671	350
Morgan v. Tate and Lyle Ltd [1955] AC 21	203
Mortensen v. Peters [1906] 14 SLT 227	93
Moss v. McLachlan [1985] IRLR 76	384
Muller v. Switzerland [1988]	373
Murphy v. Oxford [1985] Unreported (CA)	403
Murray v. Ministry of Defence [1988] 2 All ER 521	403
Murray v. Parkes [1942] 1 All ER 558	117
Murray v. U.K. [1996] 22 EHHR 29	394
Mustasa v. A-G [1980] QB 114	64
Nelms v. Roe [1969] 3 All ER 1379	305
New South Wales v. Bardolph [1934] 52 CLR 455	239
New York Times v. Sullivan 376 U.S. 254 (1964)	351
New York Times v. U.S.A. 403 U.S. 713 (1971)	419
Newcastle Breweries v. R [1920] KB 854	433
Newport BC v. Secretary of State for Wales [1998] 1 PLR 47	20
Nicholas v. Parsonage [1987] RTR 199	402
Nichols v. Bulman [1985] RTR 236	400
Nissan v A-G [1970] AC 179	237
Norwest Holst v. Trade Secretary [1978] Ch 201	306
Norwich City Council v. Environment Secretary [1982] 1 All ER 737	131
Oberschlick v. Austria (1991) 19 E.H.R.R. 389	352
O'Moran v. DPP [1975] 1 All ER 473	376
O'Hara v. Chief Constable of RUC [1997] 1 All ER 129	401
O'Loughlin v. Chief Constable of Essex [1998] 1 WLR 374	405
Open Door and Dublin Well Woman v. Ireland (1992) 15 E.H.R.R. 244	329, 330
O'Reilly v. Mackman [1982] 3 All ER 1124	72, 294, 298, 313, 314, 315
Observer and Guardian v. UK (1992) 14 E.H.R.R. 153	72, 332, 368, 369, 428
Olahinde v. Secretary of State [1990] 3 All ER 393	269
Open Door and Dublin Well Women v. Ireland [1992] The Times 5th November	338, 368
Osman v. U.K. [1998] 5 BHRC 293	12, 417, 432
Otto Preminger Institut v. Austria [1994] ECHR Ser. A vol.295-A	330, 338, 380, 381

Padfield v. Minister of Agriculture [1968] AC 997	299, 311
Page v. Hull University Visitor [1993] 1 All ER 97	294, 298, 316, 317
Pan American World Airlines v. DoT [1976] 1 Lloyd's Rep. 257	86
Parliament Belge the (1879) 4 PD 129	86
Parsons v. Burk [1971] NZLR 244	240
Paty's Case [1704] 2 Lord Raymond 1105	182
Peach v. Metropolitan Police Commissioner [1986] 1 QB 1064	431
Peacock v. Bell [1667] 1 WMS Sounds 34	87
Pepper v. Hart [1993] 1 All ER 42	84, 177, 178, 328, 336
Pickin v. British Railways Board [1974] AC 765	46, 94, 97, 99, 176, 213
Pickwell v. Camden B.C. [1983] QB 962	300
Piddington v. Bates [1960] 3 All ER 660	384
Piersen v. Secretary of State [1997] 3 All ER 577	12, 69, 72, 85, 100, 296, 322, 323
Plange v. Chief Constable of South Humberside The Times 3rd March 1992	401
Plattform 'Arzte Fur Das Leben' v. Austria [1991] 13 EHRR 204	367, 374, 378, 382, 385
Police v. Reid [1987] Crim LR 702	383
Pollard v. Chief Constable of West Yorkshire Police [1998]	404
Powell and Rayner v. UK (1990) 12 E.H.R.R. 36	327
Prebble v. Television New Zealand [1995] 1 AC 321	179
Prescott v. Birmingham Corporation [1955] Ch 210	300
Prince's Case [1606] 8 Co. Rep. 1	96, 102
Preston v. IRC [1985] 2 All ER 327	301
Prohibitions del Roy [1607] 12 Co. Rep. 63	52, 240, 241, 244
Provident Mutual Life v. Derby Corporation [1981] 1 WLR 173	305
Pubblico Ministero v. Ratti [1979] ECR 1629	154
Pulhoffer v. Hillingdon BC [1986] AC 484	298
Purcell v. Ireland (1991) EcomHR Appl. No. 15404/89	328, 369
Quietlynn Ltd v. Southend-on-Sea BC [1991] 1 QB 454	373
R. v. Acton Crown Court ex parte Layton [1993] Crim LR 458	409
R. v. Aldred (1909) 222 Cox CC	379
R. v. Anderson [1993] Crim LR 447	392
R. v. Argent [1997] 2 Crim. App. Rep. 27	394
R. v. Army Board ex parte Anderson [1992] QB 169	307, 317
R. v. Badhman [1987] Crim LR 47	405
R. v. Barker (1996) Unreported, 13.6.96 (CA)	393
R. v. Barnsley Council ex parte Hook [1976] 3 All ER 452	303
R. v. Bazil (1996) unreported, 3.4.96 (CA)	393
R. v. Beck ex parte Daily Telegraph [1993] 2 All ER 177	370
R. v. Beckford [1991] Crim LR 918	405
R. v. Beycan [1990] Crim LR 918	393
R. v. Billericay Justices ex parte Harris [1991] Crim LR 472	408
