

# INDEX

All references are to headings.

The letter n means that a reference is only in a footnote.

Act of state, 7.3(d)(ii), 8.1, 8.2(b)

Administrative courts, 1.2, 6.6(d)

Agency, see Contract

*Anns/Cooper* test, see Negligence

*Anns/Kamloops* test, see Negligence

Application for judicial review, 2.9

Appropriation of funds, see Parliamentary  
appropriation

Armed forces, see also Crown servant

dismissal at pleasure, 9.8(a)

loss of services, action for, 9.8(b)

pay, right to recover, 9.8(a)

prerogative powers over, 9.8(a)

statute law applicable to, 15.15(c)

superior orders, 15.15(c)

tortious liability, see Tort

war, operations of, 7.3(d)(ii), 8.2

Aronson, M.

statutes binding the Crown, on, 15.11(e)

Attachment, see Contempt of court,  
Garnishment

Attorney-General

injunction, application for, 2.4(b)

proceedings against, 2.3(b), 2.3(d)

tortious liability, 8.6

#### Australia

Commonwealth, 1.4(c)

states, 1.4(c)

territories, 1.4(c)

tort, liability in, 6.1(d)

unconstitutional taxes, recovery, 10.6(b)

#### Bad faith

Crown liability for, 12.5(c)n

Bill of Rights, 1689 (Eng.), 10.6(a), 15.2

British overseas territories, see Colonies

Cabinet confidences, see Public Interest

Immunity

#### Canada

proceedings against, 2.1, 6.1(e), 13.3(c)-(d), 16.4(f), 17.3(b), 17.3(c)

proceedings by, 17.3(d), 17.3(e)

provinces, see Provinces

territories, see Territories

Certiorari, see Prohibition and certiorari,

Application for judicial review

#### Charter of Rights

Crown privileges and, 1.4(f)

damages for breach, 2.2(c), 6.5(d), 8.5(a)

injunction for breach, 2.4(g), 2.6(e)

mandamus for breach, 2.6(e), 2.6(d)-(e)

property, protection of, 3.1(d), 9.6(d), 11.1, 11.3

retroactive laws, see Retroactive statute

Choice of law, see Federal jurisdiction

#### Civil law

Crown, application to, 6.1(e), 15.1, 15.2(b), 15.11(a), 15.12(c), 15.13

Cohen, David

entitlements, on, 6.6(c)

Collateral attack, 2.10, 7.4, 18

Colonies

legal status, 1.4(c)

prerogative power over, 1.5(b)n

Commercial activity, 10.4(c), 15.7(d), 15.8, 15.9, 16.2

Common law

Crown, application to, 15.1, 15.12(b), 15.12(c), 15.13

federal, 15.3(c), 17.5

uniformity of, 17.5

Compensation, see Damages, Set-off, Tort

Conflict of Laws, see Federal jurisdiction

Consolidated Revenue Fund, 3.1(c), 3.1(e), 10.1(c), 10.6(a), 12.4, 13.4

Constitutional questions

limitation of actions, 4.5(f)

notice of, 4.6(d)

Constitutional tort, see Damages

Constitutionalism, 1.2

Contempt of court

Crown, against, 2.4(i), 2.6(b), 2.7(b), 3.3

Crown servant, against, 3.3(b), 3.3(c)

Contract

administrative, 9.2

choice of law, 17.4

constitutional authority to make, 9.4(d)

Crown agent's liability, 9.7(c), 16.4(c), 16.4(e)

Crown servant, with, see Crown servant

Crown servant's liability, 3.3(c), 9.7, 16.4(e), 16.4(f)

Crown servant's power to make, 9.4(a), 9.4(e), 9.5(a), 9.5(b)  
Crown's liability, 1.3, 9.1  
Crown's power to make, 9.4  
discretion, fettering, 9.6, 9.8(a), 18  
election promises, 9.3(c)  
executive necessity, 9.6(a)n  
extinguishment of right, 9.4(d), 9.4(e), 9.6(b), 9.6(c), 9.8(a), 11.6  
injunction for breach, 9.2  
intention to create contractual relations, 9.3  
legislative appropriation, necessity for, 9.4(c)  
legislative nullification, 9.6(b), 9.6(d), 9.6(e)  
parliamentary appropriation, 9.4(c)  
petition of right, 1.3(c)  
policy promises, 9.3(d)  
quasi-contract, see Restitution  
special rules, need for, 9.2  
specific performance for breach, 9.2  
statute applicable to Crown through, 15.8, 15.12(c), 15.17(a)  
statutory authority to make, 9.4(c), 9.4(d), 9.4(e), 9.5  
tendering contracts, 9.3(e)  
termination clause, 9.2, 9.6(d)  
warranty of authority, 9.7

