

DETAILED CONTENTS

Preface	xvii
Guide to the Companion Website	xix
Tables of Equivalences	xxi
Tables of Cases	xlix
European Court of Justice (Alphabetical)	xlix
European Court of Justice (Numerical)	xcvii
The General Court (Alphabetical)	cxl
The General Court (Numerical)	cxlvii
Opinions of the European Court of Justice	cliii
Commission decisions in competition cases (non-merger)	cliv
Commission decisions in merger cases	clvii
Judgments of the European Court of Human Rights	clviii
Judgments and Opinions of the International Court of Justice and the Permanent Court of International Justice	lclix
Cases from other jurisdictions	clx
Tables of Legislation	clxiii
Treaties, Agreements, Conventions, Charters and Protocols	clxiii
Secondary legislation	clxxxv
Regulations	clxxxv
Directives	cxcii
Decisions	ccci
National legislation	ccvi
Table of Abbreviations	ccxi
Glossary of Foreign Words	ccxix
1 The history of European integration	1
Summary	2
1.1 Introduction	3
1.2 Europe after World War II (WWII)	3
1.3 The Marshall Plan	5
1.4 The Schuman Plan	6
1.5 The Messina Conference	8
1.6 The European Atomic Energy Community (Euratom)	9

DETAILED CONTENTS

1.7	The European Economic Community (EEC)	9
1.8	The Luxembourg Accord	11
1.9	The Merger Treaty	12
1.10	The 1969 Hague Summit	12
1.11	The Community from 1970 to 1985 – years of stagnation	13
1.12	Relaunch of European integration	14
1.13	The Single European Act (SEA)	16
1.14	From the Single European Act to the Treaty of Maastricht (the Treaty on European Union (TEU))	19
1.15	The Treaty of Maastricht and the European Union	22
1.16	The Treaty of Amsterdam (ToA)	25
1.17	The Treaty of Nice (ToN)	27
1.18	The constitution that never was	28
1.19	The Treaty of Lisbon (ToL): the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)	29
1.20	Theories of integration	34
	Aide-mémoire	36
2	Values and objectives of the EU including the creation of an area of Freedom, Security and Justice (FSJ)	39
	Summary	39
2.1	Introduction	40
2.2	The values on which the EU is founded	40
2.3	Over-reaching and specific objectives of the EU	41
2.4	Specific objective: the creation of an area of Freedom, Security and Justice (FSJ)	41
2.5	Specific objective: the creation of the internal market	55
2.6	Specific objective: the establishment of Economic and Monetary Union (EMU)	56
2.7	Specific objective: the affirmation and promotion of the EU's values worldwide and the protection of EU citizens outside the EU	57
	Aide-mémoire	57
3	Membership of the EU	59
	Summary	59
3.1	Introduction: the principle of equality, sincere co-operation and solidarity	60
3.2	Specific procedures applicable to membership of the EU: admission, suspension and withdrawal procedures	61
3.3	Current and future membership of the EU	69
	Aide-mémoire	76
4	Competences of the EU	78
	Summary	78
4.1	Introduction	80
4.2	The principle of conferral	82
4.3	Exclusive competences of the EU	82

4.4	Competences shared between the EU and the Member States	87
4.5	Supportive competences of the EU	96
4.6	The "flexibility clause" contained in Article 352 TFEU	97
4.7	Exercise of the Union's competences by a limited number of Member States: the enhanced co-operation procedure	99
4.8	Supranationality v inter-governmentalism: Is the EU a federation?	103
	Aide-mémoire	106
5	The Common Foreign and Security Policy (CFSP)	109
	Summary	109
5.1	Introduction	111
5.2	Innovations introduced by the ToL aimed at improving the coherence of EU foreign policy	112
5.3	The principles and objectives of EU foreign action	114
5.4	The Common Foreign and Security Policy (CFSP)	115
5.5	The Common Security and Defence Policy (CSDP)	118
5.6	Assessment of the CFSP including the CSDP	124
	Aide-mémoire	124
6	The institutional framework of the EU	128
	Summary	128
6.1	Introduction	129
6.2	The European Council	132
6.3	The Council of the European Union (the Council)	135
6.4	The European Commission (the Commission)	143
6.5	The European Parliament (EP)	151
6.6	The Court of Justice of the European Union (CJEU)	165
6.7	The Court of Auditors (CoA)	176
6.8	The European Central Bank (ECB)	177
6.9	Advisory bodies of the EU: The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR)	177
6.10	Other institutions, bodies, offices and agencies	179
	Aide-mémoire	179
7	Legislative procedures in the EU	183
	Summary	183
7.1	Introduction	185
7.2	Legislative proposals	188
7.3	The ordinary legislative procedure: Article 294 TFEU	190
7.4	Special legislative procedures	192
	Aide-mémoire	196
8	Sources of EU Law	198
	Summary	198
8.1	Introduction	199
8.2	Primary sources of EU law	200

