Index

<table>
<thead>
<tr>
<th>Term</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>abuse of power, the state and</td>
<td>179, 185–8, 222, 228</td>
</tr>
<tr>
<td>accountability (a duty to explain)</td>
<td>22–3, 80, 127, 233</td>
</tr>
<tr>
<td>académie</td>
<td>31, 60</td>
</tr>
<tr>
<td>acte clair doctrine</td>
<td>137</td>
</tr>
<tr>
<td>actes de gouvernement</td>
<td>164–6</td>
</tr>
<tr>
<td>administrative act</td>
<td>10, 47, 126, 130, 279, 290</td>
</tr>
<tr>
<td>administrative action</td>
<td>43, 46, 66, 143</td>
</tr>
<tr>
<td>judicial review procedure and</td>
<td>154</td>
</tr>
<tr>
<td>administrative contracts (contrats administratifs)</td>
<td>64, 130, 139, 284, 290, 304</td>
</tr>
<tr>
<td>amendment (avenant)</td>
<td>297</td>
</tr>
<tr>
<td>administrative courts</td>
<td>65, 82–3, 90–8, 272–8, 303</td>
</tr>
<tr>
<td>and fines for abusive claims</td>
<td>175</td>
</tr>
<tr>
<td>exceptions to separation of ordinary judicial authorities</td>
<td>131–8</td>
</tr>
<tr>
<td>good administration and</td>
<td>221–31</td>
</tr>
<tr>
<td>judicial review of</td>
<td>154</td>
</tr>
<tr>
<td>penalties and, 175–6</td>
<td></td>
</tr>
<tr>
<td>proportionality and</td>
<td>198</td>
</tr>
<tr>
<td>religious freedoms and</td>
<td>206–7</td>
</tr>
<tr>
<td>separation from ordinary courts</td>
<td>128–30, 147–9, 151</td>
</tr>
<tr>
<td>administrative decisions</td>
<td>130, 147, 177</td>
</tr>
<tr>
<td>and assessments of legal requirements, appeals against, challenging, correcting</td>
<td>191, 155–8, 174</td>
</tr>
<tr>
<td>criminal courts and legality of</td>
<td>133</td>
</tr>
<tr>
<td>declaratory judgments</td>
<td>173–4</td>
</tr>
<tr>
<td>delay of, 230</td>
<td></td>
</tr>
<tr>
<td>duty to withdraw</td>
<td>223</td>
</tr>
<tr>
<td>exceptions to legality of</td>
<td>131–8</td>
</tr>
<tr>
<td>grounds of review of</td>
<td>185</td>
</tr>
<tr>
<td>illegality of</td>
<td>143, 169, 261</td>
</tr>
<tr>
<td>incompatible, 49</td>
<td></td>
</tr>
<tr>
<td>legality of, 23, 51, 130, 136, 158</td>
<td></td>
</tr>
<tr>
<td>non-existence and</td>
<td>179–81</td>
</tr>
<tr>
<td>request for review of</td>
<td>5, 99, 100, 128</td>
</tr>
<tr>
<td>right to challenge</td>
<td>53, 54, 168</td>
</tr>
<tr>
<td>techniques of avoiding null decisions</td>
<td>170</td>
</tr>
<tr>
<td>administrative judges</td>
<td>1, 6, 18, 20, 67, 70, 83–8</td>
</tr>
<tr>
<td>creation of, 5</td>
<td></td>
</tr>
<tr>
<td>independence of, 45</td>
<td></td>
</tr>
<tr>
<td>administrative law, the context of</td>
<td>26</td>
</tr>
<tr>
<td>fait du prince theory</td>
<td>288</td>
</tr>
<tr>
<td>procedures</td>
<td>176</td>
</tr>
<tr>
<td>sources of, 43–59</td>
<td></td>
</tr>
<tr>
<td>administrative law cases, claims in</td>
<td>90</td>
</tr>
<tr>
<td>administrative redress</td>
<td>227</td>
</tr>
<tr>
<td>prior, 99–100</td>
<td></td>
</tr>
<tr>
<td>administrative regulations</td>
<td>132, 133, 147</td>
</tr>
<tr>
<td>adversarial principle, the</td>
<td>92</td>
</tr>
<tr>
<td>agent public contractuel</td>
<td>273</td>
</tr>
<tr>
<td>AIDS-infected blood, compensation and, 141</td>
<td></td>
</tr>
<tr>
<td>Algeria, military coup</td>
<td>164</td>
</tr>
<tr>
<td>Allison, John W. F., 1, 56</td>
<td></td>
</tr>
<tr>
<td>alternative dispute resolution</td>
<td>43, 78, 100–3</td>
</tr>
<tr>
<td>amicus curiae</td>
<td>17, 109, 114–15</td>
</tr>
<tr>
<td>Anglo-American system</td>
<td>55</td>
</tr>
<tr>
<td>anti-terrorism legislation</td>
<td>136</td>
</tr>
</tbody>
</table>
appeals
Conseil d'Etat and, 70
immigration-related, 69
in the United Kingdom, 65
the Commission and, 78
time limits and, 227
to the European Convention on Human Rights, 60
to the king, 61
Architect des Bâtiments de France, 182