#### Cornford, T.

on damages for invalidity, 6.6(a)

#### Costs

advance costs, 4.3(d)  
Crown liability, 4.3, 15.6(c)

#### Courts

contempt, see Contempt of court  
defamation in, 8.7(a), 8.7(c)  
Federal Court of Canada, see Federal Court of Canada  
judgment, see Judgment  
jurisdiction over Crown, 17.3  
order, see Judgment

## Crime

- Crown agent's liability, 15.14, 15.15(a), 15.15(b), 16.4(a), 16.4(b)
- Crown contractor's liability, 15.16(a)
- Crown's liability, 3.3(c), 6.2(d)(iii), 15.14
- Crown servant's liability, 15.15

## Crown

- agent, see also Public corporation
- contempt of court against, see Contempt of court
- corporation, analogy with, 1.4(d), 3.3(c), 9.4(a)
- creditor, as, see Crown debt
- "Crown", meaning of, 1.4, 15.16(a), 15.16(b)
- debt, see Crown debt
- directing mind, 1.4(d), 6.3(e), 15.14(b)
- divisible, 1.4(c), 9.4(a), 15.16(a), 15.16(b), 17.2
- fault of, 1.4(d), 15.14(b)
- federation, in, 1.4(c), 15.16(a), 17.3
- government, and, 1.4(a)-(b)
- legal person, as, 1.4(a), 1.4(d), 9.4(a)
- natural person, as, 1.4(a), 9.4(a)
- order against, 2.3(d), 2.4(b), 2.4(i), 2.6(b), 2.7(b), 2.8(b), 3.1(b), 3.2(c), 3.3
- "person", as, 15.7(b), 15.14(a)
- plaintiff, as, see Proceedings by Crown
- prerogative, see Prerogative
- proceedings against, see Crown
  - proceedings
- proceedings by, see Proceedings by Crown
- public corporation, and, see Public corporation
  - corporation

## Crown agent, see also Public corporation

- contract, 16.2(b), 16.4(e)
- control test, 16.2(b)
- Crown immunity inapplicable, 16.4(f)
- functions test, 16.2(a)
- liability to be sued, 16.4
- statute, by, 15.15(b), 16.3(a)
- ultra vires activity, 16.3(b)

Crown corporation, see Public corporation

#### Crown debt

- common law priority, 14.2
- competing Crown debts, 14.4
- enforcement, 14.1-14.2
- garnishment, 3.2, 14.4(f)
- priority, 14.2-14.5, 15.9

Crown privilege, see Public interest

- immunity

#### Crown proceedings

- application for judicial review, see Application for judicial review
- Attorney-General, see Attorney-General
- costs, see Costs
- Crown, by, see Proceedings by Crown
- Crown servant, against, see Crown servant
- damages, see Damages
- declaration, see Declaration
- discovery, see Discovery
- enforcement of judgment, see Judgment
- equitable relief, 1.3(b)
- federal jurisdiction over, 2.4(f), 17.3(c)
- habeas corpus, see Habeas corpus
- history, 1.3
- injunction, see Injunction
- intergovernmental litigation, 1.4(c), 17.3(e)
- interlocutory relief, see Interlocutory relief
- interrogatories, see Discovery
- limitation of actions, see Limitation of actions
- mandamus, see Mandamus
- notice requirements, 4.6
- petition of right, see Petition of right
- prohibition, see Prohibition and certiorari
- proper court, 4.1
- proper defendant, 4.1
- rights of parties, 15.10, 15.13, 15.17(a)

set-off, see Set-off

specific performance, see Specific performance

Crown property, see Execution

immunity from actions *in rem*, 2.12(b)

Crown representative, see Governor

Crown servant

armed forces, see Armed forces

Attorney General, see Attorney-General

certiorari against, see Prohibition and certiorari

compellable witness, see Subpoena

contempt of court by, 3.3

contract, power to make, see Contract

contractual liability, see Contract

course of employment, 6.2(e)

criminal liability, see Crime

de facto authority, 6.2(e)(i), 6.2(e)(ii), 6.4(e)

definition of, 6.2(c)(ii)

directing mind, as, 1.4(d), 15.14(b)

discovery against, 4.2(d)

dismissal-at-pleasure rule, 9.7(b), 9.8(a)

estoppel, 13.1-13.2

executive necessity, see Executive

necessity

garnishment of, 3.2(c)

good faith, 6.2(d)(ii), 8.3

governor, see Governor

habeas corpus against, 2.8

identification of, 6.2(c)(iii)

