

Table of Contents

	Page
PREFACE	v
FOREWORD	xi
ACKNOWLEDGMENTS TO THE FIRST EDITION	xiii
ACKNOWLEDGMENTS TO THE SECOND EDITION	xv
LEGAL SOURCES AND CITATION FORMS	xvii
TABLE OF COMMUNITY CASES IN THE EUROPEAN COURT OF JUSTICE	li
TABLE OF COMMUNITY CASES IN THE COURT OF FIRST INSTANCE	lxix
TABLE OF NATIONAL COURT CASES	lxxi
TABLE OF EUROPEAN COMMISSION DECISIONS	lxxix

PART I. THE EUROPEAN COMMUNITY AND EUROPEAN UNION: LEGAL AND INSTITUTIONAL FRAMEWORK

Chapter 1. The History of the European Community and the European Union	3
A. The Postwar Movement Toward European Unification	4
B. The European Coal and Steel Community and Later Community Efforts	5
C. The European Economic Community and Euratom	6
D. The European Economic Community Program: 1958-1985	7
E. The Evolution of Community Structure: 1958-1985	10
1. The Accession of New States	10
2. Institutional Change	11
3. The European Council and European Political Cooperation	11
4. Toward a More Complete Union	12
5. The Single European Act	13
F. The Maastricht Treaty and the European Union	14
1. Economic and Monetary Union	15
2. Political Union	16
3. Ratification of the TEU	18
4. Post-TEU Accessions	18
5. Post-TEU Developments: Internal and External	19
G. Enlargement Prospects and the Treaties of Amsterdam and Nice	20
1. The New Applicant States	20
2. The 1996-97 Intergovernmental Conference	21
3. Background Developments	22
4. The Treaty of Amsterdam	23
5. The Treaty of Nice	24
6. Ongoing Policy Developments	26
Chapter 2. The Treaties and the Institutions	28
A. The Treaty Framework of the European Community and the European Union	28

	Page
1. The Constitutive Treaties.....	28
2. Other Basic Community Treaties	30
3. Amendments to the EC and EU Treaties	31
Note on the Sources of Community Law	31
B. The Institutions	33
1. The Council	34
Note on the Luxembourg Accord	39
Note on the European Council	40
2. The Commission	42
Note on Delegations of Power to the Commission	48
3. The European Parliament	51
Note on the Ombudsman	56
4. The Court of Justice	58
Note on the Court's Jurisdiction Over Human Rights, "Closer Coopera- tion" and "Pillar Three"	63
Note on the Court of First Instance	65
5. Other Institutions	70
(a) The Committee of the Regions	71
(b) The Specialized Agencies	72
Chapter 3. Community Legislation and the Legislative Process	75
A. Forms of Community Action	75
Note on the ERTA Case	76
<i>Germany v. Commission</i>	78
B. The Legislative Process of the Community	82
1. The Parliamentary Consultation Procedure	83
Note on the Parliamentary Cooperation Procedure and the Emergence of "Correct Legal Basis" Disputes	86
<i>United Kingdom v. Council</i>	92
2. The Parliamentary Codecision Procedure	97
C. Community Finances and the Budget	100
Chapter 4. The Sphere of Community Law and Policy	104
A. Implied Powers	106
<i>Spain v. Council</i>	108
B. Internal Affairs	111
<i>Knoors v. Secretary of State for Economic Affairs</i>	111
C. Preemption of Member State Law	115
<i>Wilhelm v. Bundeskartellamt</i>	115
<i>Pigs Marketing Board v. Redmond</i>	118
D. The Subsidiarity Principle	120
<i>Germany v. Parliament and Council</i>	123
E. Flexibility and "Closer Cooperation"	125
Chapter 5. Judicial Review of Community Acts	129
A. The Action for Annulment (Articles 230 And 231)	129
1. What Acts may be Challenged Under Article 230?	132
<i>IBM v. Commission</i>	133
2. Private Party Standing to Seek Judicial Review	137
(a) Private Party Standing to Challenge a Regulation	138
<i>France v. Comafrika SpA and Dole Fresh Fruit Europe Ltd.</i>	138
(b) Private Party Standing to Challenge Decisions Addressed to Member States	140
<i>Alfred Töpfer and Getreide-Import Gesellschaft v. Commission</i>	140

	Page
(c) Private Party Standing to Challenge Decisions Addressed to Other Parties.....	143
<i>Metro-SB-Grossmärkte GmbH & Co. KG v. Commission</i>	143
Note on "Of Direct Concern"	145
Note on Interim Relief	146
B. Complaint for Failure to Act (Article 232)	148
<i>Lord Bethell v. Commission</i>	149
Note on Commission "Inaction" on Competition Law Complaints	151
C. The Plea of Illegality (Article 241).....	153
D. The Scope of Judicial Review.....	155
1. Lack of Competence	155
<i>Germany v. Parliament and Council</i>	156
2. Infringement of an Essential Procedural Safeguard	161
<i>Transocean Marine Paint Association v. Commission</i>	162
Note on "Administrative Due Process"	164
3. Infringement of the Treaty or any Rule of Law Relating to its Application	170
<i>Internationale Handelsgesellschaft GmbH v. Einfuhr-und-Vorratsstelle für Getreide und Futtermittel</i>	171
<i>United Kingdom v. Council</i>	175
<i>Bela-Muhle Josef Bergmann KG v. Grows-Farm GmbH</i>	179
Note on the Retroactive Effect of Court of Justice Rulings	184
4. Misuse of Powers	186
<i>Giuffrida v. Council</i>	187
Note on the Scope of Review Under "Pillar Three", Under EC Treaty Title IV, and Under "Closer Cooperation"	190
E. Damage Actions Against the Community	192
1. The Community's Liability in Tort	192
2. Liability for the Community's Legal Acts.....	195
<i>Bayerische HNL Vermehrungsbetriebe GmbH v. Council and Commission</i>	197
<i>Sofrimport S.A.R.L. v. Commission</i>	199
3. The Relationship Between Community and Member State Liability.....	200
<i>Haegeman v. Commission</i>	200
Chapter 6. Fundamental Rights, Human Rights and Transparency	203
A. The European Court of Justice: Origins of the Human Rights Discussion	205
<i>Stauder v. City of Ulm, Sozialamt</i>	205
B. The European Convention for the Protection of Human Rights and Fundamental Freedoms.....	208
<i>Connolly v. Commission</i>	212
Note on the Interplay Between Community and Convention Human Rights Convention Law	215
Note on the Application of Fundamental Community Rights to Member State Measures.....	217
C. Fundamental Rights and the Amsterdam Treaty.....	220
D. The Charter of Fundamental Rights: A New Human Rights Regime?	222
Note on the Rights of European Union Citizenship	226
E. Transparency as a Fundamental Right: The Community's "Access to Documents" Policy	226
<i>Interporc IM- UND Export GmbH v. Commission</i>	229
Note on Access to Documents Under Pillars Two and Three.....	234
Note on the New Access to Documents Regulation	236

