

Contents—Outline

Chapter 1: The General Principles of Law in the Community Legal Order	1
1.1. Introduction	1
1.2. The general principles of law derived from the laws of Member States: An overview	4
1.3. Origins and development of general principles	6
1.4. The general principles as a source of Community law	9
1.4.1. The gap-filling function of general principles	9
1.4.2. Article 220[164]	11
1.4.3. The Court's evaluative approach	12
1.4.4. The influence of national laws	15
1.5. The function of general principles in the Community legal order	17
1.5.1. Aid to interpretation	17
1.5.2. Grounds of review	19
1.5.3. Breach of general principles and liability in damages	22
1.6. The scope of application of general principles	23
1.6.1. Implementing measures	23
1.6.2. Measures adopted under an express Treaty derogation	25
1.6.3. Measures which fall within the scope of Community law	25
1.6.4. The judgment in <i>First City Trading</i>	27
1.6.5. Public authorities bound by the general principles	29
1.6.6. The application of general principles against individuals	31
1.7. The general principles of law and the EC Treaty	32
1.7.1. The general principles in the hierarchy of Community rules	32
1.7.2. The general principles as rules of Treaty interpretation	33
1.8. The general principles as a source of international law	38
 Chapter 2: The Principle of Equality	 40
2.1. The principle of equality as a general principle of Community law	40
2.2. The principle of equality in the European Convention on Human Rights	43
2.3. The application of equality in Community law: General observations	44
2.4. Agricultural law	48
2.4.1. The <i>Royal Scholten-Honig</i> case	49
2.4.2. Comparability	51
2.4.3. Objective justification	53

2.4.3.1. Discretion of the Community institutions	54
2.4.3.2. Different treatment of products of different Member States	57
2.4.3.3. Similar treatment of dissimilar situations	59
2.4.3.3.1. Individual circumstances of producers	59
2.4.3.3.2. Similar treatment of products of different Member States	60
2.4.3.4. Other considerations	61
2.5. Equal treatment and harmonization of national laws	62
2.6. Staff cases	65
2.7. Prohibition of discrimination on grounds of sex and sexual orientation	68
2.7.1. Sex equality as a fundamental right	68
2.7.2. Beyond discrimination on grounds of sex	69
2.7.3. Positive discrimination	73
2.8. Article 12[6] EC: The prohibition of discrimination on grounds of nationality	77
2.8.1. The content of the prohibition	77
2.8.2. Scope of application	81
2.8.3. Article 12[6], second paragraph	87
 Chapter 3: The Principle of Proportionality: Review of Community Measures	 89
3.1. The principle of proportionality and its function in Community law	89
3.2. What does proportionality entail?	91
3.3. The development of the principle in Community law	93
3.4. Agricultural law	95
3.4.1. Market regulation measures: The 'manifestly inappropriate' test	95
3.4.2. Production control measures	97
3.4.2.1. Co-responsibility levy	98
3.4.2.2. Maximum guaranteed quantities	98
3.4.2.3. Individual quotas	99
3.4.2.4. The skimmed-milk cases	100
3.4.3. Establishment of a common organization of the market	101
3.4.4. Measures prohibiting or restricting the use of products or substances	102
3.4.5. Monetary compensatory amounts	103
3.4.6. Administrative measures: Forfeiture of deposits and securities	104
3.5. Protective measures in trade with third States	109
3.6. Flat-rate reductions	113
3.7. Sanctions	114

3.8. Harmonization of laws	117
3.9. Proportionality as a principle governing the exercise of Community competence	118
3.10. Overview of factors to be taken into account	122

Chapter 4: The Principle of Proportionality: Review of National Measures

124

4.1. From the rule of law to economic integration	124
4.2. Equality and proportionality: complementary or alternative patterns of integration?	126
4.3. The 'less restrictive alternative' test	133
4.3.1. Article 30[36]	133
4.3.2. Mandatory requirements	137
4.3.3. The limits of the less restrictive alternative test	138
4.3.4. Equivalence and duplication	142
4.4. Specific grounds	145
4.4.1. Public health	145
4.4.2. Public security	149
4.4.3. Consumer protection	154
4.5. Criminal penalties	157
4.6. The role of national courts	160

