

CONTENTS

Preface	vii
Abbreviations	xxix
Acknowledgements	xxxiii
Table of Cases	xxxv
Table of Treaties, Instruments, and Legislation	cxxv
Tables of Equivalences	clxv
PROLOGUE	1
1. THE DEVELOPMENT OF EUROPEAN INTEGRATION	3
1. Introduction	3
2. A Brief Overview of Analyses of Integration	5
3. The History and Ideas Behind European Integration	7
4. The EEC and Euratom Treaties	10
5. 1966–86: From the Luxembourg Accords to the Single European Act	13
(a) Crisis: The Luxembourg Accords	13
(b) Enlargement of the Community	14
(c) Political Co-operation	15
(d) Developments in the Budgetary and Monetary Spheres	18
6. The Single European Act	19
7. The Treaty on European Union: Maastricht	24
(a) Title I: The Common Provisions	25
(b) Titles II–IV: Changes to the Community Treaties	26
(c) The Two Intergovernmental Pillars	28
(i) Pillar 2, Title V: Common Foreign and Security Policy (CFSP)	28
(ii) Pillar 3, Title VI: Justice and Home Affairs	29
(d) Enlargement of the Community after the TEU	29
8. From Maastricht to Amsterdam	31
9. The Treaty of Amsterdam	32
(a) The Common Provisions	33
(b) The Community Pillar	34
(c) Pillar 2, Title V: The Common Foreign and Security Policy (CFSP)	39
(d) Pillar 3, Title VI: Police and Judicial Co-operation in Criminal Matters (PJCC)	43
(e) Title VII: Closer Co-operation	45
(f) Title VIII: Final Provisions	46
10. Conclusion	46
11. Further Reading	48
(a) Books	48
(b) Articles	48

2. THE INSTITUTIONS	49
1. Introduction	49
2. The Commission	50
(a) The College of Commissioners: Composition and Appointment	50
(b) The Commission Bureaucracy	51
(c) The Powers of the Commission	53
(d) The Role of the Commission: Conclusion	56
3. The Council	57
(a) Composition of the Council	57
(b) The Presidency of the Council	58
(c) The Committee of Permanent Representatives	59
(d) The Council Secretariat	60
(e) The Powers of the Council	60
(f) The Role of the Council: Conclusion	62
4. The European Council	63
(a) Composition	63
(b) Rationale	64
(c) Role	64
(d) The Role of the European Council: Conclusion	65
5. The European Parliament	66
(a) Composition	67
(b) Parliament's Legislative Role	70
(c) Parliament's Supervisory Role	72
(d) Parliament as a Litigant	73
6. The European Court of Justice and the Court of First Instance	78
(a) Composition and Structure of the Court of Justice	79
(b) The Court of First Instance	81
(c) The Role of the Advocate General	83
(d) Procedure before the Court	83
(e) Proposals for Reform	84
(f) Style of the Court's Judgments	86
(g) Role and Methodology of the Court	86
7. The Court of Auditors	95
8. Other Community Institutions	97
(a) The Economic and Social Committee	97
(b) The Committee of the Regions	97
(c) Agencies	98
9. The Inter-institutional Dimension: The Budget	99
(a) Introduction	99
(b) Community Revenue	99
(c) Community Expenditure	100
(d) The Budgetary Procedure	101
(e) The Budget and the Institutional Division of Power	102
10. Enlargement and the Structure of the Community	103
11. Further Reading	103