Armenian genocide, 201
Assemblée Nationale, 107
astreintes, 77, 124–5, 173, 176–7
authority, legal source of, 130
Autorité de la concurrence, 114
balance sheet, theory of (le bilan coût-avantages), 192–5
Barre, Raymond, 28
Barrot, Odilon, 60
Batailler, F., 210
Bell, J., 299
biometric passports, 196–7
Bjorge, E., 209, 303
black people, false accusations against, 33
Blum, León, 116, 273
Bonaparte, Napoleon, 33, 63, 306
bouleversement de l'économie du contrat, 287
Boulogne, blockade of the port of, 258
Braconnier, S., 20, 21
Braithant, Guy, 58, 59, 116, 148, 193, 195
British lawyers, droit administratif and, 1
Brown, Neville, 2, 41, 67, 77
burkini, local ban of, 108
CADA (Commission d'accès aux documents administratifs), 40, 224
care homes, breaches in, 42
case citation, 24
case law (la jurisprudence), 55–7
cases, public hearing of, 94
Catholic Church, real estate owned by, 275
causation, 263, 264–6
cause juridique distincte, 179
centralised power and local administration, 306
Chancellor d'Aguesseau, 92
Chancery, remedies of, 169
Chapus, R., 54, 59, 239, 245
Charter of the Environment, 204, 226
Chartres Cathedral, 143
Chirac Government, 21
Christian Democrat Party, 106
circumstantial, 159–60
and guidance notes, 162–3
and soft law, 159
public access to, 224
Civil Code, 285, 294
article 1118 of the, 279, 281
article 1129 of the, 279
article 1162 of the, 281–2, 283
article 1231–5 of the, 285
article 1240 of the, 239, 245
article 1245 of the, 241
article 1583 of the, 277
article 2044, 103
contractual consent and, 279
exceptions under, 134
liability and, 268
civil courts, 56, 64, 94, 119, 294
annulment by, 102
defence of illegality before, 188–203
ordinary, 65
regulation on conflicts in, 62
civil law countries, 270
civil liberties, 230
protection of, 134–7
civil servants
protection against suit, 217
civil service appointments, discrimination in, 96
civil service college. See École nationale de l'administration (ENA)
claims
making, 98
procedure for making, 90
clause unusual in private law, 273–5
CNIL (Commission nationale de l'informatique de des libertés), 40, 93, 144, 224
Code Civil. See Civil Code
Code de Justice Administrative (CJA), 46, 131
article 111–5, 133
article 741–2, 176
article L111–5, 154
article L212–1, 68
article L213–4, 103
article L3, 97
article L521–1, 104–5, 292
article L521–2, 105, 108
article L522–1, 104, 220
article L6, 94
article L773–4, 95
article L91–1, 124
article L91–4, 124
article L91–9, 124
article R22–18, 121
article R311–1, 247
article R421–1, 159, 227
article R421–5, 167
article R621–1, 109
article R621–7–2, 101
article R622–1, 113
article R625–3, 114
article R711–3, 118
article R712–1, 118
article R732–1, 121
article R732–1–1, 115
article R741–12, 175
article R751–1, 123
article R761–1, 174
article R771–2, 132, 152
Code de l’entrée et du séjour des étrangers et du droit de l’asile (Ceseda), 46
Code de la commande publique (CCP), 46, 271, 276, 297
Code de la propriété des personnes publiques (CGPPP), 276
Code de la santé publique, 109
Code de la sécurité intérieure, 258
Code de Santé Publique, article 1110–5, 109
Code des marchés publics, 295
Code des relations entre le public et l’administration (CRPA), 23, 24, 46, 74, 99, 150, 178, 221, 222–3, 224–5, 226, 227, 230–1, 304
article L122–1, 225
article L211–2, 250
article L211–5, 230
article L242–1, 223
article L243–2, 223
Code des transports, 277
code général des collectivités territoriales (CGCT), 46
code général des impôts, 46
Code of Civil Procedure, 132, 152
Code of Criminal Procedure and individual freedoms, 134
article 157–1 of, 155
Code of Good Administrative Behaviour, 222
Code of Public Health, 261
Code of Relations between the Public and the Administration, 232