DETAILED CONTENTS

8.3	General principles of EU law	205
8.4	External sources which derive from international commitments of the EU	212
8.5	Secondary sources of EU law	213
8.6	EU acts not expressly mentioned in Article 288 TFEU	228
8.7	The contribution of the ECJ to the creation of sources of EU law: interpretation of EU law and the case law of the ECJ	229
	Aide-mémoire	233
9	Protection of Human Rights in the EU	235
	Summary	235
9.1	Introduction	237
9.2	The recognition by the ECJ of HRs as fundamental principles of EU law	238
9.3	Political acceptance of fundamental HRs: from the Treaty of Maastricht to the ToL	240
9.4	The Charter of Fundamental Rights of the European Union	241
9.5	The accession of the EU to the European Convention on Human Rights (ECHR)	250
9.6	The EU Agency for Fundamental Rights (FRA)	252
	Aide-mémoire	254
10	Preliminary rulings: Article 267 TFEU	256
	Summary	256
10.1	Introduction	258
10.2	The extension of the preliminary ruling procedure to the whole area of FSJ	260
10.3	The subject-matter jurisdiction of the ECJ under Article 267 TFEU	262
10.4	National courts and tribunals that can refer to the ECJ under Article 267 TFEU	264
10.5	Arbitration	268
10.6	The territorial jurisdiction of the ECJ under Article 267 TFEU	269
10.7	Preliminary rulings on the interpretation of EU law	270
10.8	Preliminary rulings on the validity of EU law	286
10.9	Interim relief	290
	Aide-mémoire	292
11	Direct applicability of EU Law	296
	Summary	296
11.1	Introduction	297
11.2	Direct applicability of the Treaties	298
11.3	Direct applicability of regulations	299
11.4	Direct applicability of directives	300
11.5	Direct applicability of decisions	303

11.6	Direct applicability of international agreements concluded between the EU and third countries, and between the EU and international organisations	303
	Aide-mémoire	304
12	Direct effect of EU Law	305
	Summary	305
12.1	Introduction	307
12.2	Direct effect of the Treaties	310
12.3	Direct effect of regulations	312
12.4	Direct effect of directives	312
12.5	Direct effect of decisions	335
12.6	Direct effect of international agreements concluded between the EU and third countries, and the EU and international organisations	336
	Aide-mémoire	338
13	Supremacy of EU Law	341
	Summary	341
13.1	Introduction	343
13.2	The establishment of the doctrine of supremacy of EU law by the ECJ	344
13.3	Supremacy of EU law over national constitutional law of the Member States	346
13.4	Supremacy of EU law over national law enacted prior and subsequent to a Member State's accession to the EU	347
13.5	Supremacy of EU law and international agreements entered into by a Member State	347
13.6	Supremacy of EU law and binding resolutions of the UN Security Council	349
13.7	Supremacy of indirectly effective EU law	351
13.8	Supremacy of EU law as a challenge to national courts	353
13.9	The principle of res judicata as the limit of the doctrine of supremacy of EU law	356
13.10	The principle of supremacy of EU law in the UK	360
13.11	The principle of supremacy in Member States other than the UK	361
	Aide-mémoire	363
14	Liability of a Member State for damage caused to individuals by an infringement of EU Law	365
	Summary	365
14.1	Introduction	366
14.2	The establishment of the principle of Member State liability	366
14.3	The development of the principle of Member State liability	367
14.4	A breach of EU law by a Supreme Court of a Member State	372
14.5	The application of the principle of State liability in the UK – the Factortame case	376