R. v. Birmingham City Council ex parte Sheptonhurst [1990] 1 ALL ER 1026	373
R. v. Blackledge The Times May 29th 1995	246
R. v. Inland Revenue Commissioners ex parte MFK Underwriting Ltd [1990] 1 WLR 1545	308
R. v. Bottrill ex parte Kuechenmeister [1947] KB 41	237
R. v. Boundary Commission for England ex parte Foot [1983] QB 600	201, 339
R. v. Bow County Court ex parte Pelling [1999] The Times 8th March	325
R. v. Bow Street Stipendary Magistrate ex parte Pinochet [1998] 1 WLR 827	77
R. v. Bow Street Stipendary Magistrate ex parte Pinochet (no 2) [1999] 1 All ER 577	77, 309
R. v. Bow Street Stipendary Magistrate ex parte Pinochet (No3) [1999] 2 All ER 97	11, 76-9
R. v. Brent Health Authority ex parte Francis [1985] 1 All ER 74	422
R. v. Brixton Prison Governor ex parte Osman [1992] 1 All ER 108	429
R. v. Broadcasting Complaints Commission ex parte Owen [1985] QB 1153	203
R. v. Brown [1993] 2 All ER 75	11
R. v. Burns [1886] 16 Cox CC 355	379
R. v. Cambridge Health Authority ex parte B [1995] The Times 27th October (Laws J.); [1995] 2 All ER 129(CA)	296, 303, 323, 332
R. v. Canale [1990] 2 All ER 187	393
R. v. Casement [1917] 1 KB 98	65
R. v. Caunt [1947] Unreported	379
R. v. Central Criminal Court ex parte AJD Holdings [1992] The Times 24th February	408
R. v. Central Criminal Court ex parte Boulding [1984] 1 All ER 766	386

R. v. Chief Constable of Devon & Cornwall ex parte Central Electricity Generating Board [1982] QB 458	384
R. v. Chief Constable of Lancashire ex parte Parker and McGrath [1993] Crim LR 204	412
R. v. Chief Constable of North Wales Police ex parte AB [1998] 3 All ER 310	332, 337, 339, 420–1
R. v. Chief Constable of Sussex ex parte International Traders Ferry Ltd [1999] 1 All ER 129	51, 283, 302, 337, 384 385
R. v. Chief Constable of the Merseyside Police ex parte Calverley [1986] QB 424	314
R. v. Chief Metropolitan Magistrate ex parte Choudhury [1991] 1 All ER 306	330, 379, 380
R. v. Chief Rabbi ex parte Wachmann [1993] All ER 249	315
R. v. Chief Registrar of Friendly Societies ex parte New Cross Building Society [1984] 2 All ER 27	370
R. v. Civil Service Appeals Board ex parte Bruce [1988] 3 All ER 868	267
R. v. Civil Service Appeals Board ex parte Cunningham [1991] 4 All ER 310	267, 310
R. v. Commissioner for Local Administration ex parte Bradford City Council [1979] 2 All ER 881	136–7, 224
R. v. Commissioner for Local Administration ex parte Croydon London Borough Council [1989] 1 All ER 1033	225
R. v. Commissioner for Local Administration ex parte Eastleigh Borough Council [1998] 3 All ER 151	224
R. v. Commission for Racial Equality ex parte Cotterel and Rotho [1980] 3 All ER 265	307
R. v. Comptroller of Patents [1899] 1 QB 909	85
R. v. Condon [1997] 1 WLR 827	394
R. v. Cornwall CC ex parte Huntingdon [1994] 1 All ER 694	317
R. v. Coventry City Council ex parte Phoenix Aviation [1995] 3 All ER 37	79
R. v. Cowan [1996] QB 393	394
R. v. Cox [1993] Crim LR 382	404
R. v. Criminal Compensation Board ex parte Lain [1967] 2 QB 864	241
R. v. Criminal Injuries and Compensation Board ex parte P [1995] 1 All ER 870	244
R. v. Criminal Injuries Compensation Board ex parte Moore [1999] 2 All ER 90	309
R. v. Cripps ex parte Muldoon [1983] 3 All ER 72	87
R. v. Crown Court at Bristol ex parte Bristol Press [1986] 85 CR Ap Rep 90	409
R. v. Crown Court at Chelmsford ex parte Essex Chief Constable [1994] 1 All ER 325	295
R. v. Crown Court at Sheffield ex parte Brownlow [1980] 2 All ER 44	87
R. v. Crown Court at Inner London Sessions ex parte Baines and Baines [1988] QB 579	409
R. v. Disciplinary Committee of the Jockey Club ex parte the Aga Khan [1993] 2 All ER 853	315
R. v. DPP ex parte Duckenfeld [1999] 2 All ER 877	278
R v DPP ex Parte Kebilene (1999) Times, 31 March	87, 301, 323, 326, 330, 334, 432, 437