	Page
Chapter 7. The Relationship Between Community and Member State Law	238
A. The Direct Effects Doctrine in Community Law	238
1. The Direct Effect of the EC Treaty and EC Regulations	239
<i>Van Gend en Loos v. Nederlandse Administratie Der Belastingen</i>	239
<i>Costa v. Ente Nazionale Per l'energia Elettrica (ENEL)</i>	243
<i>Van Duyn v. Home Office</i>	246
<i>Defrenne v. Societe Anonyme Belge de Navigation Aerienne Sabena</i>	248
Note on Direct Applicability and Direct Effect	251
2. The Direct Effect of EC Directives and Decisions	253
(a) Vertical Direct Effect	253
<i>Van Duyn v. Home Office</i>	253
<i>Pubblico Ministero v. Ratti</i>	256
(b) Horizontal Direct Effect	260
<i>Marshall v. Southampton and South-West Hampshire Area Health Authority</i>	260
<i>Marleasing SA v. La Comercial Internacional de Alimentacion Sa</i>	262
<i>Faccini Dori v. Recreb Srl</i>	264
Note on Direct Effect in "Triangular" Situations	267
B. The Doctrine of Supremacy of Community Law	269
<i>Costa v. Ente Nazionale Per l'energia Elettrica (ENEL)</i>	269
<i>Amministrazione Delle Finanze Dello Stato v. Simmenthal SpA</i>	272
<i>The Queen v. Secretary of State for Transport, ex Parte Factortame Ltd.</i>	274
<i>Firma Foto-Frost v. Hauptzollamt Lübeck-Ost</i>	276
Note on Supremacy and the "Abuse of Rights" Doctrine	278
 PART II. THE RECEPTION AND ENFORCEMENT OF EUROPEAN LAW IN THE MEMBER STATES	
Chapter 8. The Reception of Community Law in the Member States	282
A. Community Law in France	284
<i>Administration Des Douanes v. Societe Cafes Jacques Vabre & J. Weigel Et Cie Sarl</i>	285
<i>Ministre De L'interieur v. Cohn-Bendit</i>	289
B. Community Law in the Netherlands, Belgium and Luxembourg	292
1. Netherlands	292
2. Belgium	293
<i>Orfinger v. Belgium</i>	295
3. Luxembourg	297
C. Community Law in Germany	297
<i>Brunner and Others v. The European Union Treaty</i>	308
Note on the German "Bananas" Litigation	318
<i>Order of the Second Senate of the Constitutional Court on the Constitutionality of the Application of the European Union's Common Market for Bananas in Germany</i>	321
D. Community Law in Italy	324
E. Community Law in Denmark	326
<i>Carlsen et al. v. Rasmussen</i>	327
F. Community Law in Ireland	330
<i>Society for the Protection of Unborn Children (Ireland) Ltd. v. Grogan</i>	333
G. Community Law in the United Kingdom	336
<i>European Communities Act of 1972</i>	336
<i>Macarthys Ltd. v. Smith</i>	338
<i>Regina v. Secretary of State for Transport ex parte Factortame Ltd.</i>	342
Note on the UK Human Rights Act	343

	Page
H. Community Law in Greece, Spain and Portugal	344
1. Greece	345
2. Spain	347
3. Portugal	349
I. Community Law in Austria, Finland and Sweden	349
1. Austria	349
2. Finland	350
3. Sweden	351
Chapter 9. The Preliminary Reference	352
A. The Reference Procedure	353
Note on the "Referability" of Questions	357
B. Framing the Reference and the Ruling	359
<i>Pretore Di Salo v. Persons Unknown</i>	360
Note on "Put Up" Questions	363
C. What is an Article 234 "Court or Tribunal"?	366
<i>Nordsee Deutsche Hochseefischerei GmbH v. Reederei Mond Hochseefischerei Nordstern AG</i>	368
D. Discretionary and Mandatory References	370
E. When Should a Court Refer a Question?	371
<i>SRL Cilfit v. Ministry of Health (I)</i>	377
F. The Appealability of Preliminary References and Refusals to Refer ...	380
Note on National Provisional Relief Pending a Preliminary Ruling	382
Chapter 10. National Remedies for the Enforcement of Community Law Claims	385
A. The Adequacy of National Remedies	387
<i>Rewe-Zentralfinanz Eg v. Landwirtschaftskammer für Das Saarland</i>	387
<i>Von Colson and Kamann v. Land Nordrhein-Westfalen</i>	390
<i>Marshall v. Southampton and South-West Hampshire Area Health Authority</i>	393
<i>Van Schijndel and van Veen v. SPF</i>	395
<i>Eco Swiss China Time Ltd. v. Benetton International NV</i>	398
<i>The Queen v. Secretary of State for Transport ex parte Factortame Ltd.</i>	401
B. Damages for Member State Violations of EC Law	404
<i>Garden Cottage Foods Ltd. v. Milk Marketing Board</i>	404
<i>Francovich v. Italy</i>	407
<i>Brasserie du Pêcheur SA v. Germany and the Queen v. Secretary of State for Transport, ex parte Factortame Ltd.</i>	411
Chapter 11. Enforcement Proceedings Against the Member States	423
A. The Article 226 Procedure	424
B. Excuses for Member State Noncompliance	428
<i>Commission v. Luxembourg and Belgium</i>	429
<i>Commission v. Italy</i>	431
<i>Commission v. France</i>	432
<i>Commission v. Italy</i>	434
<i>Commission v. France</i>	436
<i>Commission v. Italy</i>	438
C. Article 226 Rulings and Their Effect	441
<i>Commission v. Italy</i>	442
Note on Sanctions for Violating Judgments of the Court in Infringement Cases	443
<i>Commission v. Greece</i>	444
D. Member State Enforcement Actions Against Other Member States	448