DETAILED CONTENTS

14.6	National procedural autonomy and the principle of Member State liability	378
	Aide-mémoire	383
15	Enforcement of EU Law – actions against Member States	385
	Summary	385
15.1	Introduction	387
15.2	Action against a Member State by the Commission under Article 258 TFEU	389
15.3	Action against a Member State by another Member State under Article 259 TFEU	413
15.4	Effect of a ruling confirming a failure of a Member State to fulfil its EU obligations	414
15.5	Pecuniary sanctions under Article 260(2) and (3) TFEU	415
	Aide-mémoire	418
16	Direct actions against EU institutions, bodies, offices and agencies	422
	Summary	422
16.1	Introduction	428
16.2	Action for annulment under Article 263 TFEU	429
16.3	Pleas of illegality under Article 277 TFEU	458
16.4	Action for failure to act under Article 265 TFEU	461
16.5	Action for damages: non-contractual liability of the European Union under Article 340(2) TFEU	466
	Aide-mémoire	483
17	An introduction to the internal market of the EU	487
18	The customs union and the prohibition of customs duties and all charges having equivalent effect to customs duties (CEE)	492
	Summary	492
18.1	Introduction – the definition of goods	493
18.2	Customs union, its external and internal aspects	494
18.3	Meaning of charges having equivalent effect to customs duties (CEE)	497
18.4	Categories of charges	500
18.5	Exceptions to the prohibition	503
	Aide-mémoire	508
19	Discriminatory internal taxation	511
	Summary	511
19.1	Introduction	512
19.2	Article 110(1) TFEU: the meaning of similar products	515
19.3	Direct, indirect and reverse discrimination	516
19.4	Article 110(2) TFEU: the meaning of products in competition	524
19.5	Unique products	527
19.6	The relationship between Article 110 TFEU and other provisions of the TFEU relating to the free movement of goods	528

19.7	Repayment of unlawful fiscal impositions	531
19.8	Harmonisation of taxation within the European Union	531
	Aide-mémoire	532
20	Quantitative restrictions (QRs) and measures having equivalent effect on imports and exports (MEQRs) – Articles 34 and 35 TFEU	535
	Summary	535
20.1	Introduction	538
20.2	The concept of “measures taken by the Member States”	539
20.3	Measures taken by EU institutions	544
20.4	The definition of QRs and MEQRs under Article 34 TFEU	544
20.5	Article 34 TFEU: the Dassonville formula	545
20.6	Article 34 TFEU: internal situations	547
20.7	Article 34 TFEU: national measures indistinctly applicable to domestic and imported goods – the Cassis de Dijon approach	550
20.8	Article 34 TFEU: types of measures having equivalent effect to quantitative restrictions	559
20.9	Article 34 TFEU: national measures relating to selling arrangements	574
20.10	New limits of Article 34 TFEU – Can the Keck approach survive?	584
20.11	Article 35 TFEU: Prohibition of QRs and MEQRs on exports	588
20.12	The Rapid Intervention Mechanism (RIM)	590
	Aide-mémoire	592
21	Article 36 TFEU	595
	Summary	595
21.1	Introduction	597
21.2	Public morality	599
21.3	Public policy and public security	601
21.4	Protection of the health and life of humans, animals and plants	603
21.5	Protection of national treasures possessing artistic, historic or archaeological value	608
21.6	Protection of intellectual property rights (IPRs)	608
	Aide-mémoire	627
22	Citizenship of the EU	632
	Summary	632
22.1	Introduction	634
22.2	The right of free movement and residence within the territory of the Member States	638
22.3	The right to participate in municipal elections and in elections to the EP	649
22.4	The right to diplomatic and consular protection	651
22.5	The right of EU citizens’ initiative	653
22.6	The right to petition the EP	653
22.7	The right to submit complaints to the EU Ombudsman	654
22.8	The right to use one’s own language in correspondence with EU institutions, bodies, offices and agencies	655

