Contents

Table of Cases xv
Table of National Legislation xlvii
Table of Secondary Legislation li
Table of Treaties and Conventions liii

1. Historical Aspects of Habeas Corpus 1
   1. Introduction 1
   2. Medieval Period 2
   3. Habeas Corpus and the Jurisdictional Conflicts 4
   4. Habeas Corpus and Executive Committals 6
   5. Procedural Defects and the Habeas Corpus Act 1679 14

2. Scope of Review 18
   1. Introduction 18
   2. The Form of Review on Habeas Corpus 21
   3. Jurisdictional Review 23
   4. Review of Patent Error 30
   5. Superior Court Orders and Convictions 41
   6. Certiorari-in-Aid of Habeas Corpus 45
   7. Privative Clauses 47
   8. Trivial Defects 49
   9. Non-Discretionary Nature of Habeas Corpus 52
   10. Habeas Corpus or Judicial Review? The Modern Approach 56
   11. Conclusion 64

3. Consideration of Questions of Fact 65
   1. Historical Introduction – Rule against Controverting the Return 65
   2. Jurisdictional Facts 71
   3. Procedural Problems and Issues of Fact 74
   4. Review of Non-Jurisdictional Fact 77
   5. Burden of Proof 84

4. Habeas Corpus, Fundamental Rights, and the Executive 90
   1. Introduction 90
   2. Emergency Powers: A Historical Overview 91
   3. Emergency Powers: Terrorism Legislation 105
   4. The European Convention on Human Rights 106
<table>
<thead>
<tr>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Martial Law</td>
</tr>
<tr>
<td>6. Executive Detention in Other Circumstances</td>
</tr>
<tr>
<td>7. Public Interest Immunity</td>
</tr>
<tr>
<td>8. Conclusion</td>
</tr>
</tbody>
</table>

5. Habeas Corpus in Immigration Law |
1. Introduction | 127 |
3. The Early Deportation Cases | 131 |
4. The Modern Law: Habeas Corpus and Immigration Detention | 134 |
5. Self-induced Restraint | 141 |
6. Issues of Timing | 146 |
7. Conclusion | 147 |

6. Habeas Corpus in Criminal Law |
1. Review of Pretrial Proceedings and Bail | 148 |
2. Delay in Trial | 148 |
3. Review of Convictions | 156 |
4. Review of Sentence | 163 |
5. Habeas Corpus to Challenge the Validity of Conditions of Imprisonment | 165 |
6. Problems of Restraint and Time | 169 |
1. Restraint of Liberty as a Basis for the Writ | 174 |
2. To Whom the Writ Should be Directed | 176 |
3. Custody Lost or Transferred | 179 |
4. Problems of Time | 181 |

7. Review of Detention in Cases of Mental Disorder | 174 |
1. Introduction | 174 |
2. The Scope of Review | 176 |
3. Criminal Cases | 179 |
4. Capacity to Take Proceedings | 181 |

8. Problems of Restraint and Time |
1. Restraint of Liberty as a Basis for the Writ | 182 |
2. To Whom the Writ Should be Directed | 182 |
3. Custody Lost or Transferred | 195 |
4. Problems of Time | 197 |

9. Territorial Ambit of Habeas Corpus | 206 |
1. Introduction | 206 |
2. The Decision in Ex p. Anderson and the Act of 1862 | 207 |
3. British Isles | 209 |
4. Protectorates | 211 |
5. Diplomatic Immunity | 212 |
6. Territorial Waters and Ships at Sea | 213 |
7. Federal Jurisdictions | 214 |
8. Persons Held beyond the Reach of Habeas Corpus | 216 |