Contents

Preface xv
Acknowledgements xvii
How to use this book xviii
Table of cases xx
Numerical table of ECJ cases xxv
Table of treaties and other instruments xxviii
Table of panels xxxiv
List of abbreviations xxxvii
Latest development: the proposed Constitution
for Europe xxxviii

Chapter 1 Introduction 1

The European Union 1
The Council of Europe 3
The North Atlantic Treaty Organization 4
The World Trade Organization 4
The North American Free Trade Agreement 5
The United Nations 5
The focus of this book 6
Further reading 6

PART I THE EUROPEAN UNION

Further reading 18

Chapter 2 Origins 9

The beginning 9
The EEC and Euratom 11
An ever closer union 13
The Community and the Union 13
The Community today 14
A Community of interests 14
France 14
Germany 16
United Kingdom 16
The Netherlands 17
Other countries 18

Chapter 3 Legislative institutions 19

The Commission 19

Structure 21

Operation 23

Legislative powers 24

France, Italy and United Kingdom v. Commission 24

Germany, France, Netherlands, Denmark and United

Kingdom v. Commission 26

Assessment 28

The Council 29

Voting 30

Appointment of the Commission 35

The European Parliament 36

Composition 36

Activities and powers 38

Opinion: democracy and the EU 41

Further reading 43

Chapter 4 Legislative powers 44

Types of Community acts 45

Legislative procedures 47

The basic procedure 47

Roquette Frères v. Council 47

European Parliament v. Council (Road Transport

case) 49

The co-operation procedure 50

The co-decision procedure 50

The budgetary procedure 52

The problem of legal basis 53

Hauptzollamt Bremerhaven v. Massey-Ferguson 53

Commission v. Council (Tariff Preferences case) 55

Commission v. Council (Commodity Coding case) 57

Commission v. Council (Titanium Dioxide case) 58

Opinion: the Court's approach 60

Subsidiarity 60

Germany v. European Parliament and Council (Tobacco

Advertising case) 63

Further reading 67

PART II INTERNATIONAL ADJUDICATION

Chapter 5 Institutions: an overview 71

The International Court of Justice 71

Structure 71

Jurisdiction 72 Assessment 73 The World Trade Organization 74 Panel formation and procedure 74 Jurisdiction 75 How binding are panel reports? 76 Assessment 76 The European Union 76 Jurisdiction 79 Preliminary rulings 79 Direct actions 80 Assessment 83 The NAFTA 83 General procedure 85 Special procedures 86 Investment disputes 86 Financial services disputes 87 Anti-dumping and countervailing duty disputes 87 Assessment 89 Conclusions 90 Further reading 90

Chapter 6 The problem of compliance 92

The International Court of Justice 92
Nicaragua v. United States 92
Germany v. United States (LaGrand case) 96
The World Trade Organization 98
European Union v. United States (Helms-Burton Act case) 98

The European Union 100

Commission v. France (Second Lamb and Mutton case) 100

Commission v. Germany (road tax on heavy goods vehicles) 103

Commission v. France (acts of violence by private persons against agricultural imports) 106

Fines for non-compliance 111

The North-South gradient 112

A final word 113

Further reading 114

Chapter 7 Interpretation 115

Words and meanings 115

The Vienna Convention on the Law of Treaties 116

Interpretation and legislation 118
Germany v. United States (LaGrand case) 118
Parti Ecologiste "Les Verts" v. European
Parliament (Ecological Party (Greens) case) 121
European Parliament v. Council
("Chernobyl" case) 124
Conclusions 127
Further reading 128

PART III RELATIONS BETWEEN LEGAL SYSTEMS: INTERNATIONAL LAW, COMMUNITY LAW AND NATIONAL LAW

Chapter 8 The role of international law 131 International law 131 International organizations 132 Community law 133 International law and national law 135 United Kingdom 137 Attorney General for Canada v. Attorney General for Ontario (Labour Conventions case) 138 Giving effect to treaties 138 Treaties and the interpretation of legislation 138 Salomon v. Commissioners of Customs and Excise 139 Canada, Australia and New Zealand 140 United States 140 The conclusion of treaties 140 Direct effect 141 Foster and Elam v. Neilson 141 Conflicts between a treaty and US law 143 The WTO and the NAFTA 143 The Netherlands 144 Conclusions 144 Further reading 144

Chapter 9 The Community Treaties in the legal systems of the Member States 145

Community law 145

Van Gend en Loos v. Nederlandse Administratie der Belastingen 145 Amministrazione delle Finanze dello Stato v. Simmenthal (Simmenthal case) 152 Defrenne v. Sabena 153 Conclusions 156 Denmark 156

