## Detailed contents

2.14 Conclusions

Abbreviations		XX	
Tab	le of case	es s	XXV
Tab	le of legis	lation	lxxix
DA	DTI		
PA	RTI		
	1 Eron	n EEC to EU: A Brief History of the Development of the Union	3
	1 1	Introduction	2
	1.2	Development prior to the Single European Act	∠ ∠
	1.3	Enlargement	_
		Kick-starting the internal market: the Single European Act	6
	1.5	Wider or deeper? Treaty on European Union	6
	1.6	Impact of the Treaty of Amsterdam	8
	1.7	Preparations for enlargement: Treaty of Nice	10
	1.8	Doomed: Treaty establishing a Constitution for Europe	11
	1.9	Democracy and effectiveness? Treaty of Lisbon	13
	1.10	Theories of integration	16
	1.11	Conflicting attitudes towards the Union	18
	1.12	Conclusions: the future	19
	2 Insti	tutions of the Union: Composition and Powers	21
	2.1	Introduction	21
	2.2	The institutions	22
	2.3	European Parliament (Article 14 TEU; Articles 223–34 TFEU)	23
	2.4	European Council (Article 15 TEU; Articles 235-6 TFEU)	29
	2.5	Council (Article 16 TEU; Articles 237-43 TFEU)	29
	2.6	Commission (Article 17 TEU; Articles 244–50 TFEU)	33
	2.7	Economic and Social Committee (Articles 301-4 TFEU)	38
	2.8	Committee of the Regions	38
	2.9	Budgetary procedures (Articles 313–16 TFEU)	39
	2.10	Court of Auditors (Articles 285–7 TFEU)	39
	2.11	Court of Justice of the European Union (Article 19 TEU; Articles 251–81 TFEU)	40
	2.12	Lisbon Treaty	44
	2.13	EU institutions outside the EU Framework	45

Introduction

7.2 Action before the European Union Courts

3	Scop	e of the EU Treaty: Laws and Lawmaking	49
	3.1	Introduction	49
	3.2	Conferred competence	49
	3.3	The scope of EU competence	51
	3.4	Types of competence	57
	3.5	Subsidiarity	58
	3.6	Basis for Union action	61
	3.7	Union acts	63
	3.8	Lawmaking process	67
	3.9	Problems in the lawmaking process—democracy, transparency and efficiency	77
	3.10	Sources of EU law	82
	3.11	Conclusions	82
4	Princ	ciple of Supremacy of EU Law	85
	4.1	Introduction	85
	4.2	The problem of priorities	85
	4.3	The Court of Justice's contribution	86
	4.4	The Member States' response	96
	4.5	Conclusions	105
5	Princ	ciples of Direct Applicability and Direct Effects	107
	5.1	Introduction	107
	5.2	Doctrine of direct effect	108
	5.3	Principle of indirect effect	132
	5.4	Conclusions	138
6	Gene	eral Principles of Law	140
	6.1	Introduction	140
	6.2	Overview of the Treaty framework and development of general principles	140
	6.3	Assessment	151
	6.4	The EU Charter of Fundamental Rights	151
	6.5	Relationship with ECHR	158
	6.6	Rules of administrative justice	162
	6.7	Equality	172
	6.8	Subsidiarity	174
	6.9	Effectiveness	174
	6.10	Conclusions	175
PART			
7	Fram	nework for Enforcement	179

179

180

	7.3	Action before national courts	183
	7.4	Conclusions	185
8	Rem	edies in National Courts	187
	8.1	Introduction	187
	8.2	General principles regarding national procedural rules	187
	8.3	Meaning of 'effectiveness'	190
	8.4	Principle of 'equivalence'	197
	8.5	Impact of EU law on national remedies	200
	8.6	Conclusions	204
9	State	Liability	206
	9.1	Introduction	206
	9.2	Principle of state liability under Francovich	206
	9.3	Conclusions	219
10	The I	Preliminary Ruling Procedure	221
	10.1	Introduction	221
	10.2	The text of Article 267 TFEU and an overview of the procedure	222
	10.3	The broad approach of the Court to Article 267 references	224
	10.4	The Court's refusal to give rulings in some cases	230
	10.5	National courts and the reference procedure	233
	10.6	What is the temporal effect of a ruling from the Court of Justice?	241
	10.7	The increasing workload of the Court of Justice: the need for reform	244
	10.8	Conclusions	244
11	Enfo	rcement Actions	247
	11.1	Introduction	247
	11.2	Outline of enforcement mechanism	248
	11.3	Purpose of enforcement actions	249
	11.4	Liability of Member States	249
	11.5	Procedure	250
	11.6	Burden of proof	254
	11.7	Common defences	254
	11.8	Consequences of a ruling and of a failure to comply	258
	11.9	Action by Member States (Article 259 TFEU)	261
	11.10	Special enforcement procedures: state aid, breach of Article 114(4) TFEU procedures and measures to prevent serious internal disturbances	262
	11.11	Conclusions	263
12	Direc	t Action for Annulment	265
	12.1	Introduction	265
	12.2	Judicial review: overview	266
	12.3	Locus standi: who may bring an action?	271
	12.4	Time limits	283