PART III. THE COMMON MARKET, THE INTERNAL MARKET AND THE FOUR FREEDOMS

Chapter 12. Free Movement of Goods: Duties, Charges, Internal Taxes	452
A. Customs Duties and Charges Having Equivalent Effect	453
1. What is a Charge Equivalent to a Duty?	453
<i>Sociaal Fonds v. SA Ch. Brachfeld</i>	453
2. Are Emergency Duties Permissible?	455
<i>Société les Commissionnaires Réunis v. Receveur des Douanes</i>	456
B. Discriminatory or Protective Internal Taxation	458
1. Basic Application of Article 90	458
<i>Humblot v. Directeur des Services Fiscaux</i>	459
<i>West Lynn Creamery, Inc. v. Healy</i>	462
2. Alcohol Excise and Consumption Taxes	463
<i>Commission v. France</i>	463
<i>Bacchus Imports, Ltd. v. Dias</i>	466
<i>Commission v. United Kingdom</i>	468
<i>Commission v. Italy</i>	470
3. Harmonization of Internal Taxes	471
<i>Socridis v. Receveur Principal des Douanes</i>	472
Chapter 13. Free Movement of Goods: Quantitative Restrictions	475
A. Article 28: Quantitative Restrictions and Measures Having Equivalent Effect	477
1. What Are "Measures Having Equivalent Effect"?	477
<i>Procureur du Roi v. Dassonville</i>	478
<i>Commission v. Germany</i>	479
<i>Commission v. Germany</i>	480
2. What Are "Measures"?	482
<i>Commission v. Ireland</i>	482
<i>Commission v. France</i>	485
B. Article 30: Treaty-Based Limitations on Article 28	488
1. Health and Safety Cases	489
<i>Commission v. United Kingdom</i>	489
<i>Dean Milk Co. v. City of Madison</i>	492
<i>Commission v. Germany</i>	494
<i>Criminal Proceedings against Albert Heijn</i>	495
<i>Criminal Proceedings against Sandoz</i>	497
<i>Commission v. Germany</i>	499
<i>Decker v. Caisse de Maladie des Employes Privés</i>	502
2. Public Morality, Public Policy and Public Security Cases	504
<i>Regina v. Henn & Darby</i>	504
<i>Campus Oil v. Minister for Industry and Energy</i>	506
C. The Court's Elaboration of Free Movement of Goods Principles	508
1. The Cassis de Dijon Doctrine	508
<i>Rewe-Zentral v. Bundesmonopolverwaltung Für Branntwein</i>	508
Note on the Commission 1980 Communication on Cassis de Dijon	511
2. Consumer Protection Cases	513
<i>Commission v. United Kingdom</i>	513
<i>Hunt v. Washington State Apple Advertising Commission</i>	515
<i>Commission v. Germany</i>	516
3. The Evolution From Cassis to Keck	519
<i>Torfaen Borough Council v. B & Q PLC</i>	519
<i>Keck and Mithouard</i>	522

	Page
4. Post- <i>Keck</i> : Distinguishing Regulation of Products from Regulation of Selling Arrangements	525
<i>Verein Gegen Unwesen in Handel Und Gewerbe Köln v. Mars</i>	525
<i>Verband Sozialer Wettbewerb v. Clinique Laboratories</i>	527
<i>Commission v. Greece</i>	530
<i>Societe d'Importation Edouard Leclerc-Siplec v. TFI Publicite</i>	531
<i>Konsumentombusmannen v. Gourmet International Products</i>	532
Chapter 14. The Common Market, The Internal Market and Harmonization of Laws	536
A. The Common Market and Harmonization of Laws	536
1. Initial Harmonization of Laws	536
2. Operation of Article 100	538
3. A Typical Harmonization Directive: Dangerous Substances	539
B. Completion of the Internal Market	540
1. The White Paper of June 1985	540
2. The Single European Act's Introduction of Article 8a	543
3. The Success of the Internal Market Program	544
4. The Single European Act's Introduction of Article 100a	547
<i>Germany v. Parliament and Council</i>	548
C. Application of Harmonization Directives: Issues of Interpretation and Preemption	549
1. How Should Directives Be Interpreted	549
<i>Verein Gegen Unwesen in Handel Köln v. Adolf Darbo</i>	549
2. The Issue of Local Language Requirements	551
<i>Piageme & Orrs v. Peeters (Piageme I)</i>	552
<i>Piageme v. Peeters NV (Piageme II)</i>	553
<i>Colim v. Bigg's Continent Noord</i>	555
3. Preemption of National Rules By Comprehensive Harmonization	556
<i>Pubblico Ministero v. Ratti</i>	557
<i>Kemikalieninspektionen v. Toolex Alpha</i>	559
<i>Commission v. United Kingdom</i>	561
4. Express or Implied Authorization for Supplementary State Rules	562
<i>Buet v. Ministère Public</i>	562
<i>The Queen v. Secretary of State for Health ex parte Gallaher</i>	565
D. The "New Approach" to Technical Harmonization	567
1. Prior Notification of New State Rules	567
<i>CIA Security International v. Signalson</i>	568
2. The New Approach to Technical Harmonization	570
Technical Harmonization and Standards: A New Approach	571
3. The "New Approach" in Operation	572
Chapter 15. Free Movement of Workers	575
A. The Treaty and Basic Legislation	576
B. Rights of the Migrant Worker, Spouse and Family	580
1. Protection of the Worker Against Discriminatory Treatment	580
<i>Württembergische Milchverwertung-Südmilch v. Ugliola</i>	580
<i>Hicklin v. Orbeck</i>	581
<i>Lawrie-Blum v. Land Baden-Württemberg</i>	582
<i>Clean Car Auto Service v. Landeshauptmann Von Wien</i>	584
<i>Groener v. Minister For Education</i>	586
2. Horizontal Direct Effect	589
<i>Angonese v. Cassa Di Risparmio Di Bolzano</i>	589
3. Non-Discrimination in "Social Advantages"	592

