# **Contents**

Preface v
Table of Statutes xiii
Table of Cases xxi
Kings and Queens of England since 1066 xliii
Table of Abbreviations xlv

#### Part one

- 1 Law and Custom in Early Britain 1
  'Communal' Justice 3
  From Communal to Personal Authority 8
  Further Reading 10
- 2 Origins of the Common Law 12
  Regional and Itinerant Royal Justice 14
  Central Royal Justice 17
  Effects on Local Justice 22
  The Boundaries of English Law 27
  Further Reading 34
- The Superior Courts of Common Law 37
  The Resurgence of the King's Bench 41
  The Exchequer of Pleas 47
  Uniformity and Abolition 49
  Further Reading 51
- 4 The Forms of Action 53
  Originating an Action 53
  Types of Original Writ 57
  Judicial Writs 64
  End of the Forms of Action 67
  Further Reading 69

- 5 The Jury and Pleading 71
  From 'Proof' to 'Trial' 72
  Medieval Pleading and Legal Development 76
  The System Transformed 81
  Decline of the Common-Law System 86
  End of the Common-Law System 90
  Further Reading 95
- 6 The Court of Chancery and Equity 97
  The Chancery 99
  Law and Equity 105
  Practical Defects of the later Chancery 111
  Reform and Abolition 113
  Further Reading 115
- 7 The Conciliar Courts 117
  The Court of Star Chamber 117
  The Court of Requests 119
  Regional Conciliar and Equity Courts 121
  The Courts of the Admiral and Marshal 122
  Further Reading 124
- 8 The Ecclesiastical Courts 126
  Effect of the Reformation 130
  Further Reading 132
- 9 Judicial Review of Decisions 135
  Proceedings in Error 136
  Development of the Appeal 138
  The Prerogative Writs 143
  Administrative Law 151
  Further Reading 153
- The Legal Profession 155
  The Medieval Profession 156
  The New Profession 162
  The Judiciary 165
  Civilian Advocates 169
  Legal Education in the Universities 170
  Further Reading 172
- 11 Legal Literature 175
  Glanvill and Bracton 175
  Formularies 177
  Reports of Cases 178
  Treatises 186
  Further Reading 192

12 Law Making 195
The Common Law 196
Equity and Legal Change 202
Legislation 204
Law Reform Movements 212
Further Reading 220

### Part two

- Tenure 223
  Feudalism and Land Ownership 229
  The Lord's Rights at Common Law 237
  Further Reading 243
  Table B. Types of property 246
  Table C. Types of tenure 247
- 14 Real Property: Feudalism and Uses 248
  Effect on Feudal Law 252
  Further Reading 258
- Alienation 260
  The Law of Inheritance 265
  Provision for Spouses and New Families 269
  Reversions and Remainders 274
  Further Reading 276
  Table D. Estates in land 279
  Table E. Modes of conveying real property 279
- Real Property: Family Settlements 280
  Remainders and Executory Interests 284
  Powers 289
  Trusts 290
  The Strict Settlement 293
  Further Reading 296
- The Term of Years 298
  Tenancy at Will 306
  Villein Tenure and Copyhold 307
  The Trust as an Interest in Land 309
  Mortgages 311
  Further Reading 315

- 18 Contract: Covenant and Debt 317
  The Action of Covenant 318
  The Action of Debt 321
  Gaps in the Medieval Law 326
  Further Reading 327
- 19 Contract: Assumpsit and Deceit 329
  Breach of Covenant as Trespass 329
  Assumpsit for Nonfeasance 333
  Assumpsit in Lieu of Debt 341
  Further Reading 346
- 20 Contract: Some Later Developments 347
  Elaboration of Contract Law 350
  Privity 353
  Contractual Terms 355
  Further Reading 361
- 21 Quasi-Contract 362
  The Action of Account 363
  Actions on the Case 365
  Indebitatus Assumpsit 368
  A General Principle 375
  Further Reading 377
- Modes of Transfer 383
  Termination of Private Property in Chattels 387
  Interests in Chattels 389
  Early Restitutionary Proceedings 390
  Detinue 391
  Trespass and Case for Chattels 394
  Trover and Conversion 397
  Further Reading 400
- 23 Negligence 401
  Trespass Vi et Armis and Negligence 402
  Actions on the Case for Negligence 406
  The Tort of Negligence 409
  Further Reading 421
- 24 Nuisance 422
  Remedies for Nuisance 422
  Isolated Occurrences 432
  Common or Public Nuisances 433
  Further Reading 435

- 25 Defamation 436
  Actions on the Case for Words 438
  Attempts to Abate the Flood of Actions 440
  The Scope of Defamation 443
  Libel 445
  Further Reading 447
- 26 Economic Torts 448
  Monopolies 449
  Domestic Relationships 454
  Unfair or Deceptive Competition 458
  Intimidation and Conspiracy 459
  Further Reading 464
- 27 Persons: Status and Liberty 466
  Villein Status 468
  Freedom from Arbitrary Imprisonment 472
  Colonial Slavery and the English Courts 475
  Further Reading 477
- 28 Persons: Marriage and its Consequences 479
  The Law of Marriage 479
  Unity of Person 483
  Bastardy 489
  Divorce 490
  Further Reading 498
- Pleas of the Crown: Criminal Procedure 500
  The Initiation of Criminal Proceedings 502
  The Trial 507
  The Avoidance or Mitigation of Punishment 512
  Further Reading 519
- 30 Pleas of the Crown: The Substantive Criminal Law
  Criminal Responsibility 523
  Degrees of Participation 525
  Some Particular Offences 526
  Further Reading 536

## Appendix I

Specimen Writs 539
Original Writs 539
Judicial Writs 548
Prerogative Writs 550
Writ of Summons after 1834 552

## Appendix II

Specimen Entries 554
An Action of Trespass 555
Proceedings at a Gaol Delivery 558

Variable of the second second

96/1

FARLE PAR & COMMERCE PARTY OF STREET

and the state of t

Index 563