immunity from suit, 16.2(a)

independent discretion rule, see Tort

injunction against, see Injunction

judges, see Judicial immunity

legal authority, 8.3, 9.5

loss of services, action for, 9.8(b)

mandamus against, 2.6(c), 3.1(e), 3.3(c)

minister, see Minister of the Crown  
pay, action to recover, 3.2(c), 9.8(a)  
persona designata, as, 2.6(c), 3.2(c), 3.3(c)  
personal liability, 8.1  
police, see Police  
power to make contracts, see Contract  
prohibition and certiorari against, see Prohibition and certiorari  
public corporation, see Public corporation  
public service statutes, 9.8  
statutes, application to, see Statutes  
statutory immunity clauses, 6.2(d)(ii), 8.4, 8.6  
subpoena against, 5.3(c)  
tortious liability of Crown, see Tort  
tortious liability, see Tort  
wrongful dismissal, action for, 9.8

#### Damages

compensation compared, 6.4(a)-(d)  
constitution, for breach of, 6.5(d), 8.5(a)  
contract, breach of, 1.3(c), 9.1, 9.6(d)  
Crown, against, 1.3(c), 2.2  
interest on, 2.2(e)  
judgment, see Judgment  
prerogative compensation, 6.4(a)-(d)  
punitive, 2.2(d)  
statutory compensation, 6.4(a), 6.4(b), 6.6(b)  
undertaking to pay, 2.4(f)

De facto officer, 6.2(e)(i), 6.2(e)(ii), 6.4(e)

Debt, see Crown debt

#### Declaration

Attorney-General, against, 1.3(b), 2.3(d)  
coercive relief, absence of, 2.3(b)  
constitutional, 2.3(a), 2.3(f), 2.3(g)  
Crown, against, 1.3(b), 2.3, 9.1  
governor, against, 2.7(b)

injunction, in lieu, 2.3(e), 2.4(a)-(c), 2.4(i)  
interlocutory, 2.3(e), 2.4(f), 2.4(i)  
procedure, 2.3(d)  
specific performance, in lieu, 2.5(b)  
suspended, 2.3(f), 2.3(g)  
trust, breach of, 12.1-12.2  
ultra vires act, 2.3(a)  
unconstitutional statute, 2.3(a)

Declaratory judgment, see Declaration

#### Defamation

communications within executive, 8.7(b)  
statements in judicial proceedings, 8.7(a)

Delict, see Tort

#### Dicey, A.V.

idea of equality, on, 1.1, 1.2, 1.3(a), 3.3(b), 6.6(d), 8.1, 18  
prerogative, on, 1.5(b)  
rule of law, on, 1.2, 6.6(d), 7.5

Direct liability, see Tort

Directory requirement, 9.4(e), 9.5(b)

#### Discovery

Crown, against, 3.3(a), 15.13, 17.3(b)  
Crown brief, of, 5.4(f)  
Crown, by, 4.2(b)  
Crown privilege, 3.3(c), 5.3(c), 5.3(d)

Discretion, see Statutory authority

Dispensing power, 10.3(c), 15.2

Distress, 3.3(b)

Documents, see Discovery, Subpoena, Public interest immunity

Duty of care, see Negligence

Economic loss, see Negligence

Edwards, J. Ll. J.

on prosecutorial immunity, 8.6

Emergency, see also Executive necessity

prerogative power over, 1.5(b)

Equality between Crown and subject, 1.1-1.2, 1.3(a), 1.4(f), 3.3(c), 6.6(d), 15.17(a), 15.17(b), 16.2(b), 16.4(f), 18

Equitable execution, 3.2(c)

Estoppel

Crown's liability, 13.2

discretion, fettering, 10.4

ostensible authority, 9.5(a)

parliamentary appropriation, absence of, 13.3

European Community

damages for breach of, 6.5(a)

supremacy over U.K. law, 2.4(g)

Evidence, see Public interest immunity

Ex gratia payment, 6.6(b)

Examination for discovery, see Discovery

Execution, see Judgment

Executive necessity

act of state, 7.6(b), 8.2(b)

constitutional crisis, 8.2(b)

contract law, 8.2(b), 9.6, 9.8(a)

discretion, fettering, 8.2(b), 9.6, 13.4

injunction, defence to, 2.4(d), 2.4(i)

tort law, 6.4(c), 8.2(a)

Executive privilege, see Public interest

immunity

Expropriation, see Property

#### Federal Court of Canada

federal common law, see Common law

Federal Crown, suits against, 7.4, 13.3(c), 13.13(d), 16.4(f), 17.3(c)