R. v. East Berkshire Health Authority ex parte Walsh [1985] QB 152	315
R. v. Environment Secretary ex parte Brent LBC [1983] 3 All ER 321	307
R. v. Fenneley [1989] Crim LR 142	397
R. v. Foreign Secretary ex parte World Development Movement [1995] 1 All ER 611	216, 300, 313, 426
R. v. Frankland Prison Visitors ex parte Lewis [1986] 1 All ER 272	309
R. v. Friend [1997] 2 All ER 1012	394
R. v. Fulling [1987] 2 All ER 65	393
R. v. G.L.C ex parte Blackburn [1976] 3 All ER 184	301
R. v. Gaming Board ex parte Benaim and Khaida [1970] 2 QB 417	307, 371
R. v. Gathercole [1838] 2 Lewin 237	380
R. v. Gibson [1990] 2 QB 619	373
R. v. Goldsmith [1983] 1 WLR 151	303
R. v. Gough [1993] AC 646	309
R. v. Governor of Winson Green Prison ex parte Littlejohn [1975] 3 All ER 208	435
R. v. Grahame-Campbell ex parte Herbert [1935] 1 KB 594	176
R. v. Green [1996] 1 Cr App 347	403
R. v. Greenwich London Borough Council ex parte Lovelace [1990] 1 All ER 353	133
R. v. Guildhall Magistrates ex parte Primlaks [1990] 1 QB 261	408
R. v. H.M.Treasury ex parte British Telecommunications plc [1996] CMLR 217	158
R. v. H.M.Treasury ex parte Smedley [1985] QB 657	313
R. v. Hackney B.C. ex parte Gamper [1985] 3 All ER 275	422
R. v. Hammersmith and Fulham LBC ex parte Beddoes [1987] 1 ALL ER 689	301

R. v. Hampden [1637] 3 St. Tr. 825	243, 244, 432
R. v. Harrow LBC [1990] 3 All ER 12	317
R. v. Harvey [1988] Crim LR 241	393
R. v. Heaton [1993] Crim LR 593	393
R. v. Hassan (1995) Crim. Law Rev. 404	393
R. v. Hendon (RDC) ex parte Chorley [1933] 2 KB 696	308
R. v. Higher Education Funding Council [1994] 1 All ER 651	309, 310
R. v. Hillingdon BC ex parte Royco Homes Ltd [1974] 2 All ER 643	302
R. v. Horseferry Road Magistrates Court [1994] 1 All ER 289	377, 378, 429
R. v. Howell [1982] QB 411	384
R. v. Hull Prison Visitors ex parte St. Germain [1979] QB 425	306
R. v. Immigration Appeal Tribunal ex parte Jeyeanthan [1999] 3 All ER 231	304
R. v. Inner London Education Authority ex parte Westminster City Council [1986] 1 All ER 19	133, 299
R. v. IRC ex parte Rossminster Ltd [1980] 1 All ER 80	76, 322
R. v. IRC ex parte Unilever [1996] STC 681	37
R. v. Jockey Club ex parte RAM Racecourse [1993] 2 All ER 225	308
R. v. Jordan [1967] Crim LR 483	94, 99
R. v. Keane [1992] Crim LR 306	404
R. v. Keane [1994] 2 All ER 418	429
R. v. Kenny [1992] Crim LR 306	392
R. v. Kensington and Chelsea BC ex parte Grillo [1996] 28 HLR 94	310
R. v. Kent Police Authority ex parte Godden [1971] 2 QB 662	309
R. v. Khan [1993] Crim LR 54	404
R. v. Khan [1996] 3 All ER 289	330, 393
R. v. Kings Lynn Justices ex parte Holland [1992] The Times 6th April	393
R. v. Lambeth DC ex parte Clayhope Properties [1987] 3 All ER 545	304
R. v. Lambeth LBC ex parte Walters [1993] 26 HLR 170	310
R. v. Lancashire County Council ex parte Huddleston [1986] 2 All ER 941	294, 310
R. v. Leeds Crown Court ex parte Switalski [1991] Crim LR 559	409
R. v. Legal Aid Board [1992] 1 WLR 711	313
R. v. Legal Aid Board ex parte Donn & Co [1996] 3 All ER 1	315
R. v. Lemon [1979] AC 617	380
R. v. Lewisham LBC ex parte Shell U.K. Ltd [1988] 1 All ER 938	299
R. v. Liverpool Corporation ex parte Liverpool Taxi Fleet Operators' Association [1975] 1 All ER 379	301
R. v. Liverpool Justices ex parte Topping [1983] 1 All ER 490	309
R. v. Longman [1988] 1 WLR 619	412
R. v. Lord Chancellor ex parte Witham [1997] 2 All ER 779	75, 99, 296, 322, 326
R. v. Lord Chancellor's Department ex parte Nangle [1992] 1 All ER 897	267
R. v. Lord Saville of Newdigate (1999) 149 NLJ 965	303, 332
R. v. Lynch [1903] 1 KB 444	65
R. v. Mellor [1996] 2 Cr App 245	404
R. v. MacMath [1997] Crim. Law Rev. 586	393
R. v. Medical Appeal Tribunal ex parte Gilmore [1957] 1 QB 574	316
R. v. Metropolitan Police Commissioner ex parte Blackburn (No2) [1968] 2 All ER 319	277, 278, 284
