

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 (*Rechtsstaat*) 5

 4. Separation of Powers 6

 5. Social (Welfare) State (*Sozialstaat*) 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 (*Rechtsverordnungen*) 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 (*Satzungen*) 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