Federal Crown, suits by, 17.3(d), 17.3(e)

intergovernmental suits, 17.3(e)

jurisdictional limits, 17.3(c), 17.3(d)

Provincial Crown, suits against, 2.1, 17.3(b)

#### Federal jurisdiction

choice of law, 6.1(e), 15.10, 17.4

contractual liability in, 15.12

federal common law, 17.3(c), 17.5

Federal Court of Canada, see Federal Court of Canada

restitution liability in, 10.2

tortious liability in, 6.1(e), 6.2(c)(i), 6.3(a)

trust liability in, 12.2

#### Federalism

Crown and, 1.4(c)

implications for application of statute, 15.2, 15.3(e), 15.16, 15.17(b)

intergovernmental litigation, 1.4(c), 17.3(e)

suits against provinces in other provinces' courts, 17.3(b)

Fiat, see Royal fiat

#### Fiduciary duty

Crown liability, 12.5

Fine, see Crime

#### Foreign affairs

act of state, 8.2(b)

prerogative power over, 1.5(b)

Freedom of information law, 5.2, 5.12

Garnishment, 3.2

Government, see Crown

#### Governor

- certiorari against, 2.7(b)
- declaration against, 2.7(b)
- mandamus against, 2.6(c), 2.7(b)
- prohibition against, 2.7(b)
- royal fiat, grant of, 2.6(d)

Governor General, see Governor

#### Habeas corpus

- constitutional guarantee, 2.8(c)
- Crown liability, 2.8(b)
- prisoner to release, 2.8(a)

#### Honours

- prerogative power over, 1.5(b)-(c)

Immunity clause, see Privative clause

#### Independent contractor

- Crown liability in tort for, 6.2(c)(iv)
- immunity from statute, 15.15(d)

#### Indian reserves

- prerogative power over, 1.5(b)

#### Injunction

- Attorney-General as plaintiff, 1.3(b), 2.4, 3.3(c), 15.11(b)
- Crown, against, 1.3(b), 2.4, 3.3(c), 9.2, 9.6(a), 9.6(d), 15.11(b)
- Crown agent, against, 2.4(c), 3.3(b), 10.2(b), 16.4(d), 16.4(f)
- Crown servant, against, 2.4(c), 2.4(e), 3.3
- declaration in lieu, 2.3(e), 2.4(b), 2.4(i)
- interim, 2.4(f)
- interlocutory, 2.3(e), 2.4(f), 2.4(i)
- mandamus, in lieu, 2.4(e)
- mandatory, 2.4(b), 2.4(e)
- necessity, defence to, 2.4(c), 2.4(i)

prerogative, defence of, 2.4(c)  
prohibitory, 2.4(a)  
statutory authority, defence of, 2.4(d)  
statutory duty, to enforce, 2.4(b), 2.4(e)  
supervisory, 2.4(g)  
ultra vires act, 2.4(c), 2.4(d), 2.4(g), 2.6(d)  
undertaking to pay damages, 2.4(f)

#### Interest

Crown liability, 4.4  
postjudgment, 3.1(d), 4.4(b), 15.11(c)  
prejudgment, 2.2(d), 4.4(a)

Interlocutory relief, 2.3(e), 2.4(f)

International law, see State immunity

Interrogatories, see Discovery

Invalidity, see Legal authority

#### Judge

liability, 6.2(d)(iv), 8.5, 8.7(a), 8.7(c)

#### Judgment

contempt of court, see Contempt of court  
Crown, enforcement against, 3.1-3.3  
Crown's duty to pay, 3.1(c), 9.4(c)  
equitable execution, 3.2(c)  
execution, 1.3(f), 3.1, 3.2(c), 3.3(a), (b), 13.5  
garnishment, 3.2  
interest on, 3.1(d), 4.4(b), 15.11(c)  
parliamentary appropriation, 3.1(c)  
Judicial immunity  
classes of judges, distinctions between, 8.5  
scope of, 6.2(d)(iv), 8.5, 8.7(a), 8.7(c)  
statutory protection, 8.5(d)

King, see Crown, Governor

Laches, 4.5(b)

Legal authority, absence of, see also Statutory authority

    Crown servant, relevance to liability, 8.3

    negligence, relevance to liability, 7.4

    tort, relevance to liability, 6.4

Lieutenant Governor, see Governor

Limitation of actions

    constitutional claims, and, 4.5(f)

    Crown, application to, 4.5, 8.4, 15.7(c), 15.7(d), 15.13

    Crown servant, application to, 8.4

    notice requirement, 4.6

Loss of services, action for, 9.8(b)

Malicious prosecution, see Tort

Mandamus

    Charter of Rights, to enforce, 2.6(d)