3. COMMUNITY LEGISLATION AND POLICY-MAKING	105
1. Introduction	105
2. The Types of Community Legislation	105
(a) Regulations	106
(b) Directives	108
(c) Decisions	109
(d) Recommendations and Opinions	109
(e) Other Methods of Developing Policy	110
3. Substantive and Procedural Conditions for the Legality of Community Action	110
(a) Substantive Requirements: Internal	110
(b) Substantive Requirements: External	115
(c) Procedural Requirements	119
4. Substantive and Procedural Conditions for the Legality of Community Action: Subsidiarity	124
(a) The Community Must Act within the Limits of its Powers	124
(b) The Exclusive Competence of the Community	124
(c) The Subsidiarity Principle Itself	127
(d) The Role of the Court	128
5. The Legislative Process: Six Procedures	129
(a) Commission Acting Alone	130
(b) Council and Commission Acting Alone	131
(c) Council, Commission, and Consultation with Parliament	131
(d) Council, Commission, and the Co-operation Procedure with the European Parliament	132
(e) Council, Commission, and European Parliament: The Article 251 (formerly 189b) Procedure	135
(f) Council, Commission, and the European Parliament: Assent	137
(g) The Exercise of Delegated Legislative Power by the Commission	138
(h) The Seeds of Legislative Initiative for the Parliament: Article 192 (formerly 138b)	141
(i) Legislative Initiative and the Council's Use of Article 208 (formerly 152)	141
6. The Voting Requirements in the Council	142
7. The Reality of Community Decision-Making: The Temporal Dimension	143
8. The Reality of Community Decision-Making: The Inter- institutional Dimension	146
(a) Institutional Co-operation: Planning the General Legislative Strategy	146
(b) Institutional Co-operation: Inter-institutional Agreements	148
(c) Inter-institutional Co-operation and Conflict-Resolution: The Making of Particular Policies	150
9. Democracy within the Community	155
10. Further Reading	161

4. THE NATURE OF EC LAW: DIRECT AND INDIRECT EFFECT	163
1. Introduction	163
2. The Conditions for Direct Effect	168
3. The Direct Effect of Measures other than Treaty Provisions	175
(a) Regulations and Decisions	176
(b) International Agreements	179
(c) Directives	185
4. Giving Effect to Directives in Other Ways	193
(a) Broadening the Concept of the State	194
(b) 'Indirect Effect': Development of the Principle of Interpretation	198
(c) 'Incidental' Horizontal Direct Effect?	206
(d) State Liability in Damages for Non-implementation of a Directive	210
5. Conclusion	211
6. Further Reading	212
(a) Books	212
(b) Articles	212
5. THE APPLICATION OF EC LAW: REMEDIES IN NATIONAL COURTS	213
1. Introduction	213
(a) The Principle of National Procedural Autonomy	214
(b) The Absence of an Obligation to Create New Remedies	215
(c) National Penalties and Remedies for Breach of Community Law: The Requirements of Proportionality, Adequacy, and Effectiveness	217
(d) A Conflict Between the Principle of Effectiveness and the Principle that National Courts need not Create New Remedies	220
(e) Conflicts Between the Principle of Effectiveness and the Application of National Procedural and Jurisdictional Rules	223
2. A Different Approach? The Express Creation of a 'Uniform' Remedy by the Court of Justice	236
(a) The Novelty of <i>Francovich</i>	236
(b) Conditions for Liability under <i>Francovich</i>	239
(c) <i>Brasserie du Pêcheur/Factortame III</i> : Clarifying the Basis of the Principle of State Liability	240
(d) Clarifying the Conditions for State Liability in <i>Brasserie du Pêcheur/Factortame III</i>	242
(e) The Relationship Between the Community Principle of State Liability and the National Remedial Framework	247
(f) The Relationship Between Existing National Remedies and the Community Damages Remedy	250
3. Conclusion	252
4. Further Reading	254
(a) Books	254
(b) Articles	254

6. THE RELATIONSHIP BETWEEN EC LAW AND NATIONAL LAW: SUPREMACY	255
1. Introduction	255
2. The First Dimension: Supremacy of Community Law from the Court of Justice's Perspective	256
3. The Second Dimension: Supremacy of Community Law from the Perspective of the Member States	264
(a) France	264
(b) Germany	268
(c) Italy	276
(d) The United Kingdom	280
4. Conclusion	291
5. Further Reading	294
7. GENERAL PRINCIPLES I: FUNDAMENTAL RIGHTS	296
1. Introduction	296
2. The Development of Fundamental Rights and General Principles as Standards Binding on the Community	299
(a) The Court's Initial Resistance	299
(b) A More Receptive Approach	300
(c) The Court's Development of Fundamental Rights as Grounds for Annulment of Community Laws	301
3. The Sources of Fundamental Rights Derived by the Court	303
4. The Types of Rights Recognized and Their Use by the Court	308
5. Are the General Principles of Community Law and Fundamental Rights Binding on the Member States?	317
(a) Member States Applying Provisions of Community Law which are Based on Protection for Human Rights	318
(b) Member States Enforcing Community Policies and Interpreting Community Rules	320
(c) Member States Derogating from Community Law Requirements	323
(d) Limits to the 'Scope of Community Law' and to the Domestic Applicability of Community Fundamental Rights	328
6. The Response of the Political Institutions to the ECJ Development of Fundamental Rights	331
(a) 'Soft' Approval of the ECJ's Developments	331
(b) The TEU and the ToA: 'Hard' Approval?	332
(c) Fundamental Rights as a Source of Legislative Competence?	333
7. Human Rights in EU Law: Some Critical Perspectives	337
8. Conclusion	347
9. Further Reading	347
(a) Books	347
(b) Articles	347