R. v. Minister of Agriculture ex parte Hamble Fisheries [1995] 2 All ER 717	275
R. v. Minister of Agriculture ex parte Hedley Lomas [1996] 3 WLR 787	156
R. v. Minister of Defence ex parte Murray [1998] The Times 17th December	310
R. v. Ministry of Defence ex parte Smith [1996] QB 517	245, 288, 302, 303, 317, 323, 332, 337
R. v. Monopolies and Mergers Commission ex parte Argyle Group plc [1986] 2 All ER 257	295
R. v. Monopolies and Mergers Commission ex parte South Yorkshire Transport [1993] 1 All ER 289	298
R. v. Nat Bell Liquors [1922] 2 AC 130	297
R. v. Nathaniel [1995] 8th March C.A.	393
R. v. North Somerset D.C. ex parte Dixon (1998) 10 JEL 162	313
R. v. North Somerset DC ex parte Fewings [1995] 1 All ER 513	37, 130, 299
R. v. Northumberland Compensation Appeal Tribunal ex parte Shaw [1952] 1 KB 388	298
R. v. Oakes [1986] 26 DLR (4th) 200	329
R. v. Oransaye [1993] Crim LR 772	404
R. v. Panel on Takeovers and Mergers ex parte Datafin plc [1987] QB 815	294, 315, 317
R. v. Parliamentary Commissioner ex parte Dyer [1994] 1 All ER 375	224

R. v. Pollution Inspectorate ex parte Greenpeace (No 2) [1994] 4 All ER 329	313
R. v. Ponting [1985] Crim LR 318	178, 425
R. v. Poole BC ex parte Beebee [1991] 2 PLR 27	153, 313
R. v. Port Talbot BC ex parte Jones [1988] 2 All ER 207	305
R. v. Preston [1994] 2 AC 130	441, 442
R. v. Quinn [1997] Crim LR 516	392
R. v. Radio Authority ex parte Bull [1997] 2 All ER 561	299, 302
R. v. Ramsey & Foot [1883] 15 Cox CC 231	380
R. v. Reading Justices ex parte South West Ltd [1992] Crim LR 672	408
R. v. Register of Companies ex parte Central Bank of India [1985] 2 All ER 79	317
R. v. Richmond BC ex parte Macarthy and Stone [1991] see MacArthy and Stone	
R. v. Samuel [1988] 2 All ER 135	399
R. v. Sang [1980] AC 402	392
R. v. Secretary of State ex parte Alberta Indian Association [1982] QB 872	229
R. v. Secretary of State ex parte Piersen, see Piersen v. Secretary of State	
R. v. Secretary of State for Employment ex parte Equal Opportunities Commission [1992] 1 All ER 545	159, 339
R. v. Secretary of State for Foreign and Commonwealth Affairs ex parte Everitt [1989] 1 All ER 655	65, 244
R. v. Secretary of State for Foreign and Commonwealth Affairs ex parte Rees-Mogg [1994] 1 All ER 442	86, 245
R. v. Secretary of State for Health ex parte Furneaux [1994] 2 All ER 652	314
R. v. Secretary of State for Health ex parte United States Tobacco International Inc. [1992] 1 All ER 212	302, 307
R. v. Secretary of State for Social Services ex parte Wellcome Foundation [1987] 2 All ER 1025	300
R. v. Secretary of State for the Environment ex parte Hillingdon Borough Council [1986] 2 All ER 273	132
R. v. Secretary of State for the Environment ex parte Rose Theatre Trust [1990] 1 QB 504	313
R. v. Secretary of State for the Home Department ex parte Adams [1995] All ER 177	417
R. v. Secretary of State for the Home Department ex parte Bentley [1993] 4 All ER 442	244
R. v. Secretary of State for the Home Department ex parte Benwell [1985] QB 554	315
R. v. Secretary of State for the Home Department ex parte Cheblak [1991] 2 All ER 319	317, 321, 417
R. v. Secretary of State for the Home Department ex parte Doody [1993] 3 All ER 92	309
R. v. Secretary of State for the Home Department ex parte Fire Brigades Union [1995] 2 All ER 224	54, 246, 321, 339
R. v. Secretary of State for the Home Department ex parte Hargreaves [1997] 1 All ER 397	302
R. v. Secretary of State for the Home Department ex parte Hosenball [1977] 3 All ER 452	417, 436
R. v. Secretary of State for the Home Department ex parte Khan [1985] 1 All ER 40	301, 307
R. v. Secretary of State for the Home Dept ex parte Launder [1997] 3 All ER 961	331
R. v. Secretary of State for the Home Dept ex parte Leech [1993] 4 All ER 539	297
