## Contents

	2	Cases	X1
	-	f Legislation Abbreviations	xxiii xxxix
			AAAIA
1.		e Emergence of the EU's Commitment to Human Rights	1
		Introduction	1
		Early Fundamental Rights Case Law in the European Communities	5
		Development of Social Rights in the Internal Market	12
		Human Rights in Political Cooperation	17
	1.5	Fundamental Rights in the European Union Era	21
2.	Fur	ndamental Rights in the EU Institutional Landscape	27
	2.1	Introduction	27
	2.2	The European Commission	28
	2.3	The European Parliament	30
	2.4	The Council of the European Union	33
		A. Working Party on Fundamental Rights, Citizens' Rights, and Free Movemen	t
		of Persons (FREMP)	36
		B. Working Party on Human Rights (COHOM)	37
		The Court of Justice	38
	2.6	The European External Action Service (EEAS) and EU Special	7.3
		Representative (EUSR) for Human Rights	41
		The EU Agency for Fundamental Rights (FRA)	44
		National Human Rights Institutions (NHRIs)	52
	2.9	Equality Bodies and Data Protection Authorities	57
		A. National Equality Bodies	57
,	3 10	B. Data Protection Authorities	60
		European Ombudsman	63
4	2.11	EU Member States	66
3.	Cor	ncepts and Language of Human Rights in the EU	70
	3.1	Introduction	70
	3.2	Human or Fundamental? On the Language and Concept of Rights	70
		A. The EU's dichotomous language of rights	70
		B. A more fundamental distinction?	74
		Human Rights Narratives as EU Myths	77
	3.4	The Rule of Law, Democracy, and Their Relation to Fundamental Rights	79
		A. The democracy, rule of law, and human rights triumvirate in general	80
		B. Democracy, the rule of law, and fundamental rights in the EU	84
4.	The	EU Legal Framework for the Protection of Fundamental Rights	94
	4.1	Introduction	94
	4.2	Fundamental Rights as General Principles of Law	94
	4.3	EU Charter of Fundamental Rights	99
		A. The scope of application of the Charter	102

		B. Limitations on the rights in the Charter	118
		C. Relation of the Charter to the ECHR and national constitutions	124
		D. Difference between rights and principles in Article 52(5) of the Charter	137
		E. Horizontal effect of the Charter	141
		F. Use of the Charter at national level	143
		G. Explanations relating to the Charter	145
	4.4	EU Secondary Law	146
		A. General Data Protection Regulation	152
		B. Directives on equality and anti-discrimination	156
		C. Directives on rights of victims and rights of suspects and accused persons	160
		D. Free movement, immigration, and asylum	166
		The Principle of Mutual Trust	181
	4.6	Protection of EU Values through Articles 2 and 7 TEU	194
5.	Inte	ernational Law, the ECHR, and the EU	212
		Introduction	212
		Application of EU Fundamental Rights to International Law	212
		International Human Rights Law and the EU	229
		The EU and the ECHR	244
		A. The view from Strasbourg	246
		B. EU accession to the ECHR	267
	5.5	Other Council of Europe Instruments	291
	5.6	Convention on the Rights of Persons with Disabilities (CRPD)	297
6.	Fur	ndamental Rights in EU Competition Enforcement	313
		Introduction	313
		Competition Enforcement in the EU	315
		A. Agreements restricting competition (Article 101 TFEU) and antitrust	
		enforcement in general	317
		B. Abuse of a dominant position (Article 102 TFEU)	329
		C. Mergers (Regulation No 139/2004)	334
		D. State aid (Article 107 TFEU)	337
	6.3	Undertakings as Beneficiaries of Fundamental Rights	343
	6.4	Rights of Defence in EU Competition Proceedings	346
		A. Right to be heard and access to file	347
		B. Right to good administration and duty to give reasons	349
		C. Right to legal assistance	352
		D. Privilege against self-incrimination	354
		E. Respect for private and family life	355
	6.5	Antitrust Fines as Criminal Sanctions? Requisite Level of Protection in EU	
		Competition Law	357
		A. Presumption of innocence	364
		B. Principle of legality (nulla poena sine lege) and proportionality	366
		C. Ne bis in idem	368
	6.6	Court Delays and the Remedial Conundrum	373
		A. The reasonable time requirement	374
		B. Remedies for delay	377
	6.7	Competition Law and Data Protection	383
7.	Equ	ality and Non-discrimination Law in the EU	387
	_	Introduction	387

