

DETAILED CONTENTS

Preface	xv
Tables of Cases	xvii
European Court of Justice (Alphabetical)	xvii
European Court of Justice (Numerical)	lxv
European Court of First Instance (Alphabetical)	cvii
European Court of First Instance (Numerical)	cxiv
Opinions of the European Court of Justice	cxx
Commission's decisions in competition cases (Non-merger)	cxxi
Commission's decisions in merger cases	cxxiv
Judgments of the European Court of Human Rights	cxxv
Opinion of the European Commission of Human Rights	cxxvi
Judgments and Opinions of the International Court of Justice and the Permanent Court of International Justice	cxxvi
Cases from other jurisdictions	cxxvii
Tables of Legislation	cxxx
Treaties, Agreements, Conventions, Charters and Protocols	cxxx
Secondary legislation	cxlviii
Regulations	cxlviii
Directives	clvi
Decisions	clxiv
National legislation	clxvii
Table of Summits	clxxiii
Table of Abbreviations	clxxv
Glossary of Foreign Words	clxxxiii
1 The history of European integration	1
1.1 Introduction	3
1.2 The Marshall Plan	5
1.3 The Schuman Plan	7
1.4 The Messina Conference	9
1.5 The European Atomic Energy Community (Euratom)	10
1.6 The European Economic Community (EEC) now the European Community (EC)	11
1.7 The Luxembourg Accord	12

DETAILED CONTENTS

1.8	The Merger Treaty	13
1.9	The Hague Summit	14
1.10	The Community from 1970 to 1985 – years of stagnation	16
1.11	Relaunch of European integration	17
1.12	The Single European Act (SEA)	19
1.13	From the Single European Act to the Treaty on European Union	22
1.14	The Treaty of Maastricht (TEU) and the European Union	25
1.15	The Treaty of Amsterdam (ToA)	28
1.16	The Schengen acquis	30
1.17	The Treaty of Nice (ToN)	34
1.18	The constitution that never was	37
2	The Treaty of Lisbon	42
2.1	Introduction	43
2.2	The expanding membership of the EU – amendments proposed by the Treaty of Lisbon	46
2.3	The competences of the EU – amendments proposed by the Treaty of Lisbon	47
2.4	The institutional framework of the EU – amendments proposed by the Treaty of Lisbon	54
2.5	Legislative procedures in the EU – amendments proposed by the Treaty of Lisbon	58
2.6	Other important amendments proposed by the Treaty of Lisbon	59
2.7	Conclusions	61
3	The expanding membership of the European Union	64
3.1	Introduction	64
3.2	The membership of the EU	65
3.3	The territorial expansion of the EU	74
4	Competences of the EU	84
4.1	Introduction	85
4.2	Pillar 1 – Competences of the EC	87
4.3	Pillar 2 – Common Foreign and Security Policy (CFSP)	112
4.4	Pillar 3 – Police and Judicial Co-operation in Criminal Matters (PJCC)	121
4.5	Supranationality v inter-governmentalism: Is the EU a federation?	125
5	The institutional framework of the European communities and the European Union	131
5.1	Introduction	132
5.2	The European Council	136
5.3	The Council of the European Union (the Council)	139
5.4	The European Commission (the Commission)	146
5.5	The European Parliament (EP)	156
5.6	The Court of Justice of the European Communities (ECJ)	170

5.7	The Court of First Instance (CFI)	180
5.8	The Court of Auditors (CoA)	181
5.9	The European Economic and Social Committee (EESC)	182
5.10	The Committee of the Regions (CoR)	183
5.11	Other institutions and bodies	184
6	Legislative procedures in the Community	188
6.1	Introduction	189
6.2	Legislative proposals	190
6.3	The consultation procedure	192
6.4	The co-decision procedure: Article 251 EC	193
6.5	The assent procedure	198
6.6	The Council's power to legislate alone	198
6.7	The Commission's own powers of legislation and those delegated to it by the Council	199
6.8	The procedures relating to the social partners dialogue between management and labour: Articles 138 and 139(2) EC	201
7	Sources of Community law	204
7.1	Introduction	205
7.2	Primary sources of Community law	206
7.3	Secondary sources of Community law	213
7.4	Community acts not expressly mentioned in Article 249 EC	224
7.5	External sources which derive from international commitments of the Community	225
7.6	Complementary sources of Community law	226
7.7	General principles of Community law including the protection of human rights	231
7.8	The contribution of the ECJ to the creation of sources of Community law: interpretation of Community law and the case law of the ECJ	242
8	Preliminary rulings: Article 234 EC	248
8.1	Introduction	249
8.2	The subject-matter jurisdiction of the Community courts under Article 234 EC	253
8.3	National courts and tribunals that can refer to Community courts under Article 234 EC	255
8.4	The territorial jurisdiction of the Community courts under Article 234 EC	260
8.5	Preliminary rulings on the interpretation of Community law	261
8.6	Preliminary rulings on the validity of Community law	280
8.7	Interim relief	285
9	Direct applicability of Community law	290
9.1	Introduction	291
9.2	Direct applicability of the founding Treaties	292