R. v. Secretary of State for the Home Dept ex parte McQuillan [1995] 4 All ER 540	323, 332, 417, 430, 436
R. v. Secretary of State for the Home Department ex parte Northumbria Police Authority [1988] QB 26	240, 246, 280, 432
R. v. Secretary of State for the Home Dept ex parte Obi [1997] 1WLR 1498	65
R. v. Secretary of State for the Home Department ex parte Ruddick [1987] 2 All ER 518	34, 244, 302, 441
R. v. Secretary of State for the Home Department ex parte Swati [1986] 1 All ER 717	314
R. v. Secretary of State for the Home Department ex parte Thakrah [1974] QB 684	95
R. v. Secretary of State for the Home Department ex parte Venables [1997] 3 All ER 97	300
R. v. Secretary of State for the Home Dept ex parte Simms [1999] 3 All ER 400	75, 296, 297, 322, 323, 331, 335
R. v. Secretary of State for Trade ex parte Anderson Strathclyde [1983] 2 All ER 223	177
R. v. Secretary of State for Trade ex parte Duddridge [1995] Envir. Law Rep. 151	153
R. v. Secretary of State for Transport ex parte Pegasus Holiday [1989] 2 All ER 481	317
R. v. Secretary of State for Transport ex parte Richmond B.C. [1994] 1 All ER 577	308
R. v. Secretary of State for Transport ex parte Richmond B.C. (No 4) [1996] 4 All ER 903	310

R. v. Self [1992] 95 Cr App Rep 42	401
R. v. Sevenoaks DC ex parte Terry [1985] 3 All ER 226	309
R. v. Sheer Metalcraft Ltd [1954] 1 All ER 542	108, 220
R. v. Shoreditch Assessment Committee ex parte Morgan [1910] 2 KB 859	297
R. v. Smith [1900] 17 Cape of Good Hope SCR 561	287
R. v. Somerset CC ex parte Garnett [1998] Env LR 91	313
R. v. South West Magistrates Court [1997] 1 WLR 885	406
R. v. Stanley [1965] 2 QB 327	373
R. v. Sussex Justices ex parte McCarthy [1924] 1 KB 256	308
R. v. Tronah Mines Ltd [1952] 1 All ER 697	203
R. v. Waltham Forest District Council ex parte Baxter [1988] QB 418	133, 301, 308
R. v. West Midlands Chief Constable ex parte Wiley [1994] 1 All ER 702	430
R. v. Walker [1998] 2 Cr App 245	393
R v Secretary of State for the Environment ex parte Kirkstall Valley Campaign Ltd [1996] 3 All ER 304	309
R. v. Bow Street Stipendiary Magistrate ex parte Pinochet (No 2) [1999] 1 All ER 577	77, 309
R. v. International Commission of the Stock Exchange ex parte Else (1982) Ltd [1993] 1 All ER 420	150
R. v. Somerset CC ex parte Fewings [1995] 3 All ER 20	130, 238, 299
Racz v. Home Office [1994] 1 All ER 97	312
Rantzen v. Mirror Group Newspapers [1994] QB 670	72, 353
Raymond v. Honey [1993] 1 AC 1	297
Re An Inquiry under the Companies Securities (Insider Dealings) Act [1988] 1 All ER 203	371
Re Findlay [1985] AC 318	302
Re Golden Chemical Products Ltd [1976] Ch 300	269
Re H [1996] AC 563	386
Re H.K. [1967] 2 QB 617	306
Re Lonrho [1990] 2 AC 154	369
Re MacManaway [1951] AC 161	193
Re Parliamentary Election for Bristol South East. [1964] 2 QB 251	188
Re Pinochet, see R. v. Bow Street Stipendiary Magistrate ex parte Pinochet (no 2)	
Re Racal Communications Ltd [1981] AC 374	298, 316
Re S (a barrister) [1981] 2 All ER 952	309
Rees v. U.K. [1987] 9 E.H.R.R. 56	330, 340
Reference re Amendment of the Constitution of Canada [1982] 105 DLR [3d] 1	27, 32
Reilly v. R [1934] AC 176	267
Retail, Wholesale and Department Store Union 580 v. Dolphin Delivery Ltd (1986) 1 S. C.R. 586	341
Reynolds v. Times Newspapers [1998] 2 All ER 961	37, 344, 349, 355-7
Reza v. General Medical Council [1991] 2 All ER 796	309
Rice v. Connolly [1966] 2 QB 414	394
Riddick v. Thames Board Mills Ltd [1977] 3 All ER 677	358
Ridge v. Baldwin [1964] AC 40	294, 306, 307
Riordan v War Office [1959] 3 All ER 552	267
Rivlin v. Bilankin [1953] 1 QB 485	177
Roberts v. Chief Constable of Cheshire Police [1999] The Times 27th January	391
Roberts v. Hopwood [1925] AC 578	300
Rogers v. Home Secretary [1973] AC 388	430
Rost v. Edwards [1990] 2 All ER 641	178