    Crown, against, 2.4(e), 2.6, 3.3

    Crown servant, against, 2.6(c), 3.3

    governor, against, 2.6(c), 2.7(b)

    injunction in lieu, 2.4(e)

    persona designata, 2.6(c), 2.7(b), 3.3

    ultra vires act, 2.4(g), 2.6(d)

Mandatory requirement, 9.4(e), 9.5(b)

Mercy

    prerogative power to grant, 1.5(b)

Military activity, see Armed forces

Milton, John

    on necessity, 8.2(a)

Minister of the Crown, see also Crown

servant

compellable witness, see Subpoena

vicarious liability for, 6.2(c)(ii)

Misfeasance in a public office, see Tort

Monstrans de droit, 1.3(a)n

National security, 5.1, 5.3(a), 5.7

Necessity, see Executive necessity

Negligence

*Anns/Cooper* test, 7.2(c)

*Anns/Kamloops* test, 7.2(b)

duty of care, 7.2

economic loss, 7.3(b)

elements of tort, 7.1

immunity for policy decisions, 6.6(a), 6.6(c), 7.2(b)(i)-(iii), 7.2(c)(iii)

indeterminate liability, concern to avoid, 7.1, 7.3(b), 7.3(c)

invalidity, 7.4

legal authority, absence of, 7.4

liability at operational level, 7.2(b)(i)-(iii), 7.2(c)(iii)

military activity, 7.3(d)(ii)

misfeasance/nonfeasance distinction, 7.3(c)

misrepresentation, 7.3(b)(iii)

nonfeasance, 7.3(c)

omissions, 7.3(c)

peculiarly governmental activity, 7.3(d)

policy considerations, 7.1, 7.2(c)(iii)

policy-operational distinction, 7.2(b)(i)-(iii), 7.2(c)(iii)

proximity, 7.2(c)(ii)

statute, relevance to duty of care, 7.2(c)(ii)

statutory duty, breach of, see Statutory duty

Non-delegable duties, see Tort

North American Free Trade Agreement

compensation for expropriation, under, 11.3(a)

Official, see Crown servant

Omissions, see Negligence

Parliamentary appropriation

contract, effect on, 9.4(c)

judgment, effect on, see Judgment

recovery of unappropriated payment, 10.6(a), 10.6(c)

Penal statute, see Crime, Statutory duty

Per quod servitium amisit, 9.8(b)

Persona designata, 2.6(c), 2.7(b), 3.1(e), 3.3

Petition of right

contract, 9.1

declaration, 2.3

equitable relief, 1.3(b)

history, 1.3, 2.1

restitution, 10.2

scope, 1.3(c)

tort, 1.3(c)-(f), 6.1(a), 6.1(b), 6.1(e)

trust, breach of, 12.2

Police informer privilege, see Public interest

immunity

Police, see also Crown servant

independent discretion rule, see Tort

informer privilege, see Public interest immunity

liability of Crown for, 16.2(b), 16.3(b)

loss of services, action for, 9.8(b)

tortious liability, see Tort

Prerogative

armed forces, 9.8(a)

compensation under, 6.4(b), 6.4(c), 11.1n,

defined, 1.5(b)

emergency, see Executive necessity

- foreign affairs, 1.5(b)
- honours, 1.5(b), 1.5(c)
- judicial review, and, 1.5(c)
- no power to legislate, 1.5(b)
- priority of Crown debts, 14.2, 15.6(d)
- property, power to take, 11.1
- statutes affecting, see Statutes
- statutes, to override, 1.5(b), 15.3(a)
- tort action, defence to, 6.4(a), 6.4(c), 6.4(d), 8.3
- war, 1.5(b), 6.4(c), 7.3(d)(ii), 8.2

Prisoner, see Habeas corpus, Tort

Privative clause, 6.2(d)(ii), 6.2(f), 8.4, 8.5(c), 8.5(d)

Proceedings against Crown, see Crown  
proceedings

Proceedings by Crown, see also Crown  
proceedings

- choice of law, 17.4
- courts, jurisdiction over, 17.3(d)
- discovery in, 15.13
- limitation of actions in, 15.7(d), 15.13
- ordinary remedies, 2.13, 10.4(a), 10.4(b)
- prerogative remedies, 2.13
- statutes, application to Crown, 15.7, 15.13, 15.17(a), 17.4(b), 17.4(c)

Proceedings in rem

- Crown against, 2.12
- defined, 2.12(a)

Prohibition and certiorari

- application for judicial review, see  
Application for judicial review
- Crown, against, 2.7(b)
- Crown servant, against, 2.7(b)
- governor, against, 2.7(b)