Code of Social Action and Families, 221
Code of Social Security, 267
codes and legislation, 46
cohabitation, 27
collegiality, principle of, 97–8
Comité consultatif national d’éthique et le Conseil national de l’Ordre des médecins, 109
commercial activities, and categories of litigation, 139
commissaire du gouvernement, 6, 7, 11, 12, 14, 55, 58, See also rapporteur public
Commission centrale d’aide sociale (CCAS), 82
Commission consultative du secret de la défense nationale (CCSDN), 112
Commission de contrôle des assurances, 38
Commission des recours des réfugiés, 78
Commission des Réfugiés, 68
Commission du Contentieux. See Conseil d’État
Commission du contentieux du stationnement payant, 83
Commission du Rapport et des Etudes, 76–8
commission for access to public documents (CADA), 39
Commission Permanente, 75
commissions départementales d’aide sociale (CDAS), 82
commune, the, 32, 36–7
big cities in, 33
elected local authorities in, 34
services provided by, 37
compensation, 252, 289
no-fault, 261–3
state liability and, 234
competence, lack of, 181–2
competition law, 47, 198, 278
compulsory competitive tendering process, 271
concessionnaires, 276, 296
Conciliation and Compensation Commission, 262
conflicts
handling, 150–3
negative, 151
of decisions, 40
positive, 150–1
Conseil constitutionnel, 6, 129, 134, 168, 217, 275, 302
constitutional principles, 211
equality in taxation and, 213
Conseil constitutionnel decision, 130
Conseil d'Etat, 2, 6, 8, 12, 13, 47, 63, 69–70, 94, 111, 125, 137, 192, 201, 248
annulling of an expropriation and, 194
consultative role of, 72–6
decision of, 64
droit administratif and the, 3
equality in taxation, 213
judicial role of, 70–2
Prince Napoleon and, 164
reference for an opinion of the, 118
renaming of, 61
scrutiny of draft legislation and, 73–4
Section du Contentieux, 184
Service de diffusion des conclusions, 116
time limits and, 167
Conseil du Roi, 61, 275
Conseil économique, social et environnemental régional (CESER), 35
Conseil national de l’enseignement supérieur et de la recherche, 83
Conseil national de l’informatique et des libertés (CNIL), 39
Conseil régional, 35
Conseil Supérieur de la Magistrature, 83
Conseil, the, local authorities and, 34–5
counsels de préfecture, 62, 66, 68, 237, 275
costs, court,
Consent, contractual, 279
Constitution
article 55 of the, 165
article 66, 134, 135, 142
the guardian of, 7
Constitution (1946), 3
Preamble, 44, 183, 204, 207, 217, 220, 269
Constitution (1958), 3, 6, 204, 220
legislative powers and, 8
pream le to, 7
Constitution French, 44–6
Constitution of An III (1795), 62
Constitutional law, 120
influence of, 7–10
constitutional rights, 204–8
constitutional turn, the, 301–3
contentieux de pleine juridiction, 188
contracts
and categories of litigation, 139
binding force of, 284–6
consent, validity, 279–81
content, validity, 281–3
formation of, 278–9
illegality of, 286
performance of the, 283–9
remedies for parties to public law contracts, 291–3
remedies for third parties, 290–1
scope of, 278
unilateral termination of, 286
contradiction, principle of, 91–4
contrats administratifs, 270, 271, 280, 287, 290, 294, 298. See also contracts
scope of, 278
corporate liability, for fault, 241
corps of financial judges, 88
corps of judges of the tribunaux administratifs, 84–5
corps of prefects, membership of, 33
corps of the Conseil d’Etat, 85–7
costs, court, 174–5
Council of Europe, 224, 232
state liability and compensation, 233
Cours d’appel de Paris, 141
Cour de cassation, 150, 151, 247
in private law, 154
Cour de discipline budgétaire et financière (CDBF), 81
Cour des comptes, 80–2
Cour nationale du droit d’asile (CNDA), 78–80, 88, 92
Cours administratives d’appel, 68–9, 84–5