DETAILED CONTENTS

9.3	Direct applicability of regulations	293
9.4	Direct applicability of directives	294
9.5	Direct applicability of decisions	296
9.6	Direct applicability of international agreements concluded between the Communities and third countries, and between the Communities and international organisations	297
10	Direct effect of Community law	299
10.1	Introduction	301
10.2	Direct effect of the EC Treaty	304
10.3	Direct effect of regulations	307
10.4	Direct effect of directives	307
10.5	Direct effect of decisions	325
10.6	Direct effect of international agreements concluded between the Community and third countries, and the Community and international organisations	326
11	Supremacy of Community law	331
11.1	Introduction	332
11.2	The establishment of the doctrine of supremacy of Community law by the ECJ	333
11.3	Supremacy of Community law over national constitutional law of the Member States	335
11.4	Supremacy of Community law over national law enacted prior and subsequent to the entry into force of the EC Treaty in a Member State	336
11.5	Supremacy of indirectly effective Community law	336
11.6	Supremacy of Community law and national courts	338
11.7	The principle of res judicata as the limit of the doctrine of supremacy of Community law	339
11.8	The principle of supremacy of Community law in the UK	342
11.9	The principle of supremacy in Member States other than the UK	343
12	Liability of a Member State for damage caused to individuals by an infringement of Community law	346
12.1	Introduction	347
12.2	The establishment of the principle of Member State liability	348
12.3	The development of the principle of Member State liability	349
12.4	A breach of EC law by a Supreme Court of a Member State	355
12.5	The application of the principle of state liability in the UK – the Factortame case	359
12.6	National procedural autonomy and the principle of Member State liability	361
13	Enforcement of Community law – actions against Member States	366
13.1	Introduction	368
13.2	Action against a Member State by the Commission under Article 226 EC	369

13.3	Action against a Member State by another Member State under Article 227 EC	392
13.4	Effect of a ruling confirming a failure of a Member State to fulfil its Community obligations	395
13.5	Actions under simplified procedures	398
14	Direct actions against Community institutions	403
14.1	Introduction: new developments relating to actions for annulment under Pillars 2 and 3 of the EU Treaty	409
14.2	Direct action for annulment under Article 230 EC	413
14.3	Pleas of illegality under Article 241 EC	444
14.4	Direct action for failure to act under Article 232 EC	448
14.5	Action for damages: non-contractual liability of the Community under Article 288(2) EC	453
15	An introduction to the internal market of the EU	475
16	The customs union	481
16.1	Introduction	482
16.2	External aspects of the customs union between the Member States of the EU	483
16.3	Internal aspects of the customs union between the Member States of the EU	484
17	The prohibition of customs duties and all charges having equivalent effect to customs duties (CEE)	486
17.1	Introduction	487
17.2	Meaning of charges having equivalent effect to customs duties (CEE)	487
17.3	Categories of charges	491
17.4	Exceptions to the prohibition	493
18	Discriminatory internal taxation	501
18.1	Introduction	502
18.2	Direct, indirect and reverse discrimination	503
18.3	Article 90(1) EC: the meaning of similar products	511
18.4	Article 90(2) EC: the meaning of products in competition	512
18.5	Unique products	513
18.6	The relationship between Article 90 and other provisions of the EC Treaty relating to the free movement of goods	514
18.7	Repayment of unlawful fiscal impositions	517
18.8	Harmonisation of taxation within the European Union	517
19	Quantitative restrictions (QRs) and measures having equivalent effect on imports (MEQRs) – Article 28 EC	521
19.1	Introduction	524
19.2	The concept of “measures taken by the Member States”	524