8. GENERAL PRINCIPLES II: PROPORTIONALITY, LEGITIMATE EXPECTATIONS, NON-DISCRIMINATION, AND TRANSPARENCY	349
1. Introduction	349
2. Proportionality	349
(a) The Role of Proportionality and Its Meaning	349
(b) Proportionality and Challenges to Community Action	353
(c) Proportionality and Challenges to Member State Action	355
3. Legal Certainty and Legitimate Expectations	357
(a) Legal Certainty and Actual Retroactivity	357
(b) Legal Certainty, Legitimate Expectations, and Apparent Retroactivity	360
(c) Legal Certainty, Legitimate Expectations, and Revocation of Unlawful Acts	363
4. Non-Discrimination	364
(a) Non-discrimination as a 'General' Principle	364
(b) Non-discrimination as a Community Goal and a Basis for Community Action	365
(c) Justifying Discrimination	367
5. Transparency	368
6. Further Reading	371
9. ENFORCEMENT ACTIONS AGAINST MEMBER STATES	372
1. Introduction	372
(a) The Procedure and its Function	373
(b) Sharpening the Enforcement Procedure: The Pecuniary Penalty	376
2. The Relationship between the 'Public' and the 'Private' Enforcement Mechanisms	377
3. The Commission's Discretion in Bringing Article 226 (formerly 169) Proceedings	381
4. The Reasoned Opinion	387
(a) Challenging the Reasoned Opinion	387
(b) Can the Commission Change the Subject Matter of its Action after it has Issued a Reasoned Opinion?	389
5. Why is an Enforcement Action Admissible after the Breach is Remedied?	390
(a) The Commission's Continued Interest in Bringing the Action	391
(b) The Need to Rule on the Legality of Short Breaches	391
(c) Establishing the Liability of a Defaulting Member State	391
6. Types of Breach by Member States of Community Law	392
(a) Breach of the Obligation of Co-operation under the EC Treaty	393
(b) Inadequate Implementation of Community Law	394
(c) Failure to Give Proper Effect to Community Law	397
(d) Action by the Courts of a Member State	397

7. State Defences in Enforcement Proceedings	398
(a) <i>Force Majeure</i>	398
(b) There was no Inertia or Opposition to the Application of EC Law	399
(c) The Community Measure on which the Infringement Proceedings are Based is Illegal	400
(d) Other Member States are also in Breach	401
8. Article 227 (formerly 170)	402
9. Interim Measures	403
10. Conclusion	404
11. Further Reading	405
(a) Books	405
(b) Articles	405
 10. PRELIMINARY RULINGS AND THE BUILDING OF A EUROPEAN JUDICIAL SYSTEM	 406
1. Introduction	406
2. Three Types of Preliminary Ruling Procedure	408
3. The Provisions which can be Referred	409
4. The Courts or Tribunals to which Article 234 (formerly 177) Applies	410
5. The Existence of a Question: The Development of Precedent	414
6. The Existence of a Question: The ' <i>Acte Clair</i> ' Doctrine	420
(a) <i>CILFIT</i> as Part of a Discourse with, and Constraint on, National Courts	421
(b) <i>CILFIT</i> as a Flexible Tool which can be Manipulated by National Courts	422
7. Precedent, <i>Acte Clair</i> , and Sectoral Delegation: The Development of a More Hierarchical Judicial System	423
8. The Decision to Refer: The National Court's Perspective	427
9. The Reference to the ECJ: The Initial Approach, 'Come One, Come All'	433
(a) The Correction of Improperly Framed References	433
(b) Challenging the Reasons for Making a Reference or the Facts on Which it is Based	435
10. The Reference to the ECJ: The Foundations of the Court's Authority over the Cases Referred to It	436
11. The Reference to the ECJ: Developing Control over the Article 234 (formerly 177) Procedure	441
12. The Reference to the ECJ: Case-Load, Docket Control, and the Judicial Architecture of the EC	446
13. Interpretation versus Application	449
14. Conclusion: A Glimpse of the Future	450
15. Further Reading	452
(a) Books	452
(b) Articles	452

