Contents

Ta	able of Cases	xii
Ta	able of Legislation	XXV
	st of Abbreviations	xxvii
1.	Introduction: The Court of Justice, Constitutional Responsibility,	
1.0	and the Scope of EU Free Movement Law	1
	1. Introduction	1
		8
	 The Court of Justice and constitutional responsibility (a) The responsibilities of constitutional courts 	. 8
	(b) Constitutional responsibility and the Court of Justice	12
	(i) The nature of the EU legal order	13
	(ii) Normative perspectives	15
	(iii) Functional constitutionalism	16
	3. The significance and scope of free movement law	2.1
	(a) Significance: why free movement law?	21
	(b) Stages: restriction, justification, and proportionality	24
	(c) Scope: general approach and chapter map	29
•		2.1
2.	Coherence, Fragmentation, and the Free Movement Case Law	31
	1. Introduction	31
	2. Coherence and fragmentation	_ 31
	(a) From convergence to coherence	32
	(b) The meaning—and limits—of coherence and fragmentation	36
	3. Key drivers of fragmentation in EU free movement case law	41
	(a) Proliferation	41
	(b) The multiple—and unsettled—objectives of the internal market	43
	(c) Realizing the protection of fundamental rights	50
	(d) The structure of the Court	54
	4. Conclusion	62
3.	The Negative Scope of Free Movement Law: 'Who-Based' Exclusi	ons 63
	1. Introduction	63
	2. Definitional exclusion from the scope of the Treaty	64
	(a) Material scope	64
	(b) Personal scope: the basic framework	66
	(c) Personal scope: the substantive dimension	71
	(d) Is there a hierarchy of rights in free movement law?	74
	(i) The citizen-worker	74
	(ii) The human (rights) dimension	81
	(e) Definitional exclusion from the scope of the Treaty:	
	interim conclusions	84

	3.	Abuse of (EU free movement) rights	85
		(a) Abuse of rights in free movement law: the emergence of	0.6
		a concept	86
		(b) A widening gap between concept and impact?	90 94
		(c) Three points of discord (d) Abuse of rights, interim conclusions	98
	1	(d) Abuse of rights: interim conclusions The harizontal scans of free movement layer	100
	4.	The horizontal scope of free movement law (a) How horizontal? The different reaches of the Treaty freedoms	100
		(i) Collective regulatory impact	103
		(ii) Member State responsibility	103
		(iii) Full horizontal reach	107
		(b) Distilling the Treaty's objectives: the catalyst of discrimination	108
		(c) The curbing of private autonomy	110
	5.	Conclusion	113
4.	TI	ne Negative Scope of Free Movement Law: Cross-Border	
		onnections and the Significance of Movement	115
		Introduction	115
		What does movement mean and why does it matter (so much)?	116
		The incredible shrinking concept: does movement matter less?	123
	0.	(a) Admissibility of (internal) national disputes under	1 200
		Article 267 TFEU	124
		(b) The changing significance of movement in law	126
	4.	Standing at the constitutional crossroads: the specific case	
		of citizenship and purely internal situations	130
		(a) A changing matrix? Citizenship, movement, and	
		the protection of fundamental rights	131
		(b) Recalibrating the weight of movement	143
	5.	Conclusion	155
5.	Be	etween Negative and Positive Scope? The Principles of	
	D	e Minimis and Remoteness	157
	1.	Introduction	157
		Too little: is there a de minimis test in EU free movement law?	158
		(a) Free movement and de minimis: the case against	158
		(b) Challenges to the status quo	163
		(c) De minimis, remoteness, and conceptual spillage	169
	3.	Too far: the principle of remoteness	171
		(a) Is remoteness a principle or principles?	172
		(b) Hypothetical restrictions	173
	,	(c) The core test: too uncertain and indirect	177
	4.	Between negative and positive scope: renewing or reframing	
		the boundaries of Treaty-caught restrictions on movement?	185
	5	Conclusion	188

	•
Contents	X1
COMMENT	Al

6.	The Positive Scope of Free Movement Law: Discriminatory	
	Restrictions	189
	1. Introduction	189
	2. Restrictions: the basic framework	190
	3. Discriminatory restrictions	193
	(a) The significance of discrimination	194
	(b) Direct and indirect discrimination	198
	(c) Questions at the edge	199
	4. The limits of discrimination	205
7.	The Positive Scope of Free Movement Law: Non-Discriminatory	
	Restrictions	209
	1. Introduction	209
	2. Non-discriminatory restrictions and market access: emergence	
	and entrenchment	210
	(a) Emergence and evolution: market access and non-discriminatory	
	restrictions	211
	(b) Entrenchment: the use of goods case law	224
	3. From concept to principle: access to what, and when?	234
	(a) Defining access as a principle: what is it trying to achieve?	234
	(i) Definitional ambiguity	236
	(ii) Questions of overreach	242
	(b) Access as a principle: refining the limits	250
	4. Conclusion	256
Conclusion		257
Inc	dex	261

-