

Table of contents

Table of abbreviations	xxv
Table of cases	xxvii
Table of European legislation	lxxxiii
Table of other legislation	c
Table of equivalences	ciii
Map of the European Union	cxxv
1 Introduction	1
FURTHER READING	11
2 The constitutional base of the Union	12
The period up to the Single European Act 1986	13
The Single European Act 1986	14
The Treaty on European Union (the Maastricht Treaty) 1993	16
The Treaty of Amsterdam (signed June 1997, entered into force 1 May 1999)	16
The Nice Treaty (adopted December 2001, entered into force 1 February 2003)	17
The Treaty of Lisbon (signed December 2007, entered into force 1 December 2009)	19
Article 49 TEU	22
Article 50 TEU	24
Structure of the Treaties	25
FURTHER READING	40
SELF-TEST QUESTIONS	41
3 The institutions of the European Union	42
Introduction	42
The history of the institutions	44
The European Council	45
The Council	46
Decision-making procedure of the Council: voting procedures	52
The Luxembourg Accords and the 'Ioannina Compromise'	55
The Commission	57

The European Parliament	66
The Court of Justice of the European Union and the General Court	73
The Court of Auditors	73
The European Economic and Social Committee (EESC)	74
Committee of the Regions (COR)	75
The European Investment Bank	75
The European Central Bank	77
Access to documents	77
FURTHER READING	77
SELF-TEST QUESTIONS	78
The European Courts: composition, functions, jurisdiction; preliminary rulings	79
The Court of Justice	79
The General Court	85
Rules of Procedure	87
Judicial activism	88
Preliminary rulings	89
Jurisdiction of national courts	92
Discretionary and mandatory references	94
When should a national court refer?	95
Should national courts always make a reference?	97
Interim measures	100
Effects of preliminary rulings	101
The future of preliminary rulings	101
The scope of references for preliminary rulings	102
The EFTA Court	105
FURTHER READING	106
SELF-TEST QUESTIONS	107
The European Union legal system	108
Primary legislation	109
Public international law in EU Courts	117
Secondary Union legislation	120

Legislative procedures	126
Decision-making procedure of the Commission (comitology)	126
Legislative powers	133
FURTHER READING	138
SELF-TEST QUESTIONS	138
6 General principles of law and the Charter of Fundamental Rights	140
General principles—their role in the EU's legal order	140
Overarching principles of the Union legal order	146
Fundamental human rights in the Union	161
Principles of administrative justice and good governance	177
SUMMARY OF THE IMPACT OF BREXIT	184
FURTHER READING	184
SELF-TEST QUESTIONS	185
7 Doctrines of European Union law: direct effect, supremacy, state liability for breach of EU law and other remedies	186
(I) Direct applicability and direct effect	186
Direct effect of Treaty Articles	187
Direct effect of international agreements binding upon the EU	189
Direct effect of regulations	191
Direct effect of directives	191
Horizontal and vertical direct effect	194
Direct effect of the Charter	196
Other means of giving maximum effect to EU law	197
(II) Supremacy of EU law	200
The doctrine of supremacy	201
EU law in the United Kingdom	205
EU law in France	212
EU law in Germany	215
EU law in Italy	220
A sample of other Member States' issues with the supremacy doctrine	221
(III) State liability and other remedies in EU law	225
Introduction	226

	The principle of effective remedies	228
	The principle of equivalence	229
	Procedure	230
	The creation of a uniform Union remedy	234
	FURTHER READING	245
	SELF-TEST QUESTIONS	247
U	Public enforcement of EU law (Articles 258–260 TFEU); review of legality and damages (Articles 263, 265, 268, 277 and 340(2) TFEU)	249
	(I) Public enforcement of EU law	249
	Article 258 TFEU	250
	Consequences of the judicial phase: financial penalties under Article 260 TFEU	262
	Commission discretion	266
	The Article 259 TFEU procedure	267
	(II) Review of legality and damages	269
	Action for annulment: Article 263 TFEU	269
	Article 263 TFEU and Article 267 TFEU	286
	Actions for failure to act: Article 265 TFEU	288
	Contractual and tortious liability of the Union	291
	FURTHER READING	296
	SELF-TEST QUESTIONS	298
U	Free movement of goods (I): the abolition of customs duties and internal taxation	300
	Introduction	300
	The customs union	301
	Free movement of goods provisions in the TFEU	302
	Customs duties and common customs tariff	303
	Charges having equivalent effect to a customs duty	304
	Charges falling within the scope of internal taxation	309
	SUMMARY OF THE IMPACT OF BREXIT	319
	FURTHER READING	321
	SELF-TEST QUESTIONS	321