11. REVIEW OF LEGALITY	453
1. Introduction	453
2. The Range of Reviewable Acts	454
3. Article 230 (formerly 173): Standing for Privileged Applicants	457
4. Article 230(4) (formerly 173(4)): A Critical Analysis of the General Standing Rules for Non-Privileged Applicants	461
(a) Challenges to Decisions Addressed to Another Person	461
(b) Challenges to Regulations: The Traditional Approach	466
(c) Challenges to Regulations and Decisions: The Emerging Jurisprudence	468
5. Article 230 (formerly 173): Standing for Non-Privileged Applicants in Particular Areas	473
(a) Anti-dumping Cases	473
(b) Competition Cases	476
(c) State Aids	477
(d) Reinforcing the Democratic Nature of the Community	478
6. Article 230 (formerly 173): The Policy Arguments Concerning Standing of Non-Privileged Applicants	479
(a) The Appellate Court Argument	480
(b) Restrictive Access and the Language of the Treaty	482
(c) The Nature of the Subject Matter: Discretionary Determinations and the CAP	483
(d) The Nature of the Subject Matter: Quasi-Judicial Determinations and the More Liberal Case Law	485
(e) Two Central Issues Concerning Standing (I): The Meaning to be Given to Individual Concern	486
(f) Two Central Issues Concerning Standing (II): Standing, Participation, and Intervention	486
7. Article 230 (formerly 173): Direct Concern	489
8. Article 232 (formerly 175): Failure to Act	490
(a) The Range of Reviewable Omissions	491
(b) The Procedure	493
(c) Standing	493
9. Article 241 (formerly 184): The Plea of Illegality	494
(a) The Range of Acts which can be Challenged	494
(b) The Forum in which Article 241 (formerly 184) can be Used	496
(c) The Types of Proceedings in which Article 241 (184) can be Raised	498
(d) The Parties who are Allowed to Use Article 241 (formerly 184)	498
10. Article 234 (formerly 177): Preliminary Rulings as a Mechanism for Contesting the Legality of Community Measures	498
(a) The Rationale for Using Article 234 (formerly 177)	498
(b) The Mechanism for Testing Community Legality via the National Courts	499
(c) The Acts which can be Challenged under Article 234 (formerly 177)	500

11. The Grounds of Review	502
(a) Lack of Competence	502
(b) Infringement of an Essential Procedural Requirement	503
(c) Infringement of the Treaty or of any Rule of Law Relating to its Application	504
(d) Misuse of Powers	505
(e) The Intensity of Review	506
12. The Consequences of Illegality and Invalidity	510
13. Conclusion	513
14. Further Reading	514
(a) On <i>Locus Standi</i>	514
(b) On Failure to Act	515
(c) On the Exception of Illegality	515
(d) On Procedural Rights	515
(e) On the Use of Article 234 (177)	515
(f) On the Consequences of Illegality	515
12. DAMAGES ACTIONS AND MONEY CLAIMS	516
1. Introduction	516
2. Liability for Legislative Acts	516
(a) The General Test	516
(b) The Meaning of Legislative Act	517
(c) The Meaning of Superior Rule of Law	518
(d) The Meaning of Flagrant Violation/Serious Breach: The Early Case Law	520
(e) The Meaning of Flagrant Violation/Serious Breach: More Recent Developments	524
(f) The Meaning of Flagrant Violation/Serious Breach: The Impact of <i>Brasserie du Pêcheur</i>	526
(g) The Present Law: An Assessment	527
3. Liability for Administrative Acts	528
4. Liability for Official Acts of Community Servants	532
5. Liability for Valid Legislative Acts	534
(a) The Nature of the Problem	534
(b) The Case Law	535
6. Causation and Damage	537
(a) Causation	537
(b) Damage	538
7. Joint Liability of the Community and the Member States	540
(a) Procedural Issues	540
(b) Substantive Issues	540
8. Liability in Contract	544
9. Liability to Make Restitution	545
10. Further Reading	547
(a) Books	547
(b) Articles	547