court costs (les dépens), 174–5
Court of Justice of the European Union (CJEU), 6, 13, 86, 137, 153, 296, 305
Advocate General, 15, 17, 19, 116
and principles of decisions taken, 228
article 260 TFEU, 173
French administrative law and, 232
general principles and, 211
legitimate expectations, 228
Court of Requests, 90
court office (le greffe), 67
court processes, article R213-5 CJA, 101
courts, 138
administrative, 65
Cours administratives d’appel, 68–9
criminal courts, 84–5, 128, 133
general, 65
reference by, 151
Index

Energy Code, 276
- article L.314-24 of, 277
enforcement, 123–7
English Privy Council, 70
Equal Opportunities Commission, 42
Errera, R., 256
erreur manifeste cases, 193
- proportionality in, 196
error of fact, 188–90
error of law, 192, 201
- absence of, 201
error of law (erreur de droit), 190–1
- essential procedural requirement (vice de procédure et vice de forme), 182–5
- essential procedural requirement, breach of, 182–5
- ethical principles, 218
EU General Data Protection Regulation (2016), 106
EU law. See European Union law
Eurodisney at Marne-la-Vallée, 102
European Charter of Fundamental Rights, 220
European Coal and Steel Community treaty, 3, 230
European Commission Code of Good Administrative Behaviour, 222, 225
European Community law, 229
appeals to, 60
- article 6 (1) of, 82, 94, 247
- article 13 of, 169
danger of, 89
domestic law, influence on, 14–21, 56
dearl trial, rights to, 14
freedom of individuals and, 106
French administrative law and, 306
French Constitution and, 203
participation of France in, 3
Protocol 16 of, 120
ratification of, 6, 177
right to redress and, 91
wearing of religious signs and, 206
European Court of Human Rights, 18, 86, 89, 109, 153, 206, 209, 232
- and actes de gouvernement, 164
- and the rapporteur public, 115
- complaints about length of proceedings, 95
- impartiality principle and, 76
- interference and, 20
- living instrument approach, 220, 304
- Vice President Genevois and decision of, 19
European Court of Justice. See Court of Justice of the European Union (CJEU)
European Directives. See on public contracts, 295
European Economic Community
- France entry to, 10
- European law, environment of, 303–5
- European Ombudsman, 304
- Code of Public Service commitment principles, 222
- European principles, and decisions taken, 228
- European Social Charter of the Council of Europe, 207
- European supranational law, 232
- European Union
- breaches of law of, 261
- competition law and courts of, 198
- Court of Justice, 86
- development of Charter of Fundamental Rights, 232
- France membership in, 303
- French administrative law and, 179
- membership in, 6
- participation of France in, 3
- treaties on, 47
European Union Directives, 149, See also Directives of the European Union
European Union law, 47–51, 119, 137, 207, 228, 270, 296, 303–5
- acte clair doctrine in, 137
- effect on administrative law, 304
- influence of, 10–14
- unlawfulness and, 249
- WTO rules and, 295
evaluation, manifest error in, 161, 171, 191–2, 198–9, 200, 201, 208, 215
ex gratia payments, 234
- exceptional risks, liability for, 252–6
Executive, the central organ of the State, 27–8
- expert report (l’expertise), 112–13
- expropriation, 104
facts
- error of, 188–90
- evaluation of, 191–2
- material error of, 201
- fair trial, the right to, 14–21
Fairgrieve, D., 236, 240, 249, 263, 266, 267
fait du prince theory, 288, 297
fault, 236
Index

and unlawfulness, 248–50
by inaction, 251–2
failure to provide a public service, 251
faute de service, 240–2, 243, 244
in regulation, 250–1
liability, 237, 238, 239
nature of, 239–40
no-fault liability, 252
ordinary, 263
types of, 251–2
faute lourde, 245–8, 250, 254
faute personnelle, 242–5, 268