## Property

- compensation for taking, 11.1n, 11.3, 11.5
- constitutional protection, 3.1(e), 11.1-11.6
- expropriation, 11.1
- NAFTA protection, 11.3(a)
- prerogative power to take, 11.1
- regulation, 11.4
- statutory power to take, 11.1
- zoning, 11.4

## Prosecutor

- malicious prosecution, 6.2(d)(iv), 8.6
- officially induced error, 13.1n
- tortious liability, 6.2(d)(iii)-(iv), 8.6

## Provinces

- legal status, 1.4(c)
- proceedings against, 2.1, 17.3(b)

Proximity, see Negligence

## Public corporation

- commercial activity, see Commercial activity
- contractual liability of Crown for, 16.4(e)
- contractual liability, see Contract
- control by Crown, 16.2
- Crown agent, as, 1.4(b), 16.1-16.5
- Crown servant, as, 16.1, 16.4(c), 16.4(d)
- discretion, fettering, see Executive necessity
- federal jurisdiction over, 16.4(f), 17.3(c)
- governmental functions, 16.2(a)
- in consimili casu, 16.2(a)
- injunction against, see Injunction
- reform of law, 16.5
- servant, status of, 6.2(d), 6.2(d)(i), 16.4(d), 16.4(e)
- statute, application of, 15.9

sue and be sued, power to, 16.1, 16.4  
tortious liability of Crown for, 16.4(d)  
tortious liability, see Tort  
ultra vires act by, 16.2(b), 16.3  
unincorporated public body, 16.1, 16.4(b), 16.4(e)

#### Public interest immunity

balancing of interests, need for 5.4(b), 5.4(c)  
cabinet confidences, 5.3(b), 5.4(b), 5.5(b)-(c), 5.6  
class claims, 5.3(e), 5.5  
confidentiality laws, 5.11  
criminal cases, 5.4(c)  
Crown brief, disclosure, 5.4(c), 5.4(f)  
Crown privilege, objection to term, 5.2  
defamation proceedings, 8.7(c)  
defined, 5.1-5.2  
discovery, 3.3(c), 5.3(c)  
fraud, 5.2  
freedom of information laws, 5.2, 5.12  
income tax returns, 5.2, 5.4(a), 5.11  
judicial review of claim, 5.4  
national security, 5.1-5.2, 5.3(b), 5.6, 5.7  
oral evidence, 5.8  
police informer privilege, 5.2, 5.3(c), 5.10, 17.5(b)  
previous publication, 5.2  
private documents, 5.1, 5.3(b)  
procedure for claim, 5.3  
public interest, 3.3(c), 5.1  
real evidence, 5.9  
subpoena, 5.3(c)-(e), 5.4-5.6  
U.S.A., executive privilege in, 5.4(a)  
waiver, 5.2, 5.10(e)

#### Public law

contract, 9.2  
European systems, 1.2, 6.6(d), 18  
tort, 6.5(a), 6.5(d), 6.6(d), 7.5

Queen, see Crown, Governor

Reference procedure, 17.3(e)

Rem, see Proceedings in rem

Remedies, see Crown proceedings

#### Representations

contractual, see Contract

estoppel, raising, see Estoppel

negligent, see Negligence, Tort

Res judicata, 13.5

#### Responsible government

conventions of, 1.5(b)

development of, 1.5(b)

#### Restitution

Crown, action by, 13.3

Crown's liability, 10.2

illegal tax, recovery, 10.6, 18

payment made without appropriation, 10.6(a), 10.6(c), 13.3

Retroactive statute, 3.1(d), 3.3(c), 6.1(e), 6.4(c), 9.6(d), 10.6(b)

Royal fiat, 1.3(d), 1.3(e), 2.3(d), 2.6(d), 6.1(e), 10.6(b)

#### Rule of law

Crown, application to, 3.3(c), 6.6(d), 10.6(c)

Dicey's idea of equality, See Dicey, A.V.

executive necessity, see Executive

necessity

Salvage, 10.2n

Secrecy, see Public interest immunity

Servants, see Crown servants

Set-off, 2.11

Shield of the Crown, see Public corporation

Smith, J.C.

on entitlements, 6.6(c)

Sovereign immunity, see State immunity

Specific performance

Crown, against, 1.3(b), 2.5, 3.3, 9.2, 9.6(a), 9.6(d), 12.2

damages in lieu, 2.5(b)

declaration in lieu, 2.5(b)