	12.5	The merits	284
	12.6	Consequences of a successful action	288
	12.7	Indirect review under Article 277 TFEU	289
	12.8	Action for failure to act: overview of the provisions	292
	12.9	Effect of definition of position	297
	12.10	Consequences of a successful action	298
	12.11	Conclusions	298
13	Unio	n Liability in Tort: Action for Damages	301
	13.1	Introduction	301
	13.2	Scope of non-contractual liability	301
	13.3	Locus standi	302
	13.4	Elements of non-contractual liability	303
	13.5	Wrongful acts or omissions	304
	13.6	Establishing an unlawful act	305
	13.7	Liability for lawful acts	310
	13.8	Damage	311
	13.9	Causation	313
	13.10	Impact of other possible causes of action	315
	13.11	Relationship between Article 340(2) TFEU and other remedies	316
	13.12	Concurrent liability	316
	13.13	Conclusions	318
RT I			
14	Intro	duction to the Internal Market	323
	14.1	Introduction	323
	14.2	Overview of the four freedoms	323
	14.3	Common themes in the free movement provisions	327
	14.4	Relationship between the freedoms	331
		The social dimension	332
	14.6	Completion of the internal market: an Area of Freedom, Security and Justice	333
	14.7	Conclusions	334
15	Harm	nonisation	336
	15.1	Introduction	336

336

338

346

353

15.2 The nature of harmonisation

15.4 Article 114 TFEU and harmonisation

15.3 Types of harmonisation

15.5 Conclusions

16	Custo	oms Union	354
	16.1	Introduction	354
	16.2	Common customs tariff	355
	16.3	Prohibition between Member States of customs duties on imports and	
		exports and of all charges of equivalent effect	355
	16.4	Prohibition of discriminatory taxation	361
	16.5	Harmonisation of taxation	369
	16.6	Conclusions	369
17	Free	Movement of Goods	371
	17.1	Introduction	371
	17.2	Outline of provisions	372
	17.3	Whose actions are caught?	373
	17.4	Types of act caught by Articles 34 and 35 TFEU	376
	17.5	Prohibition on quantitative restrictions (Article 34 TFEU)	377
	17.6	Prohibition on measures having equivalent effect to quantitative restrictions (Article 34 TFEU)	377
	17.7	Prohibition, as between Member States, of quantitative restrictions on exports and of all measures having equivalent effect (Article 35 TFEU)	394
	17.8	State monopolies (Article 37 TFEU)	397
	17.9	Relationship with other Treaty provisions	398
	17.10	Derogation from the free movement of goods	398
	17.11	Proportionality and disguised restriction on trade	401
	17.12	Grounds for derogation under Article 36 TFEU	402
	17.13	Conclusions	409
18	Free	Movement of Payments and Capital	412
	18.1	Introduction	412
	18.2	Outline of provisions relating to the free movement of capital	412
	18.3	Scope of the free movement of capital	413
	18.4	Exceptions to the free movement of capital	416
	18.5	Relationship with other freedoms	422
	18.6	Power to legislate in the field of free movement of capital	424
	18.7	Economic and Monetary Union (EMU)	425
	18.8	Conclusions	428
19	Citize	enship: Rights of Free Movement and Residence	430
	19.1	Introduction	430
	19.2	Overview	430
	19.3	Enforcement	432
	194	Personal scope: who benefits?	433

	19.5	Material scope: rights of access of the host Member State (CRD)	452
	19.6	Social rights	461
	19.7	Limitations	480
	19.8	Conclusions	491
20	Econ	omic Rights: Workers, Establishment and Services	493
	20.1	Introduction	493
	20.2	Overview and Treaty provisions	494
	20.3	Right of access to the market	495
	20.4	Test for the application of Articles 45, 49 and 56 TFEU	502
	20.5	Limitations on the application of Articles 45, 49 and 56 TFEU	509
	20.6	A rule of reason?	510
	20.7	Harmonisation	511
	20.8	The Services Directive (Directive 2006/123)	512
	20.9	Professional qualifications	517
	20.10	Establishment, services and companies	521
	20.11	Recipients of services	528
	20.12	Exceptions	537
	20.13	Conclusions	541
21	The A	Area of Freedom, Security and Justice: EU Justice and Home	
	Affai	rs Law and Policy	543
		Introduction	543
		Historical development	543
	21.3	The migration of TCNs and the need for EU powers	547
	21.4	Economic migration and integration	548
	21.5	The regulation of asylum: harmonisation or exclusion?	555
	21.6	Irregular migration and policing the EU border	557
	21.7	EU criminal justice policy	561
	21.8	Conclusions	563
22	Discr	imination	565
	22.1	Introduction	565
	22.2	Historical development	565
	22.3	TFEU provisions	567
	22.4	Legislation in force	569
	22.5	Overview of provisions on gender equality	571
	22.6	Pensions	574
	22.7	Meaning of 'worker'	576
	22.8	Equal pay for equal work	576
	22.9	Discrimination	579
	22.10	Grounds of discrimination: limited to sex	581

	22.11	Objective justification	582
	22.12	Recast Directive: Article 14(2): genuine and determining occupational	
		requirement	584
	22.13	Scope of the Recast Directive	585
	22.14	Directive 2010/41: equal treatment in self-employment	593
	22.15	Directive 2004/113: equal treatment of men and women in access to goods and services	594
	22.16	Directive 2000/43: equal treatment irrespective of racial or ethnic origin	595
	22.17	Directive 2000/78: equal treatment in employment and occupation	599
	22.18	Conclusions	614
23	EU C	ompetition Law	617
	23.1	Introduction	617
	23.2	The general scheme	617
	23.3	Abuse of a dominant position	639
	23.4	Enforcement of Articles 101 and 102	656
	23.5	Private enforcement	658
	23.6	Mergers and concentrations	658
	23.7	Conclusions	661
24	Brexi	t	663
	24.1	Introduction	663
	24.2	Article 50 TEU: notifying withdrawal	663
	24.3	Article 50: negotiating withdrawal	664
	24.4	The withdrawal agreement	665
	24.5	The Trade and Cooperation Agreement	667
	24.6	Conclusions	668
Further	Readi	ng	671
Index			675
HIGCA			0/5