  differentiating from faute de service, 242
faute simple, 245–8, 263
Fifth Republic, 3, 8, 164
  Constitution of, 7, 26, 30
finances and, 28, 44, 45, 51
financial courts, 86–2
financial judges, corps of, 88
Financial Markets Authority (Autorité des marchés financiers), 52, 138, 161
First World War, 8, 210, 257
flagrant illegality (voie de fait), 129
force majeure administrative, 288
foreigners, expulsion of, 131, 135
Fourth Republic, 3, 8
France, social change in, 305–6
Franks inquiry, control of ministers’ powers, 2
fraud, 281
freedom of movement, interference with, 105
freedom, scope of fundamental, 220
French academics, and the droit administratif, 3
French administration, 22, 41, 49, 174, 225
types of contracts and, 139
French administrative courts, 88, 154
and promotions, 170
procedure of, 127
French administrative justice system,
  background to, 61–5
French administrative law, 176, 271, 290, 306
change and, 3
development of, 231
European Convention and, 3, 305
European influences on, 232
influence of the European Union on, 304
legal certainty and, 228–30
liability and, 263, 264
public contracts and, 293
public law contract and, 270
remedies and, 169
state liability and, 234
French Civil Code, 239, 241
French law
  as a source of EU law, 47
state liability and, 268
French Ombudman (Défenseur(e)). See also Défenseur(e)
Frier, L., 246
frustration, 287
fundamental rights, 203, 220
  constitutional rights as, 204–8
European Convention on Human Rights and, 208–10
  public law and, 303
Gambetta, Léon, 27, 28
Garner, Jack, 2, 6
General Code on the Property of Public Persons, 140
general courts, 61–5
General Tax Code, 11
Geneva Convention on Refugees (1951), 211
Genevois, Bruno, 234
German Civil Code §859, 241
German occupation, 288
globalisation, 306
good administration, principles of, 221–31
good faith, principle of (bonne foi), 294
gouvernement, actes de, 164–6
Government website (Légifrance), 74
Grands Arrêts, 166, 168, 245, 254
grey literature (la literature grise)
  soft law and, 161
gross fault (faute lourde), 235, 245, 250
guidelines, case of, 160
Guyomar, M., 12, 59, 92, 117
Hamson, C. J., 2, 3, 10, 209
harm, categories, 203–4
Hauriou, M., 2, 10, 130, 147, 236, 252, 257
Haute Autorité de la Concurrence, 114
HCERES, 39
hearing, the, 120–2
  right to, 225
Hédon, Claire, 42
Heilbronner, 212
Henry IV, 61
HIV transmission, 251–2, See also AIDS-
  infected blood, compensation and homologation, 103
Hood, Christopher, 21
House of Commons Public Accounts Committee, 80
Housing Code, 167
human rights, proportionality and, 198

illegality, 172, 188–203
defence of, 188–203
flagrant, 141, 143
simple, 292
illegality (violation de la loi), 185
imprévision, 287, 288, 297
administrative law theory of, 287
inaction, liability for, 258
Incorporated Council of Law Reporting, 55
Independent Administrative Authorities (AAIs), 58, 144
independence of, 49–1
rule-making powers of, 59
Independent Office for Police Conduct, 42
individual decisions (actes individuels), 158
individual freedoms, 40, 107, 204
information, handling of, 225–7
injunctions (injonction), 172–3
inquisitorial character, principle of, 90, 96–7
institution of the Ombudsman, 41
intérêt public (public interest), 270
interim decisions process (le référé), 98
interim measures (Le référé), 104–9
international contracts, 283
International Labour Organisation, 195
international treaties, and general principles of (domestic) law, 211
intuitu personae principle, 296
investigation (L'instruction), 110–11
judges, impartiality and independence of, 97
judgments, public access to, 94
judicial review
exclusion of, 168–9
grounds of, 179
inappropriateness of, 166–7
purpose of, 178–9
sliding scale for, 199–203