State immunity, 5.9, 17.2

State necessity, see Executive necessity

State, see Crown

Statutes of limitation, see Limitation of actions

Statutes, see also Statutory authority,

Statutory duty

adoption, see incorporation by reference

benefit of, 14.4, 15.7, 15.13, 15.17(a)

commercial activity, 15.7(d), 15.8-15.9

compensation under, 6.4(b)

contract binding Crown, 15.8, 15.12(b), 15.17(a)

criminal statute, see Crime

Crown agent, application to, 15.9, 15.13-15.14, 15.15(a), 15.15(d), 15.17(a), 16.3

Crown contractor, application to, 15.13, 15.15(d), 15.17(a)

Crown in right of another government, effect on, 5.6, 14.4, 15.2, 15.4(b), 15.8, 15.10(c), 15.12(b), 15.12(c), 15.16, 17.4

“Crown”, meaning of, see Crown

Crown servant, application to, 15.14(b), 15.15, 15.17(a), 16.4(a), 16.4(b)

evaluation of law, 15.17

exempting clause, 15.17(a)

express words binding Crown, 15.3(a), 15.3(d), 15.3(e), 15.4-15.5, 15.16(b)

federal complications, 5.6, 14.3, 15.2, 15.4(b), 15.8, 15.10(c), 15.12, 15.16, 17.4

incorporation by reference, 15.10, 15.17(a)  
interpretation statute, effect on common law, 15.4, 15.6(c), 15.16  
limitation, statute of, see Limitation of actions  
logical implication binding Crown, 15.6(c)  
necessary implication binding Crown, 15.3(a), 15.3(d), 15.3(e), 15.4, 15.6, 15.17(a)  
penal statute, see Crime, Statutory duty  
prejudice to Crown, need for, 10.4(d), 15.7, 15.15, 15.17(a), 16.5  
prerogative, statute affecting, 14.4, 15.3(a), 15.3(b), 15.3(c), 15.6(b), 15.6(d), 15.17(a)  
public corporation, application to, see Public corporation  
public service statutes, see Crown servant  
retroactive, see Retroactive statute  
revival of immunity in B.C., 15.16(b)  
rights peculiar to Crown, see Prerogative  
role in establishing non-delegable duty, 6.2(c)(iv)  
role in establishing proximity, 7.2(c)(ii)  
role in satisfying standard of care in negligence, 6.3(d)  
tax statute, see Tax  
trustee statute, 12.2  
unconstitutional, remedy for, 2.3(f), 2.3(g), 6.5(d)  
waiver of immunity, 15.8

#### Statutory authority

contract, to make, 9.4(b), 9.4(e), 9.5  
discretion, fettering, see Executive necessity  
due care in exercise of, see Tort  
expenditure of public funds, 3.1(c), 9.4(c), 10.2, 10.6(c)  
injunction, defence to, 2.4(c)-(f)  
lack of, effect of, 6.4  
mandamus, defence to, 2.6(e)  
strict interpretation, 6.4(e), 7.4  
tax, levy, 10.6(c)  
tort, defence to, see Tort  
unconstitutional statute, see Unconstitutional statute

## Statutory duty

- Crown, imposed on, 6.2(b), 6.3(d)
- Crown servant, imposed on, 6.2(e)(ii), 6.3(d)
- injunction to enforce, 2.4(b), 2.4(e)
- liability for breach, 6.2(b), 6.3(d), 7.2(c)(ii)
- mandamus to enforce, see Mandamus
- penal statute, see Crime

## Street, H.

- on statutes binding Crown, 15.7(d), 15.17(a)

## Subpoena

- Crown privilege, see Public interest
- immunity
- Crown servants, against, 5.3(c), 5.3(d), 5.6
- minister, against, 5.6
- quash, application to, 5.3(c), 5.6

## Superior orders, 15.14(c)

## Supply, see Parliamentary appropriation

## Suspending power, 15.2

## Taxation

- Crown priority, 14.2-14.5
- estoppel, 13.3
- illegal, recovery of by taxpayer, 4.5(e), 4.5(f), 10.6, 18
- statutory authority to levy, 10.6(a)

## Territories

- legal status, 1.4(c)
- proceedings against, 2.1

## Tort

- abuse of office, 6.5(c), 6.6(a)
- act of state, 7.3(d)(ii), 8.2(b)
- airport administration, 7.3(d)(i)
- armed forces, 6.2(e)(i), 6.3(a), 7.3(d)(i)-(ii), 8.2(b)