	Page
<i>Ministère Public v. Mutsch</i>	592
<i>Reina v. Landeskreditbank Baden-Württemberg</i>	593
4. Discrimination in Taxation	595
<i>Finanzamt Köln-Altstadt v. Schumacker</i>	595
5. Protection of the Spouse or Family Against Discriminatory Treatment	597
<i>Casagrande v. Landeshauptstadt München</i>	597
6. Right of Free Entry and Residence	599
<i>Watson and Belmann</i>	600
<i>Commission v. Belgium</i>	601
C. Article 39's Exceptions to Free Movement	603
1. The Public Policy Exception	603
<i>Rutili v. Minister For The Interior</i>	603
<i>Adoui v. Belgium</i>	607
2. The Exception for Public Service	610
<i>Commission v. Belgium</i>	610
<i>Allué v. Università di Venezia</i>	613
D. Who is a Worker, Spouse or Family Member?	615
1. Definition of a Worker	615
<i>Levin v. Staatssecretaris Van Justitie</i>	615
<i>Lair v. Universität Hanover</i>	618
2. Definition of "Spouse" and "Dependent"	620
<i>The Netherlands v. Reed</i>	620
3. Players on Professional Sports Teams	622
<i>Union Royale Belge Des Societes De Football v. Bosman</i>	623
E. The Issue of Reverse Discrimination	626
<i>Moser v. Land Baden-Württemberg</i>	627
<i>Scholz v. Opera Universitaria di Cagliari</i>	628
 Chapter 16. European Citizenship and the Free Movement of Persons	 630
A. The People's Europe	630
B. European Citizenship	633
<i>Martinez Sala v. Freistaat Bayern</i>	635
<i>Criminal Proceedings against Bickel and Franz</i>	636
C. Students, Education and Culture	637
1. Student Access to Higher Education	638
<i>Gravier v. City of Liège</i>	638
<i>Blaizot v. University of Liège</i>	640
<i>Vlandis v. Kline</i>	641
2. Education, Vocational Training and Culture	644
D. Free Movement and Border Controls	646
<i>Criminal Proceedings against Wijsenbeek</i>	647
E. Toward An Area of "Freedom, Security and Justice"	649
1. Common Visa Policies	649
2. Other Measures to Achieve An Area of Freedom, Security and Justice	650
 Chapter 17. Right of Establishment and Right to Provide Services	 653
A. Treaty Provisions and Legislative Programs	654
1. The Nature of the Treaty Rights	654
2. Legislation to Implement Articles 43 and 49	656
3. The Commercial Agents Directive	658

	Page
<i>Ingmar GB v. Eaton Leonard Technologies</i>	659
<i>Bellone v. Yokahama</i>	661
B. Case Law on Freedom to Provide Services	662
1. The Right to Provide Cross-Border Services	662
<i>Van Binsbergen v. Bestuur Van De Bedrijfsvereniging</i>	662
<i>New Hampshire v. Piper</i>	664
<i>Criminal Proceedings against Webb</i>	667
<i>Proceedings against Corsten</i>	668
<i>Commission v. France</i>	670
2. Appropriate Public Interest Limits on Cross-Border Services	672
<i>Commission v. Germany</i>	672
<i>Her Majesty's Customs and Excise v. Schindler</i>	676
3. Right to Receive Services in Other States	679
<i>Cowan v. Trésor Public</i>	680
<i>Society for the Protection of Unborn Children Ireland [SPUC] v. Grogan</i>	682
<i>Criminal Proceedings against Bickel and Franz</i>	683
4. Cross-Border Services Provided By Technological Means	685
<i>Konsumentombudsmannen v. De Agostini (Svenska) Forlag</i>	688
C. Case Law on the Right of Establishment for Individuals and Com- mercial Firms	691
1. Application of Non-Discrimination Rules	691
<i>Commission v. Italy</i>	692
2. Establishment Rights of Corporations and Shareholders	694
<i>Regina v. Secretary of State for Transport ex parte Factortame</i>	694
<i>Lewis v. BT Investment Managers</i>	697
<i>Centros v. Erhvervs-OG Selskabsstyrelsen</i>	698
D. Company Law Harmonization	702
1. Present Directives	702
<i>Daihatsu Handler v. Daihatsu Deutschland</i>	704
<i>Commission v. Germany</i>	706
<i>Siemens v. Nold</i>	707
<i>Pafitis v. Trapeza Kentrikis Ellados</i>	708
2. Proposals for Community Legislation	710
Chapter 18. Rights of Practice for Lawyers and Other Profes- sionals	713
A. Treaty Provisions and Legislative Measures	713
1. Initial Developments	713
<i>Reyners v. Belgium</i>	714
2. Legislative Action	715
<i>Kraus v. Land Baden-Württemberg</i>	719
B. Lawyers' Right to Provide Services	721
<i>Commission v. Germany</i>	722
<i>Gebhard v. Consiglio dell'Ordine Degli Avvocati di Milano</i>	724
<i>Birbrower, Montalbano, Condon & Frank v. Superior Court</i>	727
Note on the CCBE Code of Conduct for Lawyers	729
C. Lawyers' Right of Establishment	731
1. Liberal Case Law on the Application of Practice Rights	731
<i>Reyners v. Belgium</i>	731
<i>Thieffry v. Conseil de l'Ordre Des Avocats à la Cour De Paris</i>	732
<i>Ordre Des Avocats Au Barreau De Paris v. Klopp</i>	733
<i>Gebhard v. Milan Bar Council</i>	735
2. The Directive on the Establishment of Lawyers	737
<i>Luxembourg v. Parliament and Council</i>	739
Chapter 19. Industrial and Commercial Property Rights	744
A. Determination of Rights Qualifying Under Article 30	745

