

Contents

Part I Introduction

1	The Topic ‘Individual Rights in European Union Law’	3
	References	6
2	Individual Rights in EU Law: General Sub-Topics and Issues	9
2.1	Rights, Remedies and Procedures	9
2.1.1	Rights and Remedies	11
2.1.2	Procedural Autonomy	12
2.2	Judicial Protection	13
2.2.1	The Role of National Laws and Procedures	15
2.2.2	A Right in Its Own Right	17
2.3	Reconciling Protection and Effectiveness	17
2.3.1	Terminology	17
2.3.2	Applicable Test	20
2.3.3	Scope	22
2.3.4	Reparation and Sanctions	26
2.4	Individual Rights	27
	References	29
3	A Study of the Notion of EU Law Rights: Plan and Methodology . . .	31
	References	33
4	Genesis of the European Union Law Right	35
	References	40

Part II Rights and Their Application

5	Overview: Implementation, Interpretation and Application of Rules that Grant Individual Rights	43
6	National Implementation of Directives that Entail the Grant of Individual Rights	45

6.1	Clear and Binding Provisions of National Law	45
6.2	Inappropriate Implementation	46
6.3	Rights in the Implementation Context	50
	References	57
7	Interpretation of Provisions that Grant Individual Rights	59
7.1	Contextual Interpretation	59
7.2	Consistent Interpretation	60
7.3	Extensive Interpretation	61
7.4	Interpretive Competence	65
	References	67
8	Application of Norms that Grant Rights	69
8.1	Rights and Direct Effect	69
8.2	Rights and <i>Ex Officio</i> Application	73
8.2.1	The Court of Justice on the Ex Officio Issue	73
8.2.2	Rights and the Ex Officio Issue	78
	References	80
9	Summary of Part Two: Implementation, Interpretation and Application of Norms that Grant Rights	81
 Part III Rights and Their Protection		
10	Overview: Judicial Protection of Individual Rights	85
10.1	Rights and Remedies	85
10.1.1	Chronology of Rights	85
10.1.2	Deterrence and Reparation	87
10.1.3	Objective Law and Subjective Rights	88
10.2	Remedies' Effects on Rights	88
10.2.1	Effects of the Rules on Remedies	89
10.2.2	Effects of Obtained Remedies	90
	References	92
11	Primary Remedies	93
11.1	Declaratory Remedies	93
11.1.1	Judicial Review by the European Union Courts	93
11.1.2	Judicial Review by the Member States' Courts	110
11.1.3	Invalidity and Nullity of Individuals' Obligations	127
11.2	Coercive Remedies	135
11.2.1	Comparative Notes on Injunctions	135
11.2.2	European Union Secondary Legislation	138
11.2.3	Competences of the European Union Courts	139
11.2.4	Orders to Prevent or Correct Wrongs	139
11.2.5	Orders to Fulfil or Restore Rights	143
11.3	Interim Measures	147
11.3.1	The Right to Seek and the Power to Grant	147

11.3.2	Interim Relief Before the European Union Courts	148
11.3.3	Interim Relief Before the National Courts	149
	References	154
12	Secondary Rights and Remedies	157
12.1	Restitution	157
12.2	Remuneration	160
12.3	Disgorgement	161
12.4	Compensation and Reparation	161
12.4.1	Overview	161
12.4.2	European Union Liability	163
12.4.3	Member State Liability	172
12.4.4	Civil Liability	179
	References	185
13	Summary of Part Three: Rights and Remedies	187
 Part IV Rights and Their Scope		
14	Overview: Conferral of EU Law Individual Rights	191
15	Sources of Rights	193
15.1	Overview	193
15.2	Primary and Secondary Law	196
15.3	The Charter	200
15.3.1	Scope of Application	200
15.3.2	'Rights' v 'Principles'	203
15.4	General Principles	204
15.4.1	Legitimate Expectations	205
15.4.2	Non-discrimination/Equality	211
15.4.3	Unjust Enrichment	212
15.4.4	Duty of Diligence and Good Faith	213
15.5	Ascertainability	215
15.5.1	Content Derivable from the Legal Basis of the Right	215
15.5.2	Discretion	220
	References	224
16	Determination of Individual Rights	227
16.1	Overview	227
16.2	Wording, Rights and Duties	228
16.2.1	Express Rights	229
16.2.2	Reflexes of Duties	230
16.2.3	Rights a Contrario	230
16.3	Intentions, Rights and Interests	233
16.3.1	The Interpretive Aim	233
16.3.2	Alternative Aims in National Legal Systems	234

16.3.3	What Is the Court of Justice Looking for?	236
16.3.4	Individual Interests v the Common Good	241
16.4	Policies, Rights and Remedies	247
16.4.1	Consequences for the Right Holders	248
16.4.2	Consequences for the Effet Utile	249
16.4.3	Consequences for the Judiciary	252
16.5	Rights and Procedures	255
16.5.1	Overview	255
16.5.2	Rights from Procedures	256
16.5.3	Procedural Rights	264
16.5.4	Procedural Wrongs	269
	References	272
17	Functions and Types of Rights	275
17.1	Overview	275
17.2	Functions of Rights	275
17.3	Types of Rights	277
17.3.1	'Classical' Subjective Rights	277
17.3.2	Monetary Claims	278
17.3.3	Administrative Authorizations	281
17.3.4	Civil Freedoms	283
17.3.5	Social Rights	294
17.3.6	Rights Derived from General Principles	295
	References	295
18	Protective Purpose	297
18.1	Overview	297
18.2	Personal Scope	297
18.2.1	General Remarks	297
18.2.2	Provisions Prescribing Rights or Beneficiaries	302
18.2.3	Provisions Prescribing Duties or Addressees	306
18.3	Material Scope	311
	References	313
19	Extent of the Protection	315
19.1	Overview	315
19.2	Indirect Rights or Indirect Enforcement?	316
19.2.1	Helping to Protect the Direct Right Holder	316
19.2.2	Protecting Indirect Victims from Ricochet Effects	319
19.3	Qualifying Consequences	325
19.3.1	Fixing Boundaries of Liability	325
19.3.2	Direct Causal Link	325
19.4	Qualifying Infringements	333
19.4.1	Primary Remedies and Proportionality	334
19.4.2	Secondary Remedies and Seriousness	334
19.5	Contents of the Secondary Rights	335

19.5.1	Restitution	336
19.5.2	Compensation and Reparation	336
	References	338
20	Summary of Part Four: Conferral of EU Law Individual Rights . . .	341
	Reference	344
 Part V Concluding Remarks		
21	On the Nature of the European Union Law Right	347
21.1	On Subjective and Objective Rights	347
21.2	On Public Law and Private Law Rights	348
21.3	On Rights, Conditions, Facts and Qualifications	349
21.4	On Rights, Justice and Effectiveness	350
	References	351
22	On ‘Rights Language’	353
	References	354
23	On the Delineation of European Union Law	355
	References	357
	Table of Cases	359
	Table of European Union Legislation	377
	Index	393