

Table of Contents

The Author	3
Preface and Acknowledgments	13
Guide for Readers	15
List of Abbreviations	17
General Introduction	21
§1. EUROPEAN UNION: HISTORY AND STRUCTURE	21
I. The European Communities	21
II. Towards the European Union	23
A. Maastricht Treaty	23
B. Treaty of Lisbon: 'Constitution without Constitutional Treaty'	24
§2. JUDICIAL SYSTEM OF THE EUROPEAN UNION	27
I. Court of Justice	27
II. Court of Justice of the European Union	28
§3. EUROPEAN COURTS AND NATIONAL COURTS	29
I. Institutionalized Cooperation	29
II. Jurisdiction in Liability Cases	30
Book I. Non-contractual Liability for Breach of EU Law	33
Part I. Non-contractual Liability of the European Union	37
§1. HISTORY OF ARTICLE 340(2) TFEU	37
§2. TWO VARIANTS OF UNION LIABILITY	39
Chapter 1. 'Vicarious Liability': Torts of EU Staff, Bodies and Institutions (Article 340(2) TFEU)	43

Table of Contents

§1. VICARIOUS LIABILITY: STAFF	43
I. Employment	43
II. Delict/Tort	43
III. Scope of Employment	45
IV. Public Servants' Responsibility in Their Own Personal Capacity?	46
V. Immunities	47
§2. QUASI-VICARIOUS LIABILITY	48
I. Executive Officers	48
II. EU Bodies: <i>Grifoni</i>	48
III. Institutional Organs: <i>Leussink and Others</i>	50
Chapter 2. 'Breach-of-Law Liability' of the European Union (Article 340(2) TFEU)	52
§1. UNION RIGHTS	53
§2. PROTECTIVE RULE (<i>SCHUTZNORM</i>)	54
§3. RELEVANT BREACH OF LAW	55
I. Legislative Acts	55
A. <i>Schöppenstedt</i>	56
B. <i>Bayerische HNL</i>	57
C. Post- <i>HNL</i> Phase	59
II. Administrative Acts	60
III. Consolidated Approach: The Margin-of-Discretion Test – <i>Bergaderm</i>	62
IV. The High Complexity Test	62
V. Summary	64
§4. SPECIAL EU INSTITUTIONS	64
I. EU Courts	64
II. EU Ombudsman	66
Chapter 3. Additional Conditions of Liability	68
§1. DAMAGE/INJURY	68
§2. CAUSATION	69
§3. FAULT	71
I. General Concept of Fault	71
II. No-Fault, Institutional Fault, Gross Maladministration	72
Chapter 4. Burden and Standard of Proof	75
§1. BURDEN OF PROOF	75

Table of Contents

§2. STANDARD OF PROOF	76
Part II. Liability of Member States	77
Chapter 1. Various Types of Member State Liability	77
§1. STATES' LIABILITY I: VERTICAL DIRECT EFFECT CASES	77
I. Protective Rule and Vertical Direct Effect	77
II. Protective Rule (<i>Schutznorm</i>)	78
III. Vertical Direct Effect: <i>van Gend en Loos</i>	81
IV. Equivalence and Effectiveness	83
V. Addressees of Vertical Direct Effect or: Who to Sue	84
§2. STATE LIABILITY II: <i>FRANCOVICH</i> DOCTRINE	86
I. <i>Francovich and Bonifaci</i>	87
II. Consequences	88
§3. STATE LIABILITY III: STATE PROTECTIVE DUTY	90
I. <i>Commission v. France</i>	90
II. <i>Schmidberger</i>	91
§4. STATE LIABILITY FOR JUDICIAL BODIES OF LAST INSTANCE	93
I. <i>Köbler</i>	93
II. <i>Traghetti</i>	94
§5. STATE VICARIOUS LIABILITY: BREACH OF EU LAW BY PUBLIC SERVANTS?	96
I. Case Scenario of <i>A.G.M.-COS.MET</i>	97
II. Critique of the ECJ Judgment	97
Chapter 2. Once More on Causation: <i>Brinkmann</i> and <i>Leth</i>	101
Chapter 3. Procedural Autonomy of Member States Law and Its Limits	103
Part III. Consolidation: Liability of Public Authorities for Breach of EU Law	105
§1. LEGISLATIVE ACTS: <i>BRASSERIE DU PÊCHEUR</i> AND <i>FACTORTAME III</i>	105
§2. ADMINISTRATIVE ACTS: <i>HEDLEY LOMAS</i>	109
§3. TOWARDS CONVERSION: <i>BERGADERM</i>	109