Roth v. U.S. 354 U.S. 476 [1957]	367
Roy v. Kensington Practitioner Committee [1992] 1 AC 624	316
Saltpetre Case [1607] 12 Co Rep 12	244, 432
Saunders v. U.K. [1997] 23 E.H.R.R. 313	394
Science Research Council v. Nasse [1980] AC 1028	430
Scott v. National Trust [1998] 2 All ER 705	315
Schenk v. Switzerland [1988] ECHR Ser. A no.140	393
Schmidt v. Home Secretary [1969] 2 Ch 149	306
Schtraks v. Government of Israel [1964] AC 556	435
Secretary of State v. Guardian Newspapers Ltd [1984] 3 All ER 601	322
Secretary of State for Education and Science v. Tameside MBC [1977] AC 1014	20, 131, 298
Secretary of State for Employment v. ASLEF (No2) [1972] 2 All ER 94	434
Shaw v. DPP [1962] AC 220	321
Sheriff of Middlesex Case [1840] 11 A & E 273	182-3

Sigurjonsson v Iceland [1993] 16 E.H.R.R. 462	339
Silkin v. Beaverbrook Newspapers Ltd [1958] 2 All ER 516	357
Sillers v. Smith [1982] SLT 539	101
Sim v. Stretch [1936] 2 All ER 1237	348
Simmenthal Case (1978) 3 CMLR 263	159
Simpson v. Chief Constable of South Yorkshire The Times 7th March [1991]	404
Singh v. Immigration Appeal Tribunal [1986] 2 All ER 721	32
Slim v. Daily Telegraph Ltd [1968] 2 QB 157	349
Soering v. U.K. [1989] 11 EHHR 439	328, 432, 436
Stanbury v Exeter Corporation [1905] 2 KB 838	131
Stefan v. GMC [1999] 1 WLR 1293	309
Stephens v. Avery [1988] Ch 449	358
Stockdale v. Hansard [1839] 9 Ad & El	94, 103, 176, 182-3
Stoke-on Trent City Council v. B & Q plc [1991] 4 All ER 221	107, 277
Stourton v. Stourton [1963] P. 403	173
Strauss Case HC 305 (1956-7)	178
Stringer v. Minister of Housing [1971] 1 All ER 65	301
Sturley v. Metropolitan Police [1984] The Times 27th June	404
Sunday Times v. U.K. [1979] 2 E.H.R.R. 245	2, 330, 332, 369, 428
Swinney v. Chief Constable of Northumberland Police [1996] 3 All ER 449	284
Tamlin v. Hannaford [1950] 1 KB 18	58
Tesco Stores v. Secretary of State for the Environment [1994] 2 All ER 636	301, 303, 331-2
Thomas v. Sawkins [1935] 2 KB 249	384
Thomas v. Sorrell [1674] Vaughn 330	93
Time Inc v. Hill (1967) 835 US 374	360
Tolstoy Miloslavsky v. U.K. [1995] 20 E.H.R.R. 442	354
Toogood v. Spyring [1834] 1 Cr M & R 181	349
Town Investments Ltd v. Department of the Environment [1979] 1 All ER 813	230
Trustee of the Dennis Rye Pension Fund v. Sheffield City Council [1997] 4 All ER 604	316
Tyrer v. U.K. [1978] 2 E.H.R.R. 1	325
Van de Hurk v. Netherlands [1984] 18 E.H.R.R. 481	310
Van Der Musselle v. Belgium (1983) ECHR Ser. A vol.70	325-6
Van Duyn Ltd v. The Home Office [1974] 3 All ER 178	150, 155
Vauxhall Estates Ltd v. Liverpool Corporation [1932] 1 KB 733	95
Vilvarajah v. U.K. [1991] 14 ECHR 248	332
Von Colson v. Land of North Rhine Westphalia [1984] ECR 1891	157
W.H.Smith Do It All Ltd v. Peterborough [1991] 4 All ER 193	80
Walker v. Baird [1892] AC 491	237
Walters v. W.H.Smith [1914] 1 KB 595	401
Wandsworth BC v. Winder [1985] AC 461	316
Ward v. Chief Constable of Avon [1986] The Times 26th June	401
Wason v. Walter [1868] QB 73	177
Webb v. EMO Cargo [1992] 4 All ER 929	157, 335
Webb v. Minister of Housing [1965] 2 All ER 193	300
West Rand Central Gold Mining Co. v. R [1905] 2 KB 291	237
Western Fish Products v. Penwith District Council [1981] 2 All ER 204	301
Westminster Corporation v. London and North Western Railway [1905] AC 426	300
Wheeler v. Leicester City Council [1985] 2 All ER 1106	302, 322
White and Collins v. Minister of Health [1939] KB 838	297
Whitney v. California [1927] 274 U.S. 357	347
Wilkinson v. Barking Corporation [1948] 1 All ER 564	309
Williams v. Home Office (No2) [1981] 1 All ER 1151	269, 430
Wilson v. IBA [1979] SC 351	203
Wingrove v. U.K. [1997] 1 BHRC 509	380
Wise v. Dunning [1902] 1 QB 167	378
Woolgar v. Chief Constable of Sussex [1999] 3 All ER 604	421, 428
Wychavon D.C. v. Secretary of State [1994] the Times 7th January	155