Carlsen v. Rasmussen (Danish Maastricht case) 157

Germany 157

Brunner v. European Union Treaty (German Maastricht case) 159

United Kingdom 160

Thoburn v. Sunderland City Council ("Metric Martyrs" case) 163

Conclusions 164

Further reading 165

Chapter 10 The direct effect of directives 166

The European Court makes its move 166

Van Duyn v. Home Office 166

France rebels 168

Minister of the Interior v. Cohn-Bendit 168

The European Court offers a compromise 170

Marshall v. Southampton and South West Hampshire Area

Health Authority 171

Foster v. British Gas 173

Indirect effect 174

A reconsideration? 175

Vaneetveld 175

Faccini Dori v. Recreb 178

CIA Security v. Signalson and Securitel 179

Lemmens 183

Unilever Italia v. Central Food 184

Further reading 187

Chapter 11 Enforcement of EU law in Member-State courts 189

General principles 189

Preliminary rulings 189

Maïseries de Beauce v. ONIC (ECJ) 191

Maiseries de Beauce v. ONIC (France) 193

Which courts may make a reference? 195

When may a court make a reference? 196

Borker 196

Which courts must make a reference? 197

Lyckeskog 197

When is a court obliged to make a reference? 199

CILFIT v. Ministry of Health 199

Interim measures 202

R v. Secretary of State for Transport, ex parte Factortame

(No. 2) 202

Zuckerfabrik Süderdithmarschen 204

Government liability in tort 206

Francovich v. Italy 207

Brasserie du Pêcheur v. Germany; R v. Secretary

of State for Transport, ex parte Factortame

(No. 4) 210

Further reading 214

PART IV THE COMMUNITY AND THE WORLD SYSTEM

Chapter 12 The conclusion of treaties 217 Legal personality 217 Procedure 219 Legal proceedings 220 Binding the Community and the Member States 220 Treaty-making powers 221 The United States 221 Missouri v. Holland 222 Canada 224 Attorney General for Canada v. Attorney General for Ontario (Labour Conventions case) 224 The European Community 227 Commission v. Council (European Road Transport Agreement (ERTA/AETR) case) 228 Laying-Up Fund for Inland Waterway Vessels 232 WTO case 234 Summary 234 The Commission goes too far 235 France v. Commission (Competition (Antitrust) Agreement case) 235

Chapter 13 International law in the community legal system 239
International agreements and Community
legislation 239

Assessment 238

Further reading 238

The GATT in Member-State courts 239
International Fruit Company v. Produktschap voor
Groenten en Fruit (Third International Fruit
case) 239
The GATT in the European Court 243
Fediol v. Commission 243
Nakajima v. Council 245
Germany v. Council (Bananas case) 246

The WTO Agreement 248

Portugal v. Council 248

International agreements and Member-State legislation 252

References for interpretation 252

Haegeman v. Belgium 252

Amministrazione delle Finanze dello Stato v. SPI (SPI case) 254

Sevince 255

Direct effect 256

Customary international law 256

Racke v. Hauptzollamt Mainz 256

Conclusions 261

Further reading 262

PART V FUNDAMENTAL RIGHTS

Chapter 14 The human-rights revolution 265
Characteristics of human rights 266
Where do human rights come from? 267
Fundamental rights in the United States 268
Fundamental rights in Germany 273
The European Convention on Human Rights 273
The European Court of Human Rights 276
Procedure 281
Direct effect 283
Territorial scope 284
Bankovic 284
Assessment 291
International adjudication or democracy? 293
Further reading 295

Chapter 15 The European Court and the

Bundesverfassungsgericht 297

The origin of the EC fundamental-rights doctrine 297 Stauder v. Ulm 297

Development of the new doctrine 299

Internationale Handelsgesellschaft case (ECJ) 300

Nold v. Commission 301

Hauer v. Land Rheinland-Pfalz 302

Internationale Handelsgesellschaft case (Germany) 307

Wünsche Handelsgesellschaft case 311

Later developments 313

Further reading 314

Chapter 16 Special topic: abortion 315

Roe v. Wade 315

First German Abortion case 324

Brüggemann and Scheuten v. Germany 325

Society for the Protection of Unborn Children v.

Grogan 329

Further reading 331

Chapter 17 The Human Rights Convention and the EU: a clash of two systems? 332

Conflicting treaties in international law 332
Conflicts between two Community Treaties 334
Treaties with non-member States 334
Commission v. Italy 336
Levy 337

The Community Treaties and the Human Rights
Convention 339
CFDT case 340
M & Co. v. Germany 342
Matthews v. United Kingdom 344
Further reading 352

PART VI DIRECT ACTIONS IN THE EUROPEAN COURT

Chapter 18 Remedies available to private litigants – I 355 Reviewable acts 356

Cimenteries v. Commission (Noordwijks Cement Accoord case) 357

IBM v. Commission 358

Standing for private applicants 361

Plaumann v. Commission 362

Binderer v. Commission 363

Sofrimport v. Commission 364

Codorniu v. Council 365

UPA v. Council 368

Further reading 371

Chapter 19 Remedies available to private litigants – II 372

Indirect challenge 372

Universität Hamburg 372

TWD 374

Failure to act 377

Lütticke v. Commission 378

Nordgetreide v. Commission 379

Lord Bethell v. Commission 380

Actions in tort 382

HNL v. Council and Commission (Second Skimmed Milk

Powder case) 383

Ireks-Arkady v. Council and Commission (Quellmehl and

Gritz case) 385

Amylum and Tunnel Refineries v. Council and Commission

(Second Isoglucose case) 386

Conclusion 388

Further reading 389

PART VII SUBSTANTIVE LAW - A TASTE

Chapter 20 The common market - I 393

The customs union 394

Customs duties 394

Sociaal Fonds voor de Diamantarbeiders (Diamond Workers

case) 395

Taxes on imports 395

Humblot (French Road Tax case) 397

Quantitative restrictions 398

Procureur du Roi v. Dassonville 398

Rewe-Zentral AG v. Bundesmonopolverwaltung für

Branntwein (Cassis de Dijon case) 400

Keck and Mithouard 401

Possible justifications 403

Harmonization directives 404

The Queen v. MAFF, ex parte Hedley Lomas 404

Conclusions 406

Further reading 406

Chapter 21 The common market – II 407

Free movement of persons 407

Employed persons (workers) 409

The right to enter 410

Antonissen 411

The right to reside 413

The right to remain 413

Self-employed persons 413

Providers and receivers of services 413

Other persons 414

Family rights 414

Immigration control 414

The public policy proviso 415
Conclusions 416
Non-discrimination and the right to work 416
Groener v. Minister for Education 417
Free movement (establishment) of companies 419
Centros 420
Further reading 423

Index 424