

# Contents

Abbreviations . . . . .	XXIII
-------------------------	-------

## Part I. Introductory

---

Chapter 1. Nature, Scope, and Growth of German Administrative Law . . . .	1
A. Nature and Scope . . . . .	1
B. Salient Features . . . . .	3
1. Separate Administrative Courts . . . . .	3
2. Public and Private Law Dichotomy . . . . .	3
3. The Rule of Law ( <i>Rechtsstaat</i> ) . . . . .	5
4. Separation of Powers . . . . .	6
5. Social (Welfare) State ( <i>Sozialstaat</i> ) . . . . .	7
C. Growth: Historical Developments . . . . .	8
D. Administrative Organization . . . . .	12
1. Federal Administration . . . . .	12
2. State (Land) Administration . . . . .	13
3. Municipal Administration . . . . .	14
References . . . . .	16

## Part II. Powers and Functions of Administrative Authorities

---

Chapter 2. Legislative Powers: Delegated Legislation . . . . .	19
A. General . . . . .	19
B. Executive Legislation: Ordinances ( <i>Rechtsverordnungen</i> ) . . . . .	20
1. Constitutional Limitations . . . . .	20
2. Procedural Requirements . . . . .	23
3. Judicial Control . . . . .	24
4. Grounds of Judicial Review . . . . .	25
5. Sub-delegation of Ordinance-Making Power . . . . .	27
C. Autonomous Legislation: Byelaws ( <i>Satzungen</i> ) . . . . .	27
1. Constitutional Limitations . . . . .	28

- 2. Procedural Requirements . . . . . 28
- 3. Judicial Control . . . . . 28
- D. Concluding Remarks . . . . . 29
- References . . . . . 30
  
- Chapter 3. Administrative Powers: Administrative Act . . . . . 32
  - 1. Concept and Meaning of Administrative Act . . . . . 32
  - 2. Classification of Administrative Acts . . . . . 36
  - 3. Form, Contents, and Procedure of an Administrative Act . . . . . 37
  - 4. Effect of an Administrative Act . . . . . 41
  - 5. Defective Administrative Acts . . . . . 42
  - 6. Validation of Illegal Administrative Acts . . . . . 44
  - 7. Withdrawal and Revocation of Administrative Acts . . . . . 45
  - 8. Reopening of Proceedings . . . . . 47
- References . . . . . 48
  
- Chapter 4. Administrative Powers: Contracts, Private-Law Acts, Real Acts, and Planning . . . . . 50
  - A. Administrative Contracts . . . . . 50
    - 1. Nature of Administrative Contracts . . . . . 50
    - 2. Requirement of Legality . . . . . 51
    - 3. Void Contracts . . . . . 52
    - 4. Modification and Rescission of Administrative Contracts . . . . . 53
    - 5. Enforcement of Contracts . . . . . 54
  - B. Administrative Private-Law Acts . . . . . 55
  - C. Administrative Real Acts . . . . . 57
  - D. Plans and Planning . . . . . 58
    - 1. Nature of Planning . . . . . 58
    - 2. Planning Permission . . . . . 60
    - 3. Remedy Against Planning Permission . . . . . 61
- References . . . . . 62

**Part III. Judicial Control of Administrative Powers**

---

- Chapter 5. General Principles of Judicial Review . . . . . 64
  - 1. The Common Law and German Law Approaches: An Overview . . . . . 64
  - 2. Basis of Judicial Review . . . . . 65
  - 3. Basic Principles of Judicial Review . . . . . 66

4. Scope of Judicial Review . . . . .	71
5. Grounds of Judicial Control . . . . .	72
References . . . . .	79
 Chapter 6. Judicial Review of Discretionary Powers . . . . .	 83
A. Constitutional Limitations . . . . .	84
B. Grounds of Judicial Control . . . . .	85
1. Excess of Discretion . . . . .	86
2. Abuse of Discretion . . . . .	87
C. Indefinite Legal Concepts . . . . .	96
References . . . . .	98

#### **Part IV. Administrative Courts and Judicial Remedies**

---

Chapter 7. Administrative Courts . . . . .	102
1. German Judicial System . . . . .	102
2. Administrative Courts . . . . .	104
3. Administrative Jurisdiction . . . . .	110
4. Jurisdiction of Administrative Courts . . . . .	112
5. Determination of Jurisdiction . . . . .	113
6. General Assessment . . . . .	114
References . . . . .	115
 Chapter 8. Judicial Remedies and Procedure . . . . .	 117
A. Remedies . . . . .	117
1. Nature of Judicial Remedies . . . . .	117
2. Kinds of Suits . . . . .	118
3. Conditions for Judicial Relief . . . . .	119
B. Procedure . . . . .	125
1. Principles of Procedure . . . . .	125
2. Procedure in the Court of First Instance . . . . .	128
3. Appeal, Revision, and Complaint . . . . .	130
4. Interim Relief . . . . .	133
5. Reopening of the Proceedings . . . . .	135
6. Execution of Judgments . . . . .	136
C. Concluding Remarks . . . . .	136
References . . . . .	137

## Part V. State Liability

---

Chapter 9. Liability of the Public Authorities . . . . .	139
A. Scope and Background . . . . .	139
B. General Tort Liability . . . . .	142
1. Persons Exercising Public Office . . . . .	142
2. Breach of Duty . . . . .	142
3. Duty Towards Third Party . . . . .	144
4. Exercise of Public Office . . . . .	145
5. Fault and Strict Liability . . . . .	146
6. Liability for Legislative Changes . . . . .	146
7. Limits of Liability . . . . .	147
C. Liability for Quasi-Expropriation and Sacrifice . . . . .	148
1. Liability for Quasi-Expropriation ( <i>enteignungsgleicher Eingriff</i> ) . . . . .	148
2. Liability for Sacrifice ( <i>Aufopferung</i> ) . . . . .	149
D. Remedy of Nullifying the Consequences . . . . .	151
References . . . . .	151
Table of Statutes . . . . .	154
Table of Cases . . . . .	156

## Appendices

---

Appendix I. The Basic Law . . . . .	158
Appendix II. Law of Administrative Procedure 1976 . . . . .	164
Appendix III. Law on Administrative Courts 1960 . . . . .	181
Appendix IV. An Illustrative Judgment . . . . .	184
Bibliographical Note . . . . .	188
Subject Index . . . . .	192