Attorney General's liability, 8.6  
choice of law, see Federal jurisdiction  
commercial activity, see Commercial activity  
compensation, 6.4(b), 6.4(c), 6.6  
constitutional tort, 6.5(d), 8.5(a)  
Crown agent's liability, 6.2(c)(iv), 8.1, 16.4(c)-(f)  
Crown servant's liability, 1.3(c), 3.3(b), 3.3(c), 6.1(b), 6.1(c), 6.2(c)(i)-(iii), 6.2(d)-(f), 6.5(a), 8, 16.4(d), 16.4(f)  
Crown's liability, 2.2, 6, 7  
customs, 7.3(d)(i)  
de facto officer, 6.2(c)(ii)  
defamation, 8.7  
direct liability, 6.2(b), 6.3  
economic loss, 7.3(b)  
employer's duties, 6.2(b), 6.3(b), 6.3(e)  
entitlement theory, 6.6(c), 7.5  
federal jurisdiction, see Federal jurisdiction  
governmental functions, 7.3(d)  
harbour administration, 7.3(d)(i)  
highway authority, 6.2(c)(iv), 7.2(b)(ii), 7.3(d)(i)  
history of Crown's liability, 1.3, 6.1, 6.6(d)  
independent discretion rule, 6.2(e)(iii), 6.3(d), 9.8(b)  
inevitable result rule, 6.4(e), 7.4  
invalidity, see legal authority, absence of  
judge, liability, see Judicial immunity  
legal authority, absence of, 6.2(e)(ii), 6.4(e), 6.5(a)-(c), 6.6(a), 7.4, 8.3  
loss of services, action for, 9.8(b)  
malicious prosecution, 6.2(d)(iv), 8.6  
misfeasance in a public office, 6.5(c), 6.6(a)  
misrepresentation, 7.3(b)(iii)  
motor vehicle accidents, 6.3(a), 7.2(b)(ii)  
navigation, 7.3(d)(i)  
negligence, see Negligence  
non-delegable duties, 6.2(c)(iv)  
nonfeasance, 7.3(c)  
occupier's duties, 6.2(b), 6.3(a), 6.3(c), 6.3(e)

operational decision, 6.6(a), 6.6(c), 7.2(b)(i)-(iii), 7.2(c)(iii)  
petition of right, 1.3, 6.1(a), 6.1(b), 6.1(e)  
planning decision, see policy decision  
police, 6.2(d)(iii), 6.2(e)(i), 6.2(e)(iii)  
policy decision, 6.6(a), 6.6(c), 7.2(b)(i)-(iii), 7.2(c)(iii)  
prerogative authority, 6.4(a), 6.4(c), 6.4(d)  
prison administration, 6.3(e), 7.3(c), 7.3(d)(i)  
privative clause, 6.2(d)(ii), 6.2(f), 8.5(c), 8.5(d)  
prosecutor, liability of, 6.2(d)(iv), 6.2(e)(i), 8.6  
retroactivity of liability in tort, 6.1(e)  
risk principle, 6.6(b), 7.5  
school administration, 6.3(e), 7.3(d)(i)  
statutory authority, 6.2(e)(ii)-(iii), 7.4, 8.3  
statutory duty, see Statutory duty  
ultra vires act, see legal authority, absence of,  
unconstitutional statute, see Unconstitutional statute  
vicarious liability, 6.2, 8.1, 8.4, 16.4(d)  
war, operations of, 7.3(d)(ii), 8.2(a)

Traverse of office, 1.3(a)n

Treaty, 8.2(a)

Trust

Crown as beneficiary, 12.3n, 14.5

Crown as trustee, 12.1-12.4

Fiduciary duty, see Fiduciary duty

Ultra vires, see also Prerogative, Statutory

authority, Unconstitutional statute

Crown agents, 16.3(b)

declaration as remedy, 2.3(a)

injunction as remedy, 2.4(c)-(e), 2.6(e)

tort action, see Tort

Unconstitutional statute

damages for, 6.5(d)

declaration as remedy, 2.3(a)

injunction as remedy, 2.4(g)  
mandamus as remedy, 2.4(g), 2.6(d)  
tortious liability for, 6.6(a)  
tortious liability under, 6.2(e)(ii), 6.4(e), 6.5(a), 6.6(a), 8.3,10.6

#### Unincorporated public body

legal status, 16.1, 16.4(b), 16.4(e)

#### United Kingdom

European Community law in, 2.4(g)  
unconstitutional taxes, recovery, 10.6(b)

#### United States of America

Bill of Rights, damages for breach, 6.5(d)  
executive privilege, 5.4(a)  
unconstitutional taxes, recovery, 10.6(b)

Waiver of immunity, 15.7(d), 15.8

War, see Armed forces

#### Whitmore, H.

statutes binding the Crown, on, 15.11(e)

Witness, see Public interest immunity,

Subpoena

Writ of liberate, 1.3(a)n