values enforced through, 203
juge de cassation, 284
juge des référés, 98, 104, 105
juge du référé-libertés, 107
jurisdiction
division of, 152
handling conflicts over, 150–3
justice déléguée, 124
justice, denial of, 152
Labetouille, Daniel, 102
Labour Code, 216, 273
article L7121-2 of the, 278
Laferrière, E., 58–9, 61, 147, 203, 241, 245, 300
Laski, H., 2
Lasserre, Bruno, 86
law/laws
breach of, 170
error of, 190–1, 192, 201
general principles of, 8, 21, 45, 53–5, 210–19
Law (1790), 62, 129, 179
Law of 22 Frimaire An VIII (1799), 70
Law of 28 Pluviôse An VIII (1800), 140, 237, 275, 276, 300
Law (1872), 46
Law (1905), 106, 219
Law (1957), 141
Law (1979), 23
Law (1993), 124
Law (2000), 24
Law (2011), 183, 265
Law (2016), 94
Law (2019), 94
lawfulness, 283
legal certainty, legitimate expectations of, 228–30
legal representation, obligatory, 103–4
legal scholarship (la doctrine), 57–9
legality
enforcing, 203
maintaining, 178–9
principle of, 222
Légifrance (Government website), 74
legislative acts, liability of the state and, 259
legislative exceptions, 138
legislative powers. See Constitution (1058)
legislative principle, 130
categories of litigation and, 138–41
Legislature, the, 54
central organ of the State, 28–30
legitimate expectations, 51, 304
legal certainty and, 228–30
public and, 222
Leonetti, Jean, 109
liability
controls on, 263–8
exceptional risks and, 252–6
for public works, 256–8
Index

no-fault, 140, 236, 237
state, 233–4
theories of, 234–6
Liberation (1944–1946), 210
litigation, categories of, 158–41
living instrument approach, 220, 304
local administration and centralised power, 306
local authorities, elected, 34–5
Local Government Ombudsman, 42
local languages, the French and, 35
loss of profits, 292
losses, recompense for, 266
Louis XIII, absolute monarchy and, 62
lucrum cessans, 286
Luxembourg Conseil d’Eta, 16
Luxembourg Court. See Court of Justice of the European Union (CJEU)
Maastricht Treaty, 12
MacMahon, 27
manifest error in evaluation, 161, 171, 191–2, 198–9, 200, 201, 208, 215
control over, 194
Marrakech agreements, 294
material error of fact, 201
Mayer, Otto, 231
Médiateur (the French Ombudsman), 23, 41
mediation, Directive 2008/52/EC on, 103
Mediator, case of, 262
mental capacity, lacking, 255
Métropole of Marseille, 282
Minitel, 22
minor criminal offences (contraventions), 205
mistake (erreur), 280–1
Mitchell, J. B. B., 2
mobile telephony data, access to, 306
modern French administrative law, 236
money penalty, 124
Moroccan migrants, 135, 171
Moulin, Jean, 33
moyen d’ordre public, 179
Muslim headscarf, exclusion of students with, 163

Napoleon. See Bonaparte, Napoleon
Napoleon III (emperor), 164
National Assembly, dissolution of, 165
National Audit Office, 80

National Conference of Local Administration, 31
National Health Service, 42
negative conflict, 151
New Public Management, 22
no-fault compensation, other, 261–3
no-fault liability, 140, 236, 237, 252, 261–3
non-existence (inexistence), 179–81
note en délibéré, 121
Notre-Dame-des-Landes, airport at, 226
nuclear accidents, 141
nullity, 169
can it be avoided, 170–2
effect of, 169–70
objet illicite (unlawful subject-matter), 283
obligatory legal representation, 103–4
Odent, R., 58, 70, 89, 97, 148, 210
OFFRA (Office français de protection des réfugiés et apatrides), 78, 91
ONIAM (Office national d’indemnisation des accidents médicaux), 262
openness, principle of, 94–5
oral hearings, use of, 96
ordinary fault (faute simple), 263
ordinary judicial authorities separation from administrative courts, 147–9
ordonnance (1945), 46, 254
Ordre des médecins, 83
Organic Laws, 41, 43, 44
Organisation of Economic Co-operation and Development (OECD), 22

Pantouflage, 46
Paris Lyon Marseille (PLM), 33, 37
