

# Contents

## Table of Cases

xi

## Table of Legislation

xxiii

<b>1. The Internal Market as a Legal Concept</b>	<b>1</b>
A. The 'Internal Market' as an Ambiguous Legal Concept	1
<b>2. Finding the Internal Market in the Treaty</b>	<b>3</b>
A. The Concept of the 'Internal Market' Empowers the EU – but Not Without Limits	3
B. Control and Testing – Negative Law	5
C. EU Legislative Action – Positive Law	10
D. The Decorative	13
<b>3. The Law, Politics and Economics of the Internal Market</b>	<b>15</b>
A. The Treaty of Rome	15
B. The Single European Act and the Political Bargain	16
C. The Treaty of Lisbon and the Political Bargain	19
D. The Economics of the Internal Market	21
E. The Internal Market beyond Economics Alone	24
<b>4. Principal Themes and Structure</b>	<b>27</b>
<b>5. The Internal Market</b>	<b>33</b>
A. The Breadth of the Market as a Legal Concept	33
B. The Limits of the 'Market'	39
C. The Internal Market as a Concept Which Takes the Scope of Negative Law beyond That of Positive Law	43
<b>6. The Internal Market</b>	<b>49</b>
A. Limits, What Limits?	49
1. Early Years, Easy Years	50
2. <i>Dassonville</i>	51
3. <i>Cassis de Dijon</i>	53
4. Competition Law	57
B. Where Do the Limits Lie?	60
C. Mis-steps and Re-sets	65
1. <i>Sunday Trading</i>	66
2. The Readjustments	68
3. Services	70
4. Adjusting the Readjustment	71
5. Restrictions on Use	74
6. Concluding Comments	76

D. People and Citizens	76
1. Remoteness	76
2. People and Families	78
3. Citizenship Too	81
E. State Aid	84
1. Aid Must Be Granted 'Granted Directly or Indirectly Through State Resources'	86
2. Selectivity	88
3. Making Connections and Re-Shaping Lines	89
F. Conclusion: The Limits of the <i>Internal Market</i>	90
7. The Personal Scope	95
8. Justification	99
A. Structure	99
B. Principles	100
C. Breadth	103
1. Breadth – Free Movement Law	103
2. Breadth – Competition Law	106
D. Public Health	109
E. Environmental Protection	112
F. Protection of the Economic Interests of Consumers	115
9. Creativity in the Gap between Negative and Positive Law: The Principle of Conferral Unleashed	123
A. Sport as a Case Study	124
B. Collective Labour Action as a Case Study	125
C. Justification and Sensitivity	128
10. Abuse	131
11. Fundamental Rights and National Identity in the Internal Market	135
A. Early Years, Early Cases	136
B. <i>Schmidberger</i> and <i>Omega</i>	137
C. National Identity	139
12. The Internal Market as a Site of Diversity	143
13. The Legislative Dimension: Harmonization	151
A. The Nature and Purpose of Harmonization	151
B. Article 114 – an Instrument of Re-regulation	153
C. Constitutional Commitments to Re-regulation	155
D. Judicial Review and Re-regulation	156
1. Judicial Review of Inadequate Standards	156
2. Judicial Review of Over-regulation	157
3. Judicial Interpretation of the Harmonized Legislative Acquis	160
E. The Permissibility of Prohibition	162
F. Legislative Practice and Re-regulation	163

G. The Limits of Harmonization	166
1. The Slow Road to Emergence of 'Competence Sensitivity'	166
2. The Single European Act and <i>Tobacco Advertising I</i>	168
3. The Subsequent Case Law	170
4. Limits, What Limits?	173
H. Subsidiarity and Proportionality	175
1. Subsidiarity	176
2. Proportionality	178
3. Political Controls	179
<b>14. Legislative Competence More Broadly</b>	<b>187</b>
A. The Wide Sweep	187
B. Labour Market Regulation and Social Policy	189
1. <i>Defrenne</i>	190
2. Policy Choices	191
3. From the Treaty of Rome to the Single European Act	194
4. From the Single European Act via Maastricht to the Treaty of Amsterdam	196
5. The Lisbon Strategy and Europe 2020	198
C. EU Social Policy Today	200
1. Spontaneous Alignment	201
2. Legislation on Social Policy	201
3. Approximation/Harmonization	203
D. Social Policy – the Current Debate	204
E. Social Policy – the Continuing Debate	207
<b>15. Pre-emption</b>	<b>209</b>
A. The Directions Contained in the Treaty	209
B. Legislative Practice	211
C. The Sources of Pressure on the Model of Minimum Harmonization	212
1. The Court of Justice	212
2. The Commission's Attack on 'Minimum Harmonization'	215
D. Normative Perspectives on the Choice between Models of Harmonization	219
<b>16. Conclusion</b>	<b>223</b>
A. Ambiguity and Limits	223
B. Limits and Lines	225
C. Lines and Choices	227
D. Choices and Empowerment	229
E. Empowerment and Ambiguity	232
<i>Index</i>	235