13. FREE MOVEMENT OF GOODS: DUTIES, CHARGES, AND TAXES	548
1. Introduction: Forms of Economic Integration	548
2. The Basic Structure of the Provisions Concerning Free Movement of Goods	550
3. Articles 23–25 (formerly 9–17): Duties and Charges	551
(a) Duties and Charges: Effect, Not Purpose	552
(b) Charges Having an Equivalent Effect: General Principles	554
(c) Charges Having an Equivalent Effect: Inspections and the ‘Exchange Exception’	555
(d) Charges Having an Equivalent Effect: Inspections and Fulfilment of Mandatory Legal Requirements	558
(e) Recovery of Unlawful Charges	560
4. Articles 90–93 (formerly 95–99): Discriminatory Tax Provisions	560
(a) The Purpose of Article 90 (formerly 95)	561
(b) Article 90(1) (formerly 95(1)): Direct Discrimination	561
(c) Article 90(1) (formerly 95(1)): Indirect Discrimination	562
(d) Article 90 (formerly 95): National Autonomy and Fiscal Choices	563
(e) The Relationship between Article 90(1), 95(1) and 95(2) and 90(2) (formerly 95(2))	566
(f) Article 90(1) and (2) (formerly 95(1) and (2)): The Determination of Similarity	567
(g) Article 90(2) (formerly 95(2)): The Determination of Protective Effect	570
5. The Boundary Between Articles 23–25 (formerly 9–17) and 90–93 (formerly 95–99)	573
6. Conclusion	577
7. Further Reading	579
14. FREE MOVEMENT OF GOODS: QUANTITATIVE RESTRICTIONS	580
1. Introduction	580
(a) The Place and Importance of Articles 28–31 (formerly 30–36)	580
(b) The Attainment of a Single Market: The Interconnection between Judicial and Legislative Initiatives	582
2. Directive 70/50 and <i>Dassonville</i>	583
3. Discriminatory Barriers to Trade	585
(a) Import and Export Restrictions	585
(b) Promotion or Favouring of Domestic Products	586
(c) Price-fixing	591
(d) Measures which make Imports more Difficult or Costly	592
(e) National Measures versus Private Action	593
4. Justifying Discriminatory Barriers to Trade: Article 30 (formerly 36)	594
(a) Public Morality	595

(b) Public Policy	597
(c) Public Security	599
(d) Protection of Health and Life of Humans, Animals, or Plants	600
(e) Other Grounds for Validating Discriminatory Measures?	604
5. Indistinctly Applicable Rules: <i>Cassis de Dijon</i>	604
6. Indistinctly Applicable Rules: The Post- <i>Cassis</i> Jurisprudence	608
7. Indistinctly Applicable Rules and Article 29 (formerly 34)	609
8. Indistinctly Applicable Rules: The Limits of Article 28 (formerly 30)	610
(a) The Nature of the Problem: <i>Cinéthèque</i> and <i>Torfaen</i>	610
(b) Academic Opinions Prior to <i>Keck</i>	616
(c) The Judgment in <i>Keck</i>	617
(d) <i>Keck</i> : The Rationale for and Legal Effect of the Decision	618
(e) <i>Keck</i> : Selling Arrangements	620
(f) <i>Keck</i> and the Scope of Article 28 (formerly 30): Factual and Legal Equality v. Market Access	622
(g) <i>Keck</i> , Article 28 (formerly 30), and Market Access: Meaning and Application	624
(h) <i>Keck</i> and the Scope of Article 28 (formerly 30): The Continuing Dilemma	626
9. Indistinctly Applicable Rules: The Mandatory Requirements	627
(a) The Rationale for the Mandatory Requirements	627
(b) The Mandatory Requirements	630
(i) Consumer Protection	630
(ii) Fairness of Commercial Transactions	633
(iii) Public Health	633
(iv) Other Mandatory Requirements	635
10. The Advantages and Disadvantages of <i>Cassis</i> and the Interrelationship Between Judicial and Legislative Initiatives	637
(a) The Advantages of the Court's Jurisprudence and the Commission's Response to <i>Cassis de Dijon</i>	637
(b) Problems Flowing from <i>Cassis</i> and the Commission's Response Thereto	640
11. Further Reading	644
(a) Books	644
(b) Articles	644
15. FREE MOVEMENT OF CAPITAL AND ECONOMIC AND MONETARY UNION	645
1. Free Movement of Capital	645
(a) The Original Treaty Provisions	645
(b) The Current Provisions: The Basic Principle	646
(c) The Current Provisions: The Exceptions	647
2. Early Attempts at EMU and the European Monetary System	648