	Page
<i>Keurkoop v. Nancy Kean Gifts</i>	746
<i>Consortio Italiano v. Regie Nationale des Usines Renault</i>	747
B. Designations of Origin and Generic Product Names	749
1. Designations of Origin	749
<i>Belgium v. Spain</i>	750
2. Generic Names	752
<i>Criminal Proceedings against Guimont</i>	753
C. Scope and Protection of Industrial and Commercial Property Rights	754
<i>Terrapin (Overseas) v. Terranova Industrie</i>	755
D. Exhaustion of Rights Doctrine	756
<i>Centrafarm v. Winthrop</i>	757
Note on the Controversy Concerning the Exhaustion of Rights Doctrine	759
<i>Centrafarm v. American Home Products</i>	760
<i>Bristol-Myers Squibb & Orrs v. Paranova</i>	762
<i>Pharmacia & Upjohn v. Paranova [Paranova II]</i>	765
<i>Warner Brothers v. Christiansen</i>	768
E. Toward Community-Wide Industrial and Commercial Property Rights	770
1. Trademarks	770
2. Trademark Confusion After the Trademark Directive	772
<i>Sabel v. Puma</i>	773
<i>Lloyd Schuhfabrik Meyer v. Klijsen Handel</i>	774
3. Copyright and Related Rights	776
4. Patents	777

PART IV. COMPETITION POLICY

Chapter 20. Competition Policy and the Single Market	784
A. The Objectives of Community Competition Policy	784
B. Introduction to Articles 81 and 82 and the Implementing Regulation	788
C. Market Integration and the Blockage of Imports	790
1. General	790
2. Parallel Imports	791
<i>Consten and Grundig v. Commission</i>	793
Chapter 21. Cartels	800
A. Introduction	800
B. Cartels and the Economics of Competition	801
C. Proof of Cartels	805
1. The Quinine Case	806
<i>ACF Chemiefarma v. Commission</i>	806
2. The Dyestuffs Case	810
<i>Imperial Chemical Industries Ltd. v. Commission (Dyestuffs)</i>	811
3. The Sugar Cartel Case	812
4. Wood Pulp	815
<i>Åhlström Osakeyhtiö v. Commission</i>	815
D. May Cartels be Justified?—Crisis Cartels	820
<i>Stichting Baksteen</i>	820
E. World Cartels and Offshore Cartels—Jurisdiction, Comity, and Cooperation	825
<i>Åhlström Osakeyhtiö v. Commission</i>	826

	Page
Chapter 22. Abuse of a Dominant Position	832
A. The Treaty	832
B. Dominance	833
C. Market Definition	836
<i>Europemballage Corporation v. Commission</i>	836
D. Abusive Conduct	841
1. Introduction	841
2. Excessive and Discriminatory Prices and Unfair Terms	842
<i>British Leyland PLC v. Commission</i>	842
<i>United Brands Co. v. Commission</i>	843
3. Refusal to Deal	848
<i>Istituto Chemioterapico Italiano Spa v. Commission</i>	848
<i>United Brands Co. v. Commission</i>	849
<i>Radio Telefis Eireann v. Commission</i>	854
4. Exclusive Dealing, Tying and Exclusionary Rebates	857
<i>Hoffmann-La Roche & Co. AG v. Commission</i>	859
<i>Tetra Pak International SA v. Commission</i>	863
5. Price Predation	868
<i>AKZO Chemie BV v. Commission</i>	868
<i>Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.</i>	871
<i>Tetra Pak International SA v. Commission</i>	873
Chapter 23. Horizontal Restraints Under Article 81	877
A. Agreements Among Competitors—General	877
B. Joint Buying and Selling	879
(a) Joint Buying	879
<i>Intergroup (Spar)</i>	879
(b) Joint Selling	881
C. Joint Ventures and Strategic Alliances	884
<i>European Night Services v. Commission</i>	886
D. Data Exchanges	891
E. Innovation and Competitiveness	893
F. The Environment and Competitiveness	895
<i>CECED</i>	898
G. Labor	899
<i>Albany International and Textile Industry Pension Funds</i>	899
H. Block Exemptions	902
1. Research and Development	902
2. Specialisation	904
I. Guidelines	905
Chapter 24. Vertical Restraints Under Article 81	908
A. Vertical Restraints and Their Effects	908
B. Parallel Imports and Exports	909
<i>Consten and Grundig v. Commission</i>	909
<i>Business Electronics Corp. v. Sharp Electronics Corp.</i>	910
<i>Valley Liquors, Inc. v. Renfield Importers, Ltd.</i>	911
C. Exclusive Purchasing, Tying and Related Foreclosures	916
<i>Stergios Delimitis v. Henninger Bräu AG</i>	916
<i>Schöller Lebensmittel v. Commission</i>	919
D. Selective Distribution	924
<i>Metro SB-Grossmärkte GmbH & Co. v. Commission</i>	924
<i>Metro SB-Grossmärkte GmbH & Co. v. Commission II</i>	926
E. Franchising	929

