

CONTENTS

Preface	xi
Abbreviations	xiii
Table of cases	xv
Table of Commission decisions	lxv
Table of UK statutes	lxvii
Table of European Community Treaties	lxviii
Table of European Community secondary legislation	lxxiii

PART ONE SOURCES, NATURE AND EFFECT OF EC LAW 1

1 From EEC to EU: a brief history of the development of the Union 3

Development of the Union — Changes to the EC Treaty made by the TEU —
The other two pillars of the Union — Conflicting attitudes towards the Union
— Possible future developments — Further reading

2 Scope of the EC Treaty: institutions and law-making powers 11

Scope of EC Treaty — Institutions of the EC — Parliament (Articles 137–44)
— Council (Articles 145–54) — Commission (Articles 155–63) — Budgetary
procedures — Court of Justice (Articles 164–8) — Court of Auditors —
Economic and Social Committee (Articles 193–8) — Committee of the
Regions — Law-making process — Subsidiarity — The future — Legislative
acts — Soft law — Sources of EC law — Further reading

3 Principles of direct applicability and direct effects: 38 State liability under *Francovich*

Treaty Articles — Regulations — Directives — Principle of indirect effects — Principle of State liability under *Francovich v Italy* — Decisions — Recommendations and opinions — International agreements to which the EC is a party — Conclusions — Further reading

4 Principle of supremacy of EC law 65

The problem of priorities — The Court of Justice's contribution — The member States' response — Further reading

5 General principles of law 82

Rationale for the introduction of general principles of law — Fundamental human rights — Rules of administrative justice — Equality — Subsidiarity — General principles applied to national legislation — Conclusions — Further reading

PART TWO ECONOMIC AND SOCIAL LAW OF THE EC: ASPECTS OF THE INTERNAL MARKET 103

Section A Free movement of goods 105

6 Introduction 105

7 Customs union 109

Common customs tariff — Prohibition between member States of customs duties on imports and exports and of all charges of equivalent effect

8 Prohibition of discriminatory taxation (Article 95) 116

'Similar' products — Taxation affording indirect protection to domestic products — Harmonisation of indirect taxation — Further reading

9 Elimination of quantitative restrictions on imports and 121 exports and all measures having equivalent effect (Articles 30–4)

Prohibition, as between member States, of quantitative restrictions on IMPORTS and of all measures having equivalent effect (Article 30) — Indistinctly applicable measures: the *Cassis de Dijon* test — Indistinctly applicable measures: a change of direction? — Prohibition, as between member States, of quantitative restrictions on EXPORTS and of all measures having equivalent effect (Article 34) — Further reading

10 Derogation from Articles 30–4 138 (Articles 36, 100a(4), 103, 108, 109, 115 and 223)

Public morality — Public policy — Public security — Protection of the health and life of humans, animals and plants — Protection of national treasures possessing artistic, historic or archaeological value — Protection of industrial and commercial property — Article 36 and the harmonisation of Community

rules — Minimum harmonisation — Derogation provisions other than Article 36 — Further reading

11 State monopolies of a commercial character (Article 37) 157

12 Restrictions on State aids (Articles 92–4) 159

Introduction — Structure of State aid provisions — Meaning of State aid — Policy of the Commission — Relationship between State aid and other provisions of the Treaty — Enforcement by individuals — Further reading

Section B Competition policy 170

13 Introduction 170

The structure of EC competition provisions — The theory of competition — EC competition policy — Enforcement of EC competition law — Public undertakings — Competition and third countries — Further reading

14 Article 85 177

Article 85: the general scheme — Article 85(1): elements of an infringement — Agreements between undertakings, decisions by associations of undertakings and concerted practices — Public authorities — Field of application of Article 85(1) — ‘Which may affect trade between member States’ — ‘Which have as their object or effect the prevention, restriction or distortion of competition within the common market’ — The *de minimis* principle — Agreements capable of preventing, restricting or distorting competition — The rule of reason — Article 85(3): exemption — Block exemptions — Comfort letters — Further reading

15 Article 86 205

The prohibition — Undertakings — The principle of dominance — The relevant product market (RPM) — Dominance in fact — The relevant geographical market — The temporal market — Abuse — Exploitative abuses — Anti-competitive abuse — The Merger Regulation — The abuse must affect trade between member States — Negative clearance and exemption — Relationship with Article 90(2) — Further reading