10	Free movement of goods (II): quantitative restrictions and measures having equivalent effect	322
	Prohibition of quantitative restrictions and measures having equivalent effect	322
	Grounds of derogation under Article 36 TFEU	329
	Confining <i>Dassonville</i> : developing the rule of reason	335
	Developing the list of mandatory requirements	337
	Principles of mutual recognition and equivalence	341
	Reaching the limits of Article 34 TFEU?	343
	<i>Keck</i> and certain selling arrangements	344
	Presentation requirements	348
	The conditions in <i>Keck</i> and the difficulties in finding a consistent rule	350
	The blurred distinction between Article 36 TFEU and 'mandatory requirements'	354
	Article 35 TFEU	357
	Directive 2015/1535/EU on the provision of information in the field of technical standards and regulations and rules on Information Society services	360
	SUMMARY OF THE IMPACT OF BREXIT	361
	FURTHER READING	361
	SELF-TEST QUESTIONS	362
11	Free movement of services: the freedom to provide and receive services	363
	The service economy and the law on services	363
	Non-discrimination and the direct effect of Article 56 TFEU	366
	The meaning of services	367
	Remuneration	368
	Economic services and other activities	369
	Services and cross-border activity	370
	The freedom to provide a service	371
	The freedom to receive services	371
	Services that move, where the provider and recipient do not	372
	Services Directive	373
	Limitations on services freedom	375

	Public interest grounds limiting the Article 56 TFEU freedom	376
	Health care provision and the receipt of services	381
	Proportionality and limitations on services	383
	Illegal services	385
	The focus on market access and the facilitation of services	388
	SUMMARY OF THE IMPACT OF BREXIT	390
	FURTHER READING	391
	SELF-TEST QUESTIONS	391
11	Free movement of persons and services and freedom of establishment	392
	Historical development of free movement of persons and freedom of establishment	393
	Free movement of workers	396
	Freedom of establishment	415
	Exceptions to the free movement of workers, establishment and services	426
	Special cases of free movement	435
	SUMMARY OF THE IMPACT OF BREXIT	451
	FURTHER READING	452
	SELF-TEST QUESTIONS	452
12	Citizenship and free movement rights: beyond economic links	453
	Introduction	453
	Facets of citizenship	459
	Political citizenship and European Citizens' Initiative	472
	Problems with citizenship	474
	SUMMARY OF THE IMPACT OF BREXIT	478
	FURTHER READING	478
	SELF-TEST QUESTIONS	479
13	Competition law and policy	480
	The aims of competition law	480
	Overview of the Treaty Articles	482
	Article 101 TFEU	485
	Article 102 TFEU: abuse of a dominant position	511

Application and enforcement of EU competition law	524
Private enforcement of the competition provisions	528
Merger control	528
SUMMARY OF THE IMPACT OF BREXIT	539
FURTHER READING	539
SELF-TEST QUESTIONS	541
15 Environmental law and policy	542
The framework for EU environmental law and policy	542
Environmental principles	552
European Union environmental law by sector	557
Trade in endangered species	564
Nature conservation	565
Environmental protection implementation and enforcement: access to environmental information and citizen participation in the environmental decision-making process	567
SUMMARY OF THE IMPACT OF BREXIT	574
FURTHER READING	575
SELF-TEST QUESTIONS	575
16 Discrimination law: from sex discrimination in employment to a general equality principle	577
Introduction	577
Article 157 TFEU and Treaty changes relevant to sex equality	580
Does Article 157 TFEU have direct effect?	588
Temporal effect of Article 157 TFEU	589
Secondary legislation	589
Time limits and the secondary legislation	597
Burden of proof	598
Direct and indirect discrimination and justification	601
Discrimination on grounds of age, disability, religion and sexual orientation: discrimination as a 'general principle'	612
SUMMARY OF THE IMPACT OF BREXIT	619
FURTHER READING	619
SELF-TEST QUESTIONS	620

17	<i>EU relations with third states and international organisations</i>	621
	Key TEU/TFEU provisions on external relations	621
	Competences	622
	Role of the Court of Justice of the European Union	624
	Procedure for concluding international agreements	625
	Provisional application of international agreements	625
	EU international agreements with third countries and international organisations	625
	Main types of agreements	626
	Soft law arrangements	627
	Relationships between the EU and a selection of neighbouring third countries	627
	The EU and multilateral agreements	635
	The EU in a selection of international organisations	635
	FURTHER READING	636
	SELF-TEST QUESTIONS	637
	Index	639