	Page
<i>Pronuptia de Paris GmbH v. Pronuptia de Paris</i>	929
F. Block Exemptions and Reform	933
(a) History	933
(b) Reform	934
(c) Regulation 2790/99 and the Guidelines	935
Chapter 25. Merger Control	941
A. Introduction	941
B. The Merger Regulation	942
1. Coverage and Procedures	942
2. The Substantive Standard	944
C. The Economics of Merger Analysis	945
1. Introduction	945
2. Competition—Lessening Effects	946
3. Other Effects	947
4. Competitiveness	947
5. Markets, Concentration, Barriers, and Efficiencies	948
D. Substantive Law Under the Merger Regulation	949
1. Mergers of Competitors that Increase Dominance	949
<i>Aerospatiale-Alenia/de Havilland</i>	950
<i>Boeing Company/McDonnell Douglas (US)</i>	955
<i>Boeing/McDonnell Douglas (EC)</i>	957
<i>France v. Commission (Kali + Salz)</i>	964
2. Mergers of Competitors That Facilitate Coordinated Behavior (Collective Dominance)	967
<i>France v. Commission (Kali + Salz)</i>	967
<i>Gencor Ltd. v. Commission</i>	970
3. Mergers that Create Leverage and Portfolio Effects	973
<i>Guinness/Grand Metropolitan</i>	974
<i>General Electric/Honeywell</i>	976
4. Effects on Competition	977
5. New Economy Issues: The Gatekeeper	984
E. The International Dimension	987
Chapter 26. Public Enterprises, State Action and Competition Policy	991
A. Introduction	991
B. State Monopolies of a Commercial Character—Application of Articles 28 (ex 30) and 31 (ex 37)	991
<i>Franzen</i>	993
C. Exclusive Privileges—Article 86 (ex 90)	997
<i>Höfner v. Macrotron GmbH</i>	998
<i>Albany International and Textile Industry Pension Funds</i>	1001
<i>Deutsche Post AG v. GZS, Deutsche Post AG v. Citicorp</i>	1004
D. State Measures—Articles 3, 10, 81, 82 (ex 3, 5, 85, 86)	1007
1. State Responsibility	1007
2. Private Responsibility	1009
<i>Commission and France v. Ladbroke Racing Ltd.</i>	1009
<i>Commission v. Italy</i>	1010
E. State Aids	1014
1. Introduction	1014
2. State Aid Policy	1015
<i>Germany v. Commission</i>	1017

PART V. EXTERNAL RELATIONS AND COMMERCIAL POLICY

Chapter 27. The External Relations Powers of the European Community	1023
A. The EC Treaty Provisions on External Relations	1023
1. Express Grants of External Relations Powers	1023
2. Approval of International Agreements and the Role of the European Parliament	1025
<i>Parliament v. Council</i>	1026
B. The Court of Justice and the Community's Powers in External Relations	1028
1. Implied Powers: The ERTA Case	1028
<i>Commission v. Council</i>	1028
2. The Scope of Explicit Powers: The Rubber Agreement Opinion	1036
<i>International Agreement on Natural Rubber</i>	1037
C. International Agreements in Community Law	1041
<i>Opel Austria GMBH v. Council</i>	1041
D. European Political Cooperation and the Common Foreign and Security Policy	1048
1. The Common Foreign Policy	1048
2. The Common Security Policy	1050
3. Trade Sanctions for Political Purposes	1051
<i>Bosphorus Hava Yollari Turizm Ve Ticaret As v. Minister for Transport, Energy & Communication</i>	1051
Chapter 28. The Common Commercial Policy: Preferential Arrangements and Accession Negotiations	1055
A. The EC and Europe	1055
1. The EFTA Countries	1056
<i>European Economic Area, Opinion 1/91</i>	1060
2. Central and Eastern Europe	1064
3. EC Mediterranean and Other Association Agreements	1069
B. The EC and the Developing World	1070
1. The Lomé Conventions and the Cotonou Agreement	1070
2. Asian and Latin American Countries	1071
Chapter 29. The Common Commercial Policy: The EC in the WTO	1073
A. The World Trade Organization	1073
1. Trade Liberalization	1074
2. Nondiscrimination	1076
3. Promoting Fair International Trade	1077
4. Transparency of International Trade Regulations	1078
5. The Major Exceptions to the Basic Rules	1079
6. The WTO Dispute Settlement Mechanism	1080
7. Future WTO Negotiations	1083
B. The Court of Justice and the WTO Agreement	1083
1. The Scope of the Common Commercial Policy	1083
<i>Opinion 1/94</i>	1084
2. Direct Effect of the WTO Agreement	1092
<i>Portuguese Republic v. Council</i>	1092
C. The EC and the US	1095