DETAILED CONTENTS

22.9	The evolving nature of EU citizenship	655
	Aide-mémoire	656
23	Free movement of workers	659
	Summary	659
23.1	Introduction	662
23.2	Vertical and horizontal direct effect of Article 45 TFEU	664
23.3	The scope of application <i>ratione personae</i> of Article 45 TFEU	665
23.4	The territorial scope of application of Article 45 TFEU	667
23.5	The concept of a worker	668
23.6	The family of a worker	672
23.7	The principle of non-discrimination and beyond	678
23.8	Rights granted to workers and their families under Regulation 1612/68	682
23.9	Entitlement to study finance for EU migrant workers	690
	Aide-mémoire	693
24	The right of establishment (Articles 43–48 TFEU) and the right to supply and receive services (Articles 49–55 TFEU)	696
	Summary	696
24.1	Introduction	699
24.2	Stages in the development of the right of establishment and of the right to provide services: from the sectorial harmonisation to the adoption of Directive 2006/123 on Services in the Internal Market	700
24.3	The distinction between the right of establishment and the right to provide services	712
24.4	Beneficiaries of the right of establishment and of the right to provide services	715
24.5	The right of establishment	717
24.6	The right to provide and receive services	737
	Aide-mémoire	752
25	Exceptions to the free movement of persons	756
	Summary	756
25.1	Introduction	758
25.2	The concept of “employment in the public service” and “the exercise of official authority”	758
25.3	Derogations justified on the grounds of public policy, public security and public health	762
25.4	Protection against expulsion for long-term residents and minors in a host Member State	767
25.5	Procedural safeguards under Directive 2004/38/EC	769
	Aide-mémoire	771
26	Introduction to EU Competition Law	773
	Summary	773
26.1	Introduction	774

26.2	The federal nature of EU competition law	777
26.3	Extraterritorial application of EU competition law	778
26.4	International co-operation in the field of competition law in the era of globalisation	778
26.5	Definition of an undertaking	780
26.6	The concept of activity which “may affect trade between Member States”	789
	Aide-mémoire	794
27	Article 101 TFEU	796
	Summary	796
27.1	Introduction	799
27.2	The application of Article 101 TFEU to vertical agreements	801
27.3	Agreements, decisions and concerted practices	802
27.4	Object or effect of an agreement, decision or a concerted practice	818
27.5	Prevention, distortion and restriction of competition	819
27.6	The evolution of the interpretation of Article 101(1) TFEU: the per se rule v the rule of reason?	824
27.7	From exemption to legal exception: Article 101(3) TFEU	838
27.8	Block exemption regulations	844
27.9	Civil consequences of breaches of Article 101(1) TFEU	849
	Aide-mémoire	850
28	Article 102 TFEU	854
	Summary	854
28.1	Introduction	856
28.2	The concept of dominance	858
28.3	Establishing dominance: market power, market definition, assessing the existence of market power	859
28.4	The concept of super-dominance	873
28.5	The concept of collective dominance	873
28.6	The concept of abuse	877
28.7	The categories of abuses	878
	Aide-mémoire	897
29	Merger control	902
	Summary	902
29.1	Introduction	904
29.2	The scope of application of the Merger Regulation (MR)	907
29.3	Substantial appraisal of concentration	913
29.4	The procedure under the MR	915
29.5	Enforcement and investigating powers of the Commission under the MR	919
29.6	The role of Member States in the enforcement of the MR	919
	Aide-mémoire	921
30	Enforcement of Articles 101 and 102 TFEU	924
	Summary	924

DETAILED CONTENTS

30.1	Introduction	926
30.2	Enforcement of Articles 101 and 102 TFEU by the Commission	928
30.3	Enforcement of Articles 101 and 102 TFEU before national courts and co-operation between the Commission and national courts	946
30.4	Enforcement of Articles 101 and 102 TFEU by national competition authorities (NCAs), co-operation between the Commission and NCAs, and co-operation between NCAs within the European Competition Network (ECN)	950
	Aide-mémoire	956
	Index	961