X v. U.K. [1981] 4 E.H.R.R. 188	127
X and Y v. Netherlands [1985] ECHR Ser. A vol. 91	340, 370
X Ltd v. Morgan Grampian Publishers Ltd [1990] 2 All ER 1	69, 78, 79, 92, 82, 98, 371
Young, James and Webster v. U.K. [1981] 4 E.H.R.R. 38	340
Yousoupoff v. Metro Goldwyn- Mayer Pictures Ltd [1934] 50 TLR 581	348

Table of Statutes

Access to Justice Act 1999	85	Data Protection Act 1998	421, 424
Access to Personal Files Act 1987	422	Defamation Act 1952	177
Act of Settlement 1700	46, 167, 187, 193, 231, 252	Defamation Act 1996	177
Act of the Union of Wales 1536	125	Demise of the Crown Act 1901	231
Act of Union with Ireland 1800	101, 116, 118	Deregulation and Contracting Out Act 1994	40, 59, 107, 305
Acts of Union with Scotland 1706	101, 121	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968	370
Appellate Jurisdiction Act 1873	83	Drought Act 1976	434
Appellate Jurisdiction Act 1876	62	Drug Trafficking Act 1986	411
Armed Forces Act 1981	286		
Audit Commission Act 1998	128, 136		
		Education (No 2) Act 1986	367
Bail Act 1976	400	Education Act 1944	49
Bill of Rights 1688	20, 46, 47, 167, 169, 176, 179, 181, 243, 286	Education Act 1988	133
British Nationality (Falkland Islands) Act 1983	63	Emergency Powers (Defence) Acts 1939–40	247, 433
British Nationality (Hong Kong) Act 1997	63	Emergency Powers Act 1920	170, 433
British Nationality Act 1981	63, 127	Emergency Powers Act 1964	434
Broadcasting Act 1990	57, 203, 368	Employment Rights Act 1995	267
		Energy Act 1976	434
Canada Act 1982	99	European Communities Act 1972	107, 119, 139, 141, 153, 158
Cinemas Act 1985	368	European Parliament Elections Act 1999	198
Civil List Act 1952	232	Exchequer and Audit Departments Act 1866	217
Civil Service (Management Functions) Act 1992	69, 255, 256	Extradition Act 1989	64, 77
Colonial Laws Validity Act 1965	104		
Companies Act 1995	394	Family Law Reform Act 1969	193
Contempt of Court Act 1981	40, 86, 370, 371	Firearms Act 1968	408
Courts Act 1971	62	Forfeiture Act 1870	187, 193
Courts and Legal Services Act 1990	85	Forgery Act 1913	411
Courts Martial (Appeal) Act 1968	287	Fox's Libel Act 1792	349
Crime and Disorder Act 1998	386, 399	Franchise Act 1884	168
Criminal Evidence (Amendment) Act 1997	390	Fugitive Offenders Act 1967	64
Criminal Justice (International Co-operation) Act 1990	408		
Criminal Justice (Terrorism and Conspiracy) Act 1998	435, 437	Government of Ireland Act 1914	20, 115, 116, 211
Criminal Justice Act 1987	394	Government of Wales Act 1988	36, 40, 64, 125–7, 198, 334
Criminal Justice Act 1988	77, 396, 435	Government Trading Funds Act 1900	254
Criminal Justice and Public Order Act 1994	373, 378, 383–4, 398, 399		
Crown and Parliament Recognition Act 1689	46	Health Service Commissioners Act 1983	252
Crown Proceedings (Armed Forces) Act 1987	107, 229	Highways Act 1980	376
Crown Proceedings Act 1947	75, 108, 229, 235–6, 256	His Majesty's Declaration of Abdication Act 1936	231
Criminal Proceedure and Investigations Act 1986	429	Hong Kong Act 1997	63
Customs and Excise Management Act 1979	373	House of Commons (Disqualification) Act 1975	82, 194
		Housing Act 1985	422
		Housing Act 1996	59
		Human Rights Act 1998	52, 72, 94, 118, 122, 175, 214, 266, 294, 297, 334 <i>et seq.</i> , 370, 380, 431, 441

Immigration Act 1971	64, 269	Northern Ireland (Temporary Provisions) Act 1972	117
Immigration Act 1988	64	Northern Ireland Act 1974	117
Income and Corporation Taxes Act 1988	195	Northern Ireland Act 1998	40, 63, 101, 118–21, 123, 198
Indecent Displays (Control) Act 1981	373	Northern Ireland Assembly Act 1973	116
Inheritance Tax Act 1984	203		
Insolvency Act 1986	187	Obscene Publications Act 1959	9, 372–3
Intelligence Services Act 1994	439, 440	Offensive Weapons Act	399