Table of Contents

Part IV. Liability of Private Parties for Breach of EU Law	111
Chapter 1. Various Types of Liability	111
§1. HORIZONTAL DIRECT EFFECT	111
I. <i>Walrave and Koch</i>	111
II. <i>Defrenne II</i>	112
III. Consequences	114
§2. COMPETITION LAW: <i>COURAGE LTD AND MANFREDI</i>	114
§3. IMPLIED RIGHTS OF ACTION: <i>MUÑOZ SA</i>	116
Chapter 2. Fundamental Freedoms versus Fundamental Rights	119
§1. HORIZONTALITY	119
I. Horizontal Effect of Fundamental Freedoms	119
II. Third Party Effect of Fundamental Rights	120
§2. BALANCING COMPETING PRINCIPLES: <i>FUNDAMENTAL FREEDOMS V. FUNDAMENTAL RIGHTS</i>	124
I. <i>Viking</i>	124
II. <i>AGM.-COS.MET. v. Lehtinen Reloaded</i>	126
Chapter 3. Horizontal Direct Effect of Directives?	129
§1. <i>MARSHALL (No. 1)</i>	129
§2. <i>MARLEASING</i> AND THE EMERGENCE OF HORIZONTAL INDIRECT EFFECT	130
§3. <i>MANGOLD</i> AND BEYOND	131
Chapter 4. Conditions of Liability, 'Hybridization Approach' and Competent Jurisdiction	133
Part V. Joint Liability and Consequences of Liability	135
Chapter 1. Joint Liability and Subsidiary Liability	135
Chapter 2. Consequences of Liability: Damages	137
§1. VICARIOUS LIABILITY FOR TORTS	137
I. Personal Injuries	137
II. Non-economic Loss	138
III. Wrongful Death	139

Table of Contents

IV. Loss, Destruction and Damage of Things	139
§2. BREACH-OF-LAW LIABILITY	140
I. Economic Loss	140
II. <i>Perte d'une chance</i> /Loss of a Chance	141
III. Punitive/Exemplary Damages	142
§3. INTEREST	143
§4. LIMITATIONS OF DAMAGES	143
I. Contributory Negligence	143
II. Mitigation of Damage	144
III. Assumption of Risk	144
§5. PRESCRIPTION/PERIOD OF LIMITATION	145
Chapter 3. Summary and Commentary	147
§1. THREE HEADS OF LIABILITY FOR BREACH OF EU LAW	147
I. Union's Breach-of-Law Liability	147
II. Member States' Liability	147
III. Private Parties' Liability	148
§2. VICARIOUS LIABILITY OF THE UNION	148
§3. COMMENTARY	148
Part VI. Special Cases of Responsibility of the European Union	151
Chapter 1. Compensation for Damage by Lawful Acts	152
§1. HISTORY	152
§2. <i>DORSCH CONSULT</i>	155
§3. <i>FIAMM</i>	156
§4. <i>POST-FIAMM</i>	158
Chapter 2. Liability of the EU as Public Principal of the Civil Service	159
§1. GENERAL RULES	159

Table of Contents

§2. PROTECTED INTERESTS	160
Book II. Civil Non-contractual Liability	163
Introduction	163
Part VII. Liability for Defectiveness	165
Chapter 1. Product Liability	166
§1. HISTORY	166
§2. LIABILITY UNDER DIRECTIVE 85/374/EEC	168
I. Maximum Harmonization and Article 13 of the Directive	168
II. Conditions of Liability	170
A. Damage	171
1. Death and Personal Injury	171
2. Property	174
B. Product	175
1. Characteristics of a 'Product'	176
C. Defect	178
1. 'Product Defects': Uniformity or Diversity?	180
2. Diversity of Defects and Quasi-Strict Liability	184
D. Causation and Proof	184
E. Producer	185
F. Exclusionary Grounds	185
G. Additional Provisions	189
§3. CONCLUSION	191
Chapter 2. Liability of Service Suppliers	193
I. Draft Service Liability Directive	193
II. Case Law of the ECJ	194
Part VIII. Additional Civil Liability Regimes	195
Chapter 1. Environmental Liability	195
I. History	196
II. 'Non-Liability' Directive of 2004/35/EC	196
Chapter 2. Liability for Traffic and Carriage	198
§1. INTERNATIONAL CONVENTIONS	198
§2. AIR CARRIAGE	199

Table of Contents

I. International Conventions	199
II. EU Regulation (EC) No. 889/2002	200
Chapter 3. Protection of Personal Data	201
I. Directive 95/46/EC	201
II. New Approach 2012	204
Part IX. Summary and Commentary	207
Concluding Remarks	209
Selected Bibliography	213
Table of Cases	217
Table of EU Legislation	231
Index	235