	Page
Chapter 30. The Community Customs Code	1102
A. Introduction	1102
B. Classification of Goods	1103
<i>Council Regulation 2658/87 of July 23, 1987</i>	1104
<i>E.I. Du Pont De Nemours Inc. v. Commissioners of Customs & Excise</i>	1105
<i>Peacock AG v. Hauptzollamt Paderborn</i>	1107
C. Valuation of Goods	1112
<i>Hans Sommer GmbH & Co. KG v. Hauptzollamt Bremen</i>	1112
D. Origin of Goods	1115
<i>Gesellschaft Für überseehandel MBH v. Handelskammer Hamburg</i>	1115
<i>Brother Int'l v. Hauptzollamt Geissen</i>	1118
E. Import Measures	1122
1. Formal Safeguard Measures	1122
2. Informal Safeguard Arrangements	1123
3. Intra-Community Safeguard Arrangements (Article 134)	1124
4. Other Import Restrictions	1124
F. Export Arrangements	1124
G. Other Customs Rules	1125
 Chapter 31. EC Remedies for Unfair International Trade Practices	 1126
A. Regulation of Dumped Imports	1127
1. Substantive Aspects of the EC Antidumping Regulation	1128
(a) Dumping	1128
(b) Material Injury	1130
(c) Community Interest	1131
2. Procedural Aspects of the EC Antidumping Regulation	1132
3. The Steel Wire Rope Case	1134
<i>Commission Regulation No 230/2001 of 2 February 2001 Imposing a Provisional Anti-Dumping Duty on Certain Iron or Steel Ropes and Cables Originating in the Czech Republic, Russia, Thailand and Turkey</i>	1134
4. The Court of Justice and Antidumping	1150
(a) Reviewability	1150
(b) Procedural Rights in Antidumping Proceedings	1152
<i>EEC Seed Crushers' & Oil Processors' Fed'n (FEDIOL) v. Commission</i>	1152
<i>Al-Jubail Fertilizer Co. v. Council</i>	1154
(c) Substantive Review of Antidumping Cases	1156
B. Regulation of Subsidized Imports	1159
<i>Commission Regulation 1741/2000 of 3 August 2000 Imposing a Provisional Countervailing Duty on Imports of Polyethylene Terephthalate (PET)</i>	1160
C. The Trade Barriers Regulation	1169
 PART VI. FREE MOVEMENT OF CAPITAL AND ECONOMIC AND MONETARY UNION	
 Chapter 32. Free Movement of Capital and the Integrated Financial Market	 1172
A. Initial Developments	1172
1. EEC Treaty Provisions and Legislation	1172
2. Case Law of the Court of Justice	1174

	Page
B. Success in Achieving Free Movement of Capital	1175
1. The 1988 Directive: Legislative Liberalization	1175
<i>Svensson v. Ministre Du Logement</i>	1176
2. The Maastricht Treaty Mandates Free Movement of Capital	1178
<i>Criminal Proceedings against Sanz de Lera</i>	1179
<i>Association Eglise de Scientologie de Paris v. The Prime Minister</i>	1180
<i>In re Albore</i>	1182
<i>In re Trummer and Mayer</i>	1184
C. The Integrated Financial Market	1186
1. Basic Principles	1186
<i>Alpine Investments v. Minister Van Financien</i>	1187
<i>Commission v. Italy</i>	1190
2. Securities Law Harmonization	1192
3. Basic Banking Law Harmonization	1194
<i>Societe Civile Immobiliere Parodi v. Banque H. Albert de Bary</i>	1198
<i>Criminal Proceedings against Ambry</i>	1200
4. Supplemental Banking Legislation	1202
Chapter 33. Economic and Monetary Union	1205
A. The Goals and Benefits of Economic and Monetary Union	1206
B. The Initial Stages	1208
1. The EEC Treaty: Economic Coordination	1208
2. The European Monetary System	1209
3. Planning for Economic and Monetary Union	1211
4. The EMU Provisions of the Treaty of Maastricht	1213
C. The Second Stage: 1994-98	1214
1. The European Monetary Institute	1214
2. Economic Coordination	1214
3. The Convergence Criteria	1216
3. Preparations for the Third Stage	1218
D. Commencing the Final Stage of EMU	1219
1. The Decision to Launch the Third Stage	1219
2. The "Ins" and the "Outs"	1220
E. The European Central Bank	1223
1. Structure, Powers and Judicial Review	1223
2. The Principle of Independence	1224
3. Price Stability and Secondary Objectives of the ECB and the ESCB	1226
4. ECB Policy 1999-2001	1227
4. Democratic Accountability and Transparency	1229
F. The Coming of the Euro	1232
1. Policy Decisions and Legislation	1232
2. Practical Preparations for the Introduction of the Euro	1235

PART VII. SPECIFIC COMMUNITY POLICIES

Chapter 34. Environmental Protection	1241
A. The Environment in the EC Treaty	1241
1. The Legal Basis for Community Activities	1241
2. The Court of Justice and EC Environmental Legislation	1245
<i>Commission v. Italy</i>	1245
<i>Procureur de la République v. Association de Défense des Brûleurs d'Huiles Usagées (ADBHU)</i>	1246