DETAILED CONTENTS

19.3	Measures taken by the Community institutions	529
19.4	The definition of quantitative restrictions and measures having equivalent effect	530
19.5	The Dassonville formula	531
19.6	Reverse discrimination	533
19.7	National measures indistinctly applicable to domestic and imported goods: the Cassis de Dijon approach	535
19.8	Types of measures having equivalent effect to quantitative restrictions	544
19.9	National measures relating to selling arrangements indistinctly applicable to domestic and imported goods	558
19.10	The Rapid Intervention Mechanism (RIM)	568
20	Quantitative restrictions and measures having equivalent effect on exports (MEQRs) – Article 29 EC	571
20.1	Introduction	571
20.2	National measures which apply without distinction to domestic products for export and domestic products for the national market	572
20.3	National measures which make a distinction between domestic products for export and for the domestic market	573
21	Article 30 EC	576
21.1	Introduction	577
21.2	Public morality	580
21.3	Public policy and public security	581
21.4	Protection of the health and life of humans, animals and plants	583
21.5	Protection of national treasures possessing artistic, historic or archaeological value	587
22	Citizenship of the EU	589
22.1	Introduction	591
22.2	The right of free movement and residence within the territory of the Member States	592
22.3	The right to participate in municipal elections and in elections to the EP	603
22.4	The right to diplomatic and consular protection	605
22.5	The right to petition the EP	607
22.6	The right to submit complaints to the EU Ombudsman	607
22.7	The evolving nature of EU citizenship	609
23	Free movement of workers	612
23.1	Introduction	615
23.2	Vertical and horizontal direct effect of Article 39 EC	616
23.3	The scope of application <i>ratione personae</i> of Article 39 EC	617
23.4	The territorial scope of application of Article 39 EC	618
23.5	The concept of a worker	619
23.6	The family of a worker	624

23.7	The principle of non-discrimination and beyond	628
23.8	Rights granted to workers and their families under Regulation 1612/68	632
23.9	Entitlement to study finance for EC migrant workers	640
24	The right of establishment (Articles 43–48 EC) and the right to supply and receive services (Articles 49–55 EC)	646
24.1	Introduction	649
24.2	Directive 2006/123/EC on services in the Internal Market	650
24.3	The distinction between the right of establishment and the right to provide services	657
24.4	Beneficiaries of the right of establishment and of the right to provide services	660
24.5	Stages in the development of the right of establishment and of the right to provide services	664
24.6	The right of establishment	668
24.7	The right to provide and receive services	685
25	Exceptions to the free movement of persons	705
25.1	Introduction	707
25.2	The concept of “employment in the public service” and “the exercise of official authority”	707
25.3	Derogations justified on the grounds of public policy, public security and public health	710
25.4	Protection against expulsion for long-term residents and minors in a host Member State	714
25.5	Procedural safeguards under Directive 2004/38/EC	716
26	Introduction to EC competition law	720
26.1	Introduction	721
26.2	The federal nature of EC competition law	723
26.3	Extraterritorial application of EC competition law	725
26.4	International co-operation in the field of competition law in the era of globalisation	727
26.5	Definition of an undertaking	730
26.6	The concept of activity which “may affect trade between Member States”	736
27	Article 81 EC	744
27.1	Introduction	747
27.2	The application of Article 81 EC to vertical agreements	749
27.3	Agreements, decisions and concerted practices	750
27.4	Object or effect of an agreement, decision or a concerted practice	764
27.5	Prevention, distortion and restriction of competition	766
27.6	The evolution of the interpretation of Article 81(1) EC: the per se rule v the rule of reason?	772
27.7	From exemption to legal exception: Article 81(3) EC	787

DETAILED CONTENTS

27.8	Block exemption regulations	793
27.9	Civil consequences of breaches of Article 81(1) EC	797
28	Article 82 EC	802
28.1	Introduction	804
28.2	The concept of dominance	806
28.3	Establishing dominance: market power, market definition, assessing the existence of market power	806
28.4	The concept of super-dominance	821
28.5	The concept of collective dominance	821
28.6	The concept of abuse	825
28.7	The categories of abuses	826
29	Merger control	847
29.1	Introduction	849
29.2	The scope of application of the Merger Regulation (MR)	853
29.3	Substantial appraisal of concentration	860
29.4	The procedure under the MR	861
29.5	Enforcement and investigating powers of the Commission under the MR	866
29.6	The role of Member States in the enforcement of the MR	866
30	Enforcement of Articles 81 and 82 EC	871
30.1	Introduction	874
30.2	Enforcement of Articles 81 and 82 EC by the Commission	876
30.3	Enforcement of Articles 81 and 82 EC before national courts and co-operation between the Commission and national courts	894
30.4	Enforcement of Articles 81 and 82 EC by national competition authorities (NCAs), co-operation between the Commission and the NCAs, and co-operation between the NCAs within the European Competition Network (ECN)	900
31	Intellectual property rights	912
31.1	Introduction	913
31.2	Intellectual property rights and the free movement of goods	915
31.3	Parallel imports of goods from outside the European Economic Area (EEA)	933
31.4	Intellectual property rights and Articles 81 and 82 EC	935
31.5	Harmonisation of intellectual property rights	942
	Index	951