Interception of Communications Act 1985	44, 442–3	Official Secrets Act 1911	41, 425
Interpretation Act 1978	93	Official Secrets Act 1989	425–7
Ireland Act 1949	116		
Irish Church Act 1879	115	Parliament Act 1911	31, 49, 53, 96, 104–5, 169, 187, 210–11
Irish State (Constitution) Act 1922	115	Parliament Act 1949	54, 96, 104–5, 210–11
Isle of Man Purchase Act 1765	127	Parliament Papers Act 1840	182
		Parliamentary and Health Services Commissioners Act 1987	224
Judicature Act 1873	82	Parliamentary Commissioners Act 1967	224, 226, 252
Judicial Committee Act 1833	63, 193	Parliamentary Commissioners Act 1994	224
Judicial Pensions and Retirement Act 1993	62, 189	Parliamentary Constituencies Act 1986	200
Juries Act 1974	174	Police Act 1964	384
Justices of the Peace Act 1997	86, 87	Police Act 1996	277–80, 284
		Police Act 1997	80, 390, 443–4
Knives Act 1997	390, 408	Police and Criminal Evidence Act 1984	282, 285, 391 <i>et seq</i>
		Prevention of Corruption Act 1916	180
Life Peerages Act 1958	105, 169	Prevention of Terrorism (Additional Powers) Act 1996	390, 437
Local Government (Access to Information) Act 1985	421	Prevention of Terrorism (Temporary Provisions) Act 1989	434, 435 <i>et seq</i>
Local Government (Miscellaneous Provisions) Act 1982	373	Prosecution of Offenders Act 1985	283
Local Government Act 1972	128, 130 <i>et seq</i> , 135, 305	Protection from Harassment Act 1997	386, 399
Local Government Act 1974	135–6	Protection of Children Act 1978	373
Local Government Act 1985	128	Provisional Collection of Taxes Act 1968	215
Local Government Act 1988	133, 368	Public Bodies (Admission to Meetings) Act 1960	422
Local Government Act 1992	60, 128, 129, 133	Public Bodies (Corrupt Practises) Act 1889	180
Local Government Act 1999	133	Public Interest Disclosure Act 1998	429
Local Government and Housing Act 1989	133–4, 135	Public Order Act 1936	376
Local Government Finance Act 1988	135	Public Order Act 1986	376–9, 381–3
Local Government Finance Act 1992	135	Public Records Act 1958, 1967, 1975	421
Magistrates Court Act 1980	370, 400		
Meeting of Parliament Act 1870	170	Recess Elections Act 1975	192
Mental Health Act 1983	193	Regency Act 1937	105, 231
Metropolitan Police Act 1829	277, 278	Regional Developments Agencies Act 1998	114
Metropolitan Police Act 1836, 1856	278	Registration of Political Parties Act 1998	193
Ministerial and Other Salaries Act 1975	194	Rehabilitation of Offenders Act 1974	348
Ministers of the Crown Act 1975	59, 252, 254	Representation of the People Act 1981	193
Misuse of Drugs Act 1971	408	Representation of the People Act 1983	192–205, 376
		Representation of the People Act 1985	64, 192, 193, 195, 202, 231
National Audit Act 1983	217	Road Traffic Act 1988	398
National Audit Act 1993	217	Royal Assent Act 1967	214
National Health Service Act 1946	49	Royal Titles Act 1953	231
National Insurance Act 1946	49		
National Loans Fund Act 1968	215		
Naval Discipline Act 1971	286		
Northern Ireland (Emergency Provisions) Act 1991	433, 435		
Northern Ireland (Emergency Provisions) Act 1998	435		

Scotland Act 1998	36, 40, 63, 102, 121–4, 198, 229, 334	Telecommunications Act 1984	252, 442
Security Services Act 1989	269, 438–40	Theatres Act 1968	373
Security Services Act 1996	439	Theft Act 1968	409
Septennial Act 1715	169	Trade Union Act 1913	203
Sex Discrimination Act 1975	108	Trade Union Act 1984	203
Single European Act 1986	140	Transport and Works Act 1992	213
State Immunity Act 1978	41, 75, 78	Tribunals and Inquiries Act 1992	50, 295, 298, 309
Statute of Wales 1084	113	Vagrancy Act 1824	400
Statute of Westminster 1931	103	Video Recordings Act 1984	373
Statutory Instruments Act 1946	50, 108, 220	War Damage Act 1965	93
Succession to the Crown Act 1707	194	Welsh Church Act 1914	211
Supreme Court Act 1981	62, 311, 313, 314	Wireless Telegraphy Act 1949	368