3. Economic and Monetary Union: The Three Stages	650
(a) Stage One and the Delors Report	650
(b) Stage Two: The Treaty on European Union	650
(c) Stage Three: The Basic Legal Framework	652
(d) The Legal Consequences of Moving to Stage Three	653
4. Understanding EMU: The Economic Foundations	655
(a) The Case for EMU	655
(b) The Case against EMU	657
5. Understanding EMU: Central Bank Independence	658
6. The Transition to EMU: The Real World	660
7. Further Reading	663
 16. FREE MOVEMENT OF WORKERS AND BEYOND	 664
1. Introduction	664
2. The Effect of Article 39 (formerly 48)	666
3. Who is Protected by Article 39 (formerly 48)?	672
4. The Article 39(4) (formerly 48(4)) Exception	684
5. Directive 68/360	691
6. Directive 68/360 and Those who Move in Search of Work	695
7. Workers and their Families: Social Advantages and Other Rights	697
(a) Regulation 1612/68	697
(b) Article 7(2) of Regulation 1612/68	699
(c) Rights of Families as Parasitic on the Workers' Rights	703
(d) Family Members in an 'Internal Situation'	705
8. After Amsterdam: Freedom of Movement within the EU	707
9. Education	711
(a) Children (and Family Members) of Workers	712
(b) Workers	713
(c) Students	714
10. Citizenship	719
(a) A Significant Change?	719
(b) Rights of Movement and Residence	720
(c) Political Rights	722
(d) Limits and Potential	723
11. Further Reading	725
(a) Books	725
(b) Articles	726
 17. FREEDOM OF ESTABLISHMENT AND TO PROVIDE SERVICES	 727
1. Introduction	727
(a) The Three Chapters	728
(b) The Secondary Legislation	730
(c) Articles 45 and 55 (formerly 55 and 66): The Official-Authority Exception	731

2. The Right of Establishment	733
(a) The Effect of Article 43 (formerly 52)	734
(b) Harmonization and Mutual Recognition of Qualifications	738
(c) The Scope of Article 43 (formerly 52)	744
(i) Does It Cover Only Discriminatory Restrictions?	744
(ii) The 'Reverse Discrimination' Question: Can Nationals Rely on Article 43 (formerly 52) in their Own Member State?	749
(iii) Are Restrictions on Social Benefits Contrary to Article 43 (formerly 52)?	754
(d) Establishment of Companies	755
3. Free Movement of Services	762
(a) The Effect of Article 49 (formerly 59)	764
(b) The Scope of Article 49 (formerly 59)	766
(i) The Need of an Inter-State Element	766
(ii) The Freedom to Receive Services	767
(iii) The Economic Nature of the Services: Remuneration	769
(iv) Can Illegal Activities Constitute Services within Articles 49–50 (formerly 59–60)?	770
(v) Are Restrictions on Social Benefits Contrary to Article 49 (formerly 59)?	772
(c) Justifying Restrictions on the Free Movement of Services	774
(d) Are Non-Discriminatory Restrictions covered by Article 49 (formerly 59)?	780
4. Further Reading	785
(a) Books	785
(b) Articles	785
18. THE PUBLIC POLICY, SECURITY, AND HEALTH	
DEROGATIONS: DIRECTIVE 64/221	786
1. Introduction	786
2. The Discretion of the Member States	788
(a) What Conduct Can Justify the Invocation of the Derogations?	788
(b) What Steps may Member States take Against Non-Nationals?	790
(c) The 'Personal Conduct' Requirement	793
(d) The Procedural Protections under Directive 64/221	796
3. Further Reading	800
19. EQUAL TREATMENT OF WOMEN AND MEN	801
1. Introduction	801
2. Equal Pay	805
(a) Directive 75/117	808
(b) Indirect Discrimination in Pay and Objective Justification	811
(c) The Breadth of Article 141 (formerly 119): What can Constitute 'Pay'?	822
3. Equal Treatment	841