	Page
<i>World Wildlife Fund v. Autonome Provinz Bozen</i>	1247
B. Community Environmental Legislation and Activities	1252
European Commission, Environment: Current Situation & Outlook	1253
European Commission, Global Assessment: Europe's Environment: What Directions for the Future 9, 7 (2000)	1256
Environment 2010: Our Future, Our Choice: The Sixth Environmental Action Program of the European Community 2001-2010	1258
C. Member State Regulation of the Environment	1259
1. Member State Implementation of Community Legislation	1260
2. Member State Environmental Measures	1265
<i>Commission v. Denmark</i>	1265
<i>Commission v. Belgium</i>	1269
Chapter 35. Consumer Protection	1271
A. The Legal Basis for Community Consumer Protection Activities	1271
B. Overview of Community Consumer Protection Activities	1272
Preliminary Program of the European Economic Community for a Consumer Protection and Information Policy	1273
European Commission, Consumers: Introduction	1275
C. Community Consumer Advertising Rules	1277
<i>Complaint against X</i>	1278
<i>Konsumentombudsmannen v. De Agostini (Svenksa) Forlag</i>	1279
D. Protection of Economic Interests: Unfair Contract Terms	1282
<i>Oceano Grupo Editorial SA v. Murciano Quintero</i>	1283
<i>Commission v. Netherlands</i>	1286
E. The Products Liability Directive	1289
<i>Commission v. United Kingdom</i>	1290
Chapter 36. Social Policy	1295
A. Treaty Provisions, the Social Charter and Social Action Programs	1295
1. The EEC Treaty and the 1974 Social Action Program	1295
2. The Social Charter and the 1989 Social Action Program	1297
3. The Maastricht Treaty's Social Protocol	1298
4. The Social Chapter of the Treaty of Amsterdam	1299
5. Employment Policy Action and the Treaty of Amsterdam	1300
B. The 1974 Social Action Program: Legislation and Case Law	1301
1. The 1975 Directive on Collective Redundancies	1301
<i>Dansk Metalarbejderforbund v. H. Nielsen & Son</i>	1303
<i>Commission v. United Kingdom</i>	1304
Note on Warn	1307
2. The 1977 Transfer of Undertakings Directive	1308
<i>Spijkers v. Benedik Abattoir</i>	1310
<i>Botzen v. Rotterdamsche Droogdok Maatschappij</i>	1311
<i>Foreningen Af Arbejdsledere v. Daddy's Dance Hall</i>	1313
<i>Suzen v. Zehnacker Gebaudereinigung</i>	1315
<i>Commission v. United Kingdom</i>	1318
3. Employee Protection in Employer Insolvencies	1320
C. Worker Health and Safety Legislation	1320
1. Generic Health and Safety Measures	1320
2. The Pregnant and Adolescent Workers Directives	1321
3. The Working Time Directive	1322
<i>United Kingdom v. Council</i>	1323
<i>Queen v. Secretary of State for Trade Ex Parte BECTU</i>	1324
D. Social Action Legislation in the 1990s	1326
1. The Employment Terms and Posting of Workers Directives	1327

	Page
2. The Parental Leave Directive	1328
3. Worker Information and Consultation Directives	1330
Chapter 37. Equal Rights	1333
A. Treaty Articles and Basic Concepts	1333
<i>Defrenne v. Sabena</i>	1335
B. Equal Pay for Women and Men	1335
1. The Equal Pay Directive	1335
2. Defining the Concept of "Pay"	1336
3. Indirect Discrimination	1337
<i>Jenkins v. Kingsgate (Clothing Productions) Ltd.</i>	1337
<i>Bilka-Kaufhaus v. Von Hartz</i>	1338
<i>Union of Commercial and Clerical Employees v. Danish Employers' Association ex parte Danfoss</i>	1340
4. Determining Work of "Equal Value"	1342
<i>Murphy v. Bord Telecom Eireann</i>	1342
<i>Enderby v. Frenchay Health Authority</i>	1344
C. Equal Treatment for Women and Men	1346
1. The 1976 and 1986 Equal Treatment Directives	1346
2. Scope of the Equal Treatment Directives	1348
<i>P v. S</i>	1348
<i>Grant v. South-West Trains Ltd.</i>	1349
3. "Occupational Activities" Suitable for only One Sex	1352
<i>Johnston v. Chief Constable of the Royal Ulster Constabulary</i>	1352
<i>Sirdar v. The Army Board and Secretary of State for Defence</i>	1355
<i>Kreil v. Federal Republic of Germany</i>	1357
4. Protection of Women, Positive Action and Reverse Discrimination	1358
<i>Kalanke v. Freie Hansestadt Bremen</i>	1359
<i>Abrahamsson and Anderson v. Fogelqvist</i>	1360
<i>Hofmann v. Barmer Ersatzkasse</i>	1363
<i>Habermann-Beltermann v. Arbeiterwohlfahrt</i>	1366
D. Discrimination on Grounds other than Gender	1369
E. Social Security, Pensions and Pensionable Age	1371
1. Social Security Directives	1371
2. Social Security and Pensions Caselaw	1372
<i>Regina Virginia Hepple v. Adjudication Officer; Adjudication Officer v. Anna Stec</i>	1372
3. Age of Qualification for Retirement Pensions	1374
<i>Marshall v. Southampton & South-West Hampshire Area Health Authority</i>	1374
<i>Barber v. Guardian Royal Exchange Assur. Group</i>	1376
Chapter 38. Jurisdiction and Judgments in Civil and Commercial Litigation	1380
A. The Brussels Convention: An Overview	1380
B. From Convention to Regulation	1383
C. Jurisdiction Under the Brussels Convention	1385
1. The Brussels Convention's Sphere of Application	1386
<i>LTU Lufttransportunternehmen GmbH & Co. KG v. Eurocontrol</i>	1386
2. General Jurisdiction	1387
3. Special Jurisdiction	1389
(a) Place of Performance in Contract	1390
<i>Leathertex v. Bodetex</i>	1392
(b) Place of Tort	1394

	Page
<i>Handelskwekerij G.J. Bier BV v. Mines de Potasse d'alsace.</i>	1394
<i>Dumez France SA and Tacoba Sarl v. Hessische Landesbank</i>	1396
4. Jurisdiction Based on Multi-Party Status	1398
5. Insurance and Consumer Contracts	1399
(a) Insurance Contracts	1399
(b) Consumer Contracts	1400
6. Individual Contracts of Employment	1401
7. Rules on Exclusive Jurisdiction	1402
8. Forum Selection Clauses	1404
9. Procedural Matters	1406
(a) Lis pendens	1406
(b) Provisional relief	1407
D. Recognition and Enforcement of Judgments	1409
<i>Krombach v. Bamberski</i>	1411
E. The Matrimonial Jurisdiction and Judgments Convention	1415
F. The Insolvency Proceedings Regulation	1416
G. New Legal Instruments on Cooperation in Civil Justice	1418
Note on the Proposed International Jurisdiction and Judgments Convention	1419
INDEX	1421