

# Contents

<b>1</b>	<b>At the Edge of the Law: Mapping the Terrain of Abuse in the EU Legal Order</b> .....	1
1.1	The Aim of This Book and Delimitation .....	1
1.2	A Few Preliminary Issues .....	4
1.3	Plan of the Book .....	7
	References .....	8
<b>2</b>	<b>Abuse of Law in Municipal Legal Orders and International Law: An Overview</b> .....	9
2.1	Introduction .....	10
2.2	The Origins of the Concept of Abuse of Law from Roman Law to Modern Times .....	10
2.3	Abuse of Law in Domestic Legal Systems .....	12
2.3.1	Continental Europe .....	12
2.3.2	The Common Law Tradition .....	15
2.3.3	Japan, the Islamic Legal System and the Nordic Countries .....	16
2.4	The Concept of Abuse of Law in the International Legal Order .....	19
2.4.1	The Scholarly Dimension: A Theory of Abuse of Law in International Law .....	20
2.4.2	The Practice: Areas of International Law Where Abuse of Law Has Been Recognised .....	23
2.4.3	Abuse of Rights in the Field of Human Rights Law .....	26
2.4.4	An Appraisal of Abuse of Law in General International Law .....	27
2.5	Concluding Remarks .....	30
	References .....	31
<b>3</b>	<b>Analysis of the Court of Justice's Case Law</b> .....	35
3.1	Introduction .....	36
3.2	The First Phase .....	39
3.2.1	The Foundational Stone: <i>Van Binsbergen</i> .....	39

3.2.2	The <i>Knoors</i> Ruling, aka <i>Van Binsbergen</i> , the Sequel . . . . .	41
3.2.3	The Emergence of a Different Form of Abuse in the EU Legal Order: Abuse of Process . . . . .	42
3.2.4	The Improper Invocation of Rights Granted by Secondary Legislation: A Matter of Abuse or of the Scope of Application of EU Law? The Court's Answer in <i>Cremer</i> and <i>Töpfer</i> . . . . .	45
3.2.5	The Emergence of <i>Fraus Legis</i> in the EU Legal Order: <i>Könecke</i> and the Use of Fraudulent Means to Exploit the Law . . . . .	48
3.2.6	The Use and Abuse of the Free Movement of Goods to Circumvent National Legislation: The <i>Leclerc</i> Judgment . . . . .	49
3.2.7	The Use of a Fundamental Freedom to Obtain a Benefit Granted by National Law: The <i>Segers</i> and <i>Lair</i> Rulings . . . . .	50
3.2.8	The "Greek Challenge" Cases . . . . .	54
3.2.9	Merging the Findings of <i>Van Binsbergen</i> and <i>Leclerc</i> : The <i>Veronica</i> Ruling . . . . .	59
3.2.10	The Role of Harmonisation and Proportionality: The <i>Kraus</i> Judgment . . . . .	60
3.2.11	The Prequel to <i>Emsland-Stärke</i> : <i>Boterlux</i> . . . . .	61
3.2.12	How to Apply an Express Anti-abuse Clause and the Emergence of the Concept of "Valid Commercial Reasons": The <i>Leur-Bloem</i> Decision . . . . .	64
3.2.13	When the Need to Combat Abuse Is Abused: The Misplaced Invocation of the Need to Prevent Tax Avoidance in <i>Imperial Chemical Industries</i> . . . . .	65
3.2.14	An Internal Market Is an Internal Market: The Endorsement of Regulatory Arbitrage in <i>Centros</i> . . . . .	67
3.3	The Second Phase . . . . .	69
3.3.1	Developing a Test for Abuse: <i>Emsland-Stärke</i> . . . . .	69
3.3.2	The Strengthening of the Court's Free Mover-Friendly Attitude in Relation to Persons: The Irrelevance of the Worker's Motives in <i>Akrich</i> . . . . .	71
3.3.3	The Further Strengthening of the Court's Free Mover-Friendly Attitude in Relation to Persons: The Irrelevance of the Motives in <i>Chen</i> . . . . .	74
3.3.4	Abuse of (Union) Law Meets Tax Evasion: The Court's Rulings in <i>Marks and Spencer</i> , <i>Halifax</i> , <i>Cadbury Schweppes</i> and <i>Kofoed</i> . . . . .	76
3.3.5	More Cases of Tax Evasion and Abuse . . . . .	85
3.3.6	Abuse of Law (or Lack Thereof) in the Field of Free Movement of Persons . . . . .	90

3.3.7	Abuse of Union Law and the Recognition of Foreign Titles and Qualifications .....	95
3.3.8	Three Remaining Cases: <i>Slancheva, Kratzer</i> and <i>Polbud</i> .....	100
3.4	The Third Phase .....	103
3.4.1	Introduction .....	103
3.4.2	The Beginning of a New Era: The Landmark <i>Cussens</i> Ruling .....	104
3.4.3	The Differences Between Fraud and Abuse as They Emerged in the <i>Altun</i> Ruling .....	106
3.4.4	Setting the Boundaries of the General Principle of Prohibition of Abuse of Law: The Contribution of (a New Wave of) Tax Evasion Cases .....	108
3.4.5	The Application of the Principle of Abuse of Union Law in Horizontal Disputes .....	113
3.4.6	The Emergence of a New Trend? Recent Cases Concerning Abuse and Asylum .....	115
3.4.7	Going Back to the Origins: Abuse of Law and the Free Movement of Goods .....	117
3.4.8	Abuse of Union Law and the Insurance of Motor Vehicles: The <i>Matmut</i> Ruling .....	118
3.5	Conclusions (a Postponement) .....	120
	References .....	120
<b>4</b>	<b>The Scope of Application of the Principle of Abuse of Law in the EU Legal Order</b> .....	<b>125</b>
4.1	Introduction .....	125
4.2	Abuse of Law as a General Principle of EU Law .....	127
4.2.1	The Prohibition of Fraud as a General Principle of EU Law .....	131
4.3	Abuse of Union Law: A Typology .....	132
4.3.1	The Role of Proportionality .....	137
4.3.2	The Two Constitutive Elements of Abuse of Union Law: An Appraisal .....	139
4.4	The Application of Abuse of Law to Different Areas of EU Law .....	140
4.5	What Is the Role of Secondary Legislation? .....	143
4.6	Open Questions and Outstanding Challenges .....	146
4.7	Conclusions .....	149
	References .....	153
<b>5</b>	<b>The Purpose and Function of Abuse of Law in the Union Legal Order</b> .....	<b>155</b>
5.1	Introduction .....	155
5.2	The Purpose and Function of Abuse of Law in the Union Legal Order .....	156

5.3	The Purpose and Function of Abuse of Law in General: A Theory of Abuse of Law .....	161
5.4	Conclusions: Abuse of Union Law as an Integral Part of a Complete Legal System .....	165
	References .....	167
<b>6</b>	<b>Concluding Reflections: Abuse of Law and the Maturation of the EU Legal Order .....</b>	<b>169</b>
6.1	The Principle of Abuse of Law in the EU Legal Order: From the Uncertain First Steps of the Early Case Law to the Formulation of a Fully-Fledged Doctrine of Abuse .....	169
6.2	Abuse of EU Law: A Childhood Disease or an Inevitable Consequence of Maturity? .....	173
	References .....	175
	<b>Index .....</b>	<b>177</b>