16 Enforcement of Articles 85 and 86: powers and procedures 224

Powers and duties of the Commission — Confidentiality — Sanctions — Concentrations — The role of national authorities — The role of individuals — Further reading

17 Articles 85 and 86 and industrial property rights 241

Section C Free movement of persons 244

18 Introduction: an outline of EC social policy 244

Freedom of movement: fundamental rights — The growing social dimension — Employment and social protection — Further reading

19 Free movement of workers 253

Personal scope — Material scope — 'Employment in the public service' (Article 48(4)) — Derogation on grounds of public policy, public security or public health (Article 48(3)) — Further reading

20 Freedom of establishment; freedom to provide services; freedom to receive services 277

Establishment — Services — Limitations on the freedoms — Professional qualifications — Mutual recognition — Professional rules of conduct — A new approach to harmonisation — Other barriers to freedom — Activities connected with the exercise of official authority — Freedom to provide services and the exercise of industrial property rights — Freedom to receive services — Education: vocational training — Scholarships and grants — Scope of equality principle — Harmonisation of company law — Further reading

21 Free movement of persons: limitation on grounds of public policy, public security or public health (Directive 64/221) 306

Public policy, public security, public health — Personal conduct — Procedural rights — Further reading

22 Social security 314

Personal scope — Principles — Material scope — Social assistance — Operation of the system — Applicable law: *lex laboris* — Principle of apportionment — Payment of benefits to persons resident outside the competent State: special provisions — Evaluation — Further reading

23 Sex discrimination 332

Introduction — Equal pay for equal work: Article 119 — Pay — Discrimination — Objective justification — Equal work — Equal pay for work of equal value (Directive 75/117) — Principle of equal treatment for men and women (Directive 76/207) — Derogation from the equal treatment principle (Articles 2(2), (3) and (4)) — Sex as determining factor (Article 2(2)) — Pregnancy and maternity (Article 2(3)) — Positive discrimination (Article 2(4)) — Direct effects of Directive 76/207 — Principle of equal treatment in matters of social security (Directive 79/7) — Principle of equal treatment in occupational pension schemes (Directive 86/378) — Equal treatment in self-employment (Directive 86/613) — Remedies — Further reading

PART THREE 367 REMEDIES AND ENFORCEMENT OF EC LAW

24 Introduction 369

Action before the European courts — Action before national courts — Remedies — Future impact on national legal systems — Further reading

Section A Action before national courts	383
25 The preliminary rulings procedure (Article 177)	383
Introduction — The procedure — Jurisdiction of the Court of Justice — Limitations on the Court's jurisdiction — Jurisdiction of national courts — Mandatory jurisdiction (Article 177(3)) — Discretionary or 'permissive' jurisdiction (Article 177(2)) — When will a decision be necessary? — <i>Acte clair</i> — Exercise of discretion — Exercise of mandatory jurisdiction — Effect of a ruling — Interim measures — Conclusions — Further reading	
Section B Action before the Court of Justice against member States	409
26 Enforcement actions (Articles 169 and 170, 93(2), 100a(4) and 225)	409
Action by the Commission (Article 169) — Failure to fulfil an obligation — Procedure — Defences — Effects of a ruling — Action by member States (Article 170) — Special enforcement procedures: State aids (Article 93(2)), breach of Article 100A(4) procedures (Article 100a(4), para. 3) and measures to prevent serious internal disturbances (Article 225) — Further reading	
Section C Action before the Court of Justice against Community institutions	420
27 Judicial review: introduction	420
28 Direct action for annulment (Article 173)	422
Reviewable acts — <i>Locus standi</i> ; who may bring an action? — Time-limits — The merits — Further reading	
29 Action for failure to act (Article 175)	445
Reviewable omissions — <i>Locus standi</i> — Procedure — Consequences of a successful action — Further reading	
30 Indirect review before the Court of Justice (Article 184)	455
Proceedings in which Article 184 may be invoked — Reviewable acts — <i>Locus standi</i> — Grounds of review — Consequences of a successful challenge — Further reading	
31 Community liability in tort, action for damages (Articles 178 and 215(2))	460
<i>Locus standi</i> — Elements of non-contractual liability — Wrongful acts or omissions — Liability for wrongful acts having legal effect — The <i>Schöppenstedt</i> formula — Individual acts — Damage — Causation — Relationship between Article 215(2) and other remedies — Concurrent liability — Relationship between Community liability and State liability under <i>Francovich</i> — Further reading	
Bibliography	477
Index	481