Parliament, 59
adoption of Code of Good Administrative Behaviour, 222
Parliamentary and Health Ombudsman (UK), 42
path dependence, 299–301
Pays de la Loire, 36
Penal Code (1992), 133, 134
penalties, 175–6
criminal, 198
disciplinary, 196
pension contributions (Gardedieu), 263
Petit, J., 246
pharmaceutical companies, 214
Planiol, M., 239, 240
Planning Code, 155
plein contentieux, 126, 174, 289
pleine juridiction proceedings, 175
point of law (en cassation), 70
political refugee, general principle and, 211
Poniatowski, 41
Pope, 106
Port, F. J., 2
positive conflicts, 150–1
Posts and Telecommunications, 86
power, abuse of, 185–8, 222, 228
powers, separation of, 9, 54, 62
PPP contracts (marché de partenariat), 170, 283
prefect, the, 33
préfet de police de Paris, 150
préjudice moral, 264
preliminary references, 118–20
pretium doloris, 264
principle of contradiction, the (le principe du contradictoire), 90, 91–4
principles, and decisions taken, 228
prior decision, need for, 158–9
private bodies, 145
private contractors, exceptions to binding force and, 287–9
private law
clause unusual, 273–5
Cour de cassation in, 154
principles borrowed from, 216–17
private law contracts (contrats de droit privé), 139, 241, 264
private law relations, 1
private property, protection of, 134–7
privilege d’action d’office, 291
privilege du préalable, 166
Privy Council, British, 70
Privy Council, French King’s, 69
proceedings
inquisitorial nature of, 112
length of, 95
time limits and, 167–8
written nature of, 95–6
prohibition, 42, 62
Promotion Molière, 87, 88
property, ownership of, 139
proportionality, 195–9
principle of, 228
Proposal for a Regulation on a Common European Sales law, 139
public action, transparency and, 224
Public and the Administration (Code des relations entre le public et l’administration (CRPA)), 221
public authorities, 94
exceptions to binding forces of contracts, 284–6
liability and, 236
making claims against, 90
real estate owned by, 276
state liability and, 233
termination of contract and, 286
public bodies
decision-making powers of, 40
public bodies, liability of, 140–1
public burdens, equality before, 257–61, 263
public contractor, 292
public contracts
claims related to, 270
French administrative law and, 293
public law
and private law, 119, 239, 252, 300
distinction between private law and, 128–30
identifying matters, 147–9
separation between and private law, 300
public law contracts (‘contrats administratifs’), 270–1, 281, 298
legislator and, 275–8
remedies for, 289–93
remedies for third parties to, 290–1
specific rules and, 278–89
public law matters, 147
public office, equal access to, 212–13
public officials
conduct of, 222–3
public persons, 144–7
Public Procurement Code, 296
public procurement contracts, 266, 271, 276, 278, 287, 294, 295, 296
annulment of, 114
collusion and, 286
concessions and, 285, 287, 289, 290
EU Directives and, 295
favouritism and, 292
litigations and, 277
performance and, 283
public works and, 275
public property, occupation of, 290
public requests, handling of, 225–7
public service mission, 272–3
public services
administrative regulation, 147
Index

assistance to, 236–7
continuity of the, 217–18
equality before, 214–15
failure to provide, 251
internal measures, 162–3
neutrality of, 215
neutrality of the, 218–19
public works, liability for, 236–8
public, legitimate expectations of the, 222
quangos (Executive Non-Departmental Public Bodies (ENDPBs)), 38
question préjudicielle de constitutionnalité (QPC), 204
rail track company (RFF), 38
rapporteur public, 6, 19, 25, 56, 67, 71, 87, 95, 195. See also commissaire du gouvernement
reasonable time, decisions in, 95, 227
reasons, duty to give, 250–1
Rechtsstaat, 178