(a) Equal Treatment as a General Principle	841
(b) Directive 76/207	842
(c) The Distinction between Conditions of Work, Pay, and Social Security	848
(d) Equal Treatment and Pregnancy	852
(e) The Pregnancy Directive	861
(f) Directive 86/613	863
(g) Parental Leave	864
(h) Sexual Harassment	865
4. Social Security	866
(a) Directive 79/7	866
(i) Direct Effect of Directive 79/7	867
(ii) Personal Scope	869
(iii) Material Scope	872
(iv) The Exceptions in Article 7	876
(v) Indirect Discrimination in Social Security	879
(b) Directive 86/378 as Amended by Directive 96/97	883
5. Remedies	884
6. Conclusion	889
7. Further Reading	890
(a) Books	890
(b) Articles	890
 20. COMPETITION LAW: ARTICLE 81 (FORMERLY 85)	891
1. Introduction	891
2. Undertakings	893
3. Agreements, Decisions, and Concerted Practices	894
4. The Object or Effect of Preventing, Restricting, or Distorting Competition	903
(a) The Nature of the Problem	903
(b) The Experience in the United States	903
(c) The Academic Debate in the EC	905
(d) The Case Law in the EC	907
(e) Economic Analysis within Article 81(1) (formerly 85(1)): An Evaluation	913
5. The Effect on Trade between Member States	914
6. The <i>De Minimis</i> Doctrine	915
7. Exemption under Article 81(3) (formerly 85(3))	916
(a) Individual Exemption	916
(b) Block Exemption	919
8. Vertical Restraints	920
(a) The Economic Debate	920
(b) The Critique of the Commission and the Commission's Green Paper	924
(c) Exclusive Distribution	926

(d) Selective Distribution	929
(e) Franchising	934
(f) Exclusive Purchasing	936
9. Further Reading	938
21. COMPETITION LAW: ARTICLE 82 (FORMERLY 86)	
1. Introduction	940
2. Dominant Position: The Product Market	942
3. Dominant Position: The Geographic Market and the Temporal Factor	947
4. Dominant Position: The Commission's Notice on Market Definition	948
5. Dominant Position: Market Power	949
6. Abuse: General Principles	954
(a) General Problems of Interpretation	954
(b) Exploitation of Anti-competitive Practices	955
7. Abuse: Particular Examples	956
(a) Abuse and Mergers	956
(b) Abuse and Refusal to Supply	958
(c) Abuse and Price Discrimination	963
(d) Abuse and Predatory Pricing	969
8. Joint Dominance	972
9. Objective Justification and Proportionality	975
10. Further Reading	976
(a) Books	976
(b) Articles	976
22. COMPETITION LAW: MERGERS	978
1. Introduction	978
2. The Policy Reasons for Merger Control	979
(a) Arguments against Mergers	979
(b) Arguments in favour of Mergers	980
3. Regulation 4064/89 as Amended: Procedural Issues	981
4. Regulation 4064/89 as Amended: Substantive Issues	983
(a) Concentration: General	983
(b) Concentration: Joint Ventures	984
(c) Concentrations which have a 'Community Dimension'	988
(d) Concentrations: The Substantive Criteria	989
(e) Concentrations: Reflections on the Substantive Criteria	996
5. Relationship between Community and Member State Merger Control	998
(a) The General Principle: One-stop Merger Control	998
(b) Article 21(3)	999
(c) Referral to the Competent Authorities of the Member State: The German Clause	999
(d) Article 22(3): The Dutch Clause	999

(e) The Residual Role of Articles 81 and 82 (formerly 85 and 86)	1000
6. Judicial Review	1001
7. Further Reading	1001
(a) Books	1001
(b) Articles	1001
 23. COMPETITION: ENFORCEMENT AND PROCEDURE	1003
1. Introduction	1003
2. Public Enforcement by the Commission: Finding the Violation	1004
(a) Investigation	1004
(b) Notification	1007
(c) Complaints	1008
3. Public Enforcement by the Commission: Competition Decisions	1011
(a) Informal Settlement	1011
(b) Formal Decisions: Interim Orders	1012
(c) Formal Decisions: Negative Clearance	1013
(d) Formal Decisions: A Finding of Infringement	1014
(e) Formal Decisions: Individual Exemption	1016
(f) Judicial Review by the CFI	1017
4. Private Enforcement: The Role of the National Courts	1018
(a) The Advantages and Disadvantages of Enforcement through National Courts	1018
(b) Article 81 (formerly 85): Enforcement of Agreements	1019
(c) National Courts and Comfort Letters	1022
(d) Damages Actions and Recovery of Benefits	1023
5. Public Enforcement through National Competition Authorities	1024
6. Further Reading	1025
(a) Books	1025
(b) Articles	1025
 24. INTELLECTUAL PROPERTY	1026
1. Introduction: Property Rights versus the Single Market	1026
2. Articles 28–30 (formerly 30–36): The Exhaustion of Rights Doctrine	1029
(a) Patents	1029
(b) Trade Marks	1033
(c) Copyright	1036
3. The Limits of Articles 28–30 (formerly 30–36): The Demise of the Common Origin Doctrine and the Limits of Consent	1041
4. Articles 81 and 82 (formerly 85 and 86)	1047
(a) General Principles: The Existence/Exercise Distinction	1047
(b) Article 81 (formerly 85): Assignments	1048
(c) Article 81 (formerly 85): Licensing	1050
(d) Article 81 (formerly 85): Block Exemption	1053
(e) Article 82 (formerly 86)	1054
5. Article 12 (formerly 6) and Non-Discrimination	1057