7.2	Discrimination on Grounds of Nationality	390
7.3	Gender Discrimination	39'
	A. Equal pay, employment, and social security	398
	B. Horizontal provisions and examples of sex discrimination	410
	C. Sexual orientation	422
7.4	Racial Discrimination	426
7.5	Religious Discrimination	434
7.6	Age Discrimination	444
7.7	Discrimination on Grounds of Disability	454
8. Hu	ıman Rights in EU Migration Laws and Policies	463
8.1	Introduction	463
8.2	Fundamentals of EU Migration and Asylum Policy	463
8.3	Migrants' Rights	465
	A. Right to life and human dignity	466
	B. Prohibition on arbitrary detention	469
	C. Right to asylum	475
	D. Right to non-refoulement	477
	E. Right to private and family life	480
	F. Right to leave/enter	481
8.4	Migration Channels to the EU	482
	A. Highly skilled workers	484
	B. Students and researchers	485
	C. Family reunification	488
	D. Asylum	492
8.5	Migration Control and Border Policies	508
	A. Hotspots	511
	B. European Border and Coast Guard Agency (Frontex)	516
	C. Operation Sophia	523
	D. Externalization and the EU-Turkey statement	527
9. Hu	man Rights in EU External Action	539
9.1	Introduction	539
9.2	Horizontal Principles and Objectives	539
	A. Articles 3(5) and 21 TEU	540
	B. EU Strategic Framework on Human Rights and Democracy	547
9.3	The External Human Rights 'Toolkit'	552
	A. EU Action Plan on Human Rights and Democracy	553
	B. Financing instruments	557
	C. EU Human Rights Guidelines	562
	D. EU Human Rights and Democracy Country Strategies	567
	E. Human rights dialogues	568
	F. Human rights clauses in international agreements	574
9.4	Common Foreign and Security Policy (CFSP)	581
	A. The CFSP and CSDP framework	581
	B. Sanctions and restrictive measures	589
	C. EU external representation and the Human Rights Council	595
	D. CSDP missions	606
9.5	EU Enlargement and Neighbourhood Policy	610
	A. Copenhagen criteria and the accession process	614

## X CONTENTS

	9.6	B. European Neighbourhood Policy (ENP) Normative Power Europe? External Perceptions of the EU	625 641
10		nan Rights in EU Trade Policy	646
10.		Introduction	
			646
		The Nexus between Human Rights and Trade	646
		Human Rights in EU Trade Policy since the Treaty of Lisbon	648
	10.4	EU Trade Policy Instruments for Human Rights	652
		A. Generalized Scheme of Preferences (GSP)	652
		B. Unilateral trade control measures	662
		C. Human rights clauses in EU trade agreements	666
	10.5	D. Sustainable development chapters in EU trade agreements	672
	10.5	Assessing the Human Rights Impact of EU Trade Agreements	677
11.	Hum	nan Rights in EU Development Policy	682
	11.1	Introduction	682
	11.2	Human Rights and Development	682
		A. Different communities, diverging conceptions	683
		B. Human rights-based conditionality in development cooperation	686
		C. Programme support and financial instruments for human rights and good	
		governance	688
		D. Human rights mainstreaming and the human rights-based approach to	
		development	689
	11.3	Human Rights in EU Development Cooperation	691
		A. Evolution of the legal and policy framework	692
		B. Aid sanctions and political conditionality	697
		C. EU mainstreaming policy	702
		D. The EU's rights-based approach to development	702
Inde	ex		707