Chapter 5: Legal Certainty and Protection of Legitimate Expectations

163

5.1. Legal certainty	163
5.2. Protection of legitimate expectations	169
5.3. Non-retroactivity	170
5.3.1. The principle against retroactive application of laws	170
5.3.2. The conditions of retroactivity	172
5.3.3. Cases where the Court has annulled retroactive measures	174
5.3.4. Monetary compensatory amounts	176
5.3.5. Reinstatement of effects of a measure declared void	177
5.3.6. The criterion of foreseeability	179
5.3.7. Immediate application of the law	180
5.3.8. Maintenance of existing advantages and benefits	183
5.3.9. The presumption against retroactivity	185
5.4. Legitimate expectations arising from legislation	186
5.4.1. Protection of specific interests	186
5.4.2. Milk quotas	187
5.5. Legitimate expectations arising from conduct of the Community institutions	192

5.6. Revocation of beneficial administrative acts	194
5.7. Expectations of a non-commercial nature	195
5.8. Recovery of unduly paid charges	197
Chapter 6: Fundamental Rights	202
6.1. Introduction	202
6.2. Review of Community measures	204
6.2.1. The early years	204
6.2.2. From <i>International Handelsgesellschaft</i> to <i>Hauer</i>	205
6.2.3. The national reaction	208
6.2.4. What is a fundamental right?	209
6.2.5. Searching for the appropriate standard of protection	213
6.2.6. The right to property and the freedom to trade	215
6.2.7. Access to official documents	221
6.3. Review of national measures	225
6.3.1. Implementing measures	225
6.3.2. Measures derogating from the fundamental freedoms	228
6.3.3. Other measures falling within the scope of Community law	231
6.3.4. The <i>Grogan</i> case: Deference or intervention?	233
6.4. Community law and the European Convention on Human Rights	236
6.4.1. The status of the Convention in Community law	236
6.4.2. Opinion on the accession of the Community to the European Convention on Human Rights	241
Chapter 7: The Rights of Defence	244
7.1. Introduction	244
7.2. When does the right to a fair hearing apply?	249
7.3. Content of the right to a fair hearing	254
7.4. Fair hearing and confidentiality	257
7.5. Consequences of failure to observe	259
7.6. Competition proceedings	262
7.7. Anti-dumping procedures	267
7.8. Staff cases	269
7.9. The relationship between the right to a hearing and other procedural rights	271
7.10. The right to a hearing before national authorities	274
Chapter 8: The Principle of Effective Remedies in National Courts	276
8.1. The enforcement of Community rights in national courts	276
8.2. The conditions governing actions for the protection of Community rights	279

8.2.1. The dual requirements of equivalence and effectiveness	279
8.2.2. Limitation periods	281
8.2.3. Recovery of unduly paid charges: Other obstacles imposed by national law	287
8.3. Effective judicial review	290
8.3.1. Judicial review as a constitutional right	290
8.3.2. <i>Locus standi</i> before national courts	296
8.4. Compensation	297
8.5. Is a national court required to raise a point of Community law of its own motion?	299
8.6. Interim measures	303
8.6.1. Interim relief in national courts to protect Community rights	303
8.6.2. Interim relief in national courts to suspend national measures implementing Community regulations	304
Chapter 9: Principles Governing Liability in Damages	313
9.1. Community Liability: Article 288(2) [215(2)]	314
9.1.1. Administrative action	314
9.1.2. Legislative measures	315
9.1.2.1. Superior rule of law	316
9.1.2.2. Seriousness of the violation	317
9.1.3. Measures other than measures of economic policy	320
9.1.4. Liability for valid acts	321
9.2. The legal basis of state liability	321
9.3. The conditions of State liability: An overview	325
9.4. Failure to transpose a directive into national law	326
9.5. Breach of Community law as a result of action by the national legislature	330
9.6. A critique of the Court's reasoning	333
9.7. Breach of the Treaty by the national administration	335
9.8. Incorrect transposition of a directive	336
9.9. The right to reparation: The importance of national law	337
9.10. The aftermath of <i>Francovich</i>	338
9.10.1. Time limit	339
9.10.2. Retroactive application of implementing measures	340
9.11. The national reaction	342
9.11.1. The response of the Bundesgerichtshof	342

9.11.2. The response of the Divisional Court	343
9.12. Relationship with other remedies	347
10: Conclusions	349