Recommendations of the Council of Europe, 236
and state compensation, 234
recompense for all losses (réparation intégrale), 266
recours (request), 90
recours administratif préalable obligatoire (RAPO), 99
recours de plein contentieux, 289, 291, 293
recours pour excès de pouvoir, 62, 64, 90, 103, 108, 174, 188, 289, 290, 291
redress, right to, 91
référet procedure, 71, 96, 141, 143, 220
référe-liberté, 71, 104, 107, 108, 169, 173, 177, 220
refugee status, claims for, 78
Region of Pays de la Loire, 31
region, the, 35–6
elected local authorities in, 34
regional administration, 30–2
regulation, 144, 206
AAs and, 39
administrative, 132, 133
EEC, 10
fault in, 250–1
General Tax Code and, 11–12, 50
prefect and implementation of, 34
public, 246
regulatory decisions (actes réglementaires), 158
regulatory offences, 205
religion, freedom of (liberté du culte), 206–7
religious beliefs, 209
remedies, 169
for fraud, 281
for public law contracts, 289–93
nullity and, 169
parties to public law contracts, 291–3
third parties to public law contracts and, 290–1
renvoi, 306
reparation, 234, 239
entitlement to, 236
recompense for all losses, 266
request (la requête), 90
request for information, 111–12
réserves d’interprétation, 502
responsibility (a duty to take charge), 233
Restoration (1814–30), 55
review
grounds of, 179
sliding scale for, 190–203
review court (juge de cassation), 264
Revolution (1789), 60, 61, 129, 210, 211, 237, 300, 306
before the Conseil du Roi, 275
départements and, 32
equal access to public office, 212
equality in taxation and, 213
equality of public burdens and, 5
state officials and, 30
theories of liability and, 235
Richelieu, 61
rights
against direct or indirect discrimination, 41
constitutional, 204–8
fundamental, 203
rights of the child, 41, 221
to a fair trial, 3, 14–21, 261
riot damage, statutory liability, 258
Rivero, J., 53, 124, 211, 219
Robson, W. A., on Dicey’s approach, 2
Rocard, M., 25, 29
Romieu, 58
Rouban, L., 85, 86
rule of law, British, 1
Rural Code, 48, 278
Saint Marc, Renaud Denoix de, 86
Sauvè, Jean-Marc, 86
Schengen database, 93
Schwartz, Bernard, 55
Index

theory of the balance sheet (le bilan coût-avantages), 192–5
third parties, remedies and public law contracts, 290–1
Third Republic, 8, 44, 300
time limits, 167–8
and appeals, 227
tort action, in England, 233
Toubon, Jacques, 41
traditional principles, 53, 203, 211–12, 219
transparency, data protection and, 224–5
transparency principle, 278
travaux préparatoires, 275
Treaty on the Functioning of the European Union (TFEU), 47, 179
tribunal administratif, 11, 19, 34, 69, 97, 98, 101, 110, 112, 117–18, 120, 132, 145, 180, 184, 215, 249
homologation and, 103
local taxpayers and, 158
of Bastia, 124
of Clermont-Ferrand, 221
of Montpellier, 67
of Paris, 248
of Polynesia, 125
of Versailles, 95
preliminary question and, 118
Tribunal des Conflicts, 119, 131–2, 133, 134–5, 137, 140, 141, 144, 150, 151, 152, 241, 247, 277, 278
concessionaries and, 276
unlawful administrative actions and, 143
tribunaux administratifs, 66–8, 152
reconciliation and, 100
Troïka, 122
troubles dans l’existence de la vie (disturbance in a way of life), 264
UNESCO treaty, 259
unforeseen situations (sujétions imprévues), 289
unilateral termination, 286
United States, Administrative Law Procedure Act (1945), 2
unlawfulness, 265, 291, 292–3
fault and, 248–50
under acts of the Vichy regime, 244
unreasonable obstinacy, 109

VAT. See Directives
Vedel, G., 8, 9, 147
dispute with Eisenmann, 7–9
Vichy Law (1943), 168
voie de fait, 129, 132, 141–3, 180

Wächsmann, P., 247
Wildhaber, L., 18
Wilson, J. F., 59

witness hearing (l’enquête), 114
World Trade Organization (WTO)
Agreement on Government Procurement (‘GPA’), 294
rules, 295