6. Intellectual-Property Rights and Harmonization	1057
7. Further Reading	1058
(a) Books	1058
(b) Articles	1059
25. THE STATE AND THE COMMON MARKET	1060
1. Introduction	1060
2. The State and Participation in the Market: General Principles	1061
3. Public Undertakings and Article 86 (formerly 90)	1062
(a) The Scope of Article 86(1) (formerly 90(1)): General Principles	1062
(b) The Scope of Article 86(1) (formerly 90(1)): Agnosticism as to the Organization of Economic Activities?	1065
(c) The Scope of Article 86(2) (formerly 90(2))	1070
(d) The Scope of Article 86(3) (formerly 90(3))	1072
(e) Article 86 (formerly 90) and National Courts	1074
4. The State, Articles 10, 81, 82, and 28 (formerly 5, 85, 86, and 30)	1075
5. State Aids: The Substantive Rules and Article 87 (formerly 92)	1077
(a) Article 87(1) (formerly 92(1))	1077
(b) Article 87(2) (formerly 92(2))	1082
(c) Article 87(3) (formerly 92(3)): The Commission, Substantive Policy, and the Choice between Rule-Making and Individualized Adjudication	1082
(d) Article 87(3) (formerly 92(3)): Particular Categories	1085
6. State Aids: The Procedural Rules and Articles 88 and 89 (formerly 93 and 94)	1091
(a) Review of Existing State Aids	1091
(b) The Procedure for New State Aids: Notification and Preliminary Review	1091
(c) The Procedure for State Aids: Detailed Investigation and Enforcement	1093
(d) Exceptional Circumstances: Article 88(2) (formerly 93(2)) Paragraphs 3 and 4	1094
(e) Article 89 (formerly 94): Implementing Regulations	1095
(f) Challenges to Commission Decisions	1095
7. State Aids: Recovery of Unlawful Aids	1096
8. The Relationship of State Aids to Other Provisions of the Treaty	1098
9. State Aids, Market Integration, and Regional Policy	1100
10. Further Reading	1102
(a) Books	1102
(b) Articles	1102
26. COMPLETION OF THE SINGLE MARKET	1104
1. Introduction: The Limits of Integration Prior to 1986	1104
2. The Commission's Paper and the Benefits of a Single Market	1105
3. The Reinvigoration of Europe: The Politics of Integration	1112

4. Completing the Internal Market: Legislative Reform and the SEA	1115
(a) Article 14 (formerly 7a): The Obligation Stated	1115
(b) Article 15 (formerly 7b and 7c): The Obligation Qualified	1118
(c) Article 95(1) (formerly 100a(1)): Facilitating the Passage of Harmonization Measures	1118
(d) Article 95(2)–(10 (formerly 100a(2)–(5)): Qualifications to Article 95(1) (formerly 100a(1))	1120
5. Completing the Internal Market: The New Approach to Harmonization	1124
(a) The Rationale for the New Approach	1124
(b) The New Approach to Harmonization	1125
(c) The New Approach to Harmonization: Legislative Format	1128
(d) The New Approach to Harmonization: Beyond 1992	1130
6. Completing the Internal Market: Tensions and Concerns	1132
(a) Consumer Interests and Commercial Power	1132
(b) The Single Market, Market Freedom and Structural Balance	1134
(c) Politics, Economics, and the Single Market Enterprise	1135
7. Conclusion	1136
8. Further Reading	1137
(a) Books	1137
(b) Articles	1137
Index	1139