

Contents

<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxxv
1. Introduction	1
Constitutional moment	1
Subject matter and methodology	3
 Part I—Constitutional Foundations: Powers and Objectives	
2. Competence in matters of commercial policy	9
Introduction	9
<i>Opinion 1/75</i> and the notion of exclusivity	11
The rise of UNCTAD and the broad conception of ‘trade’	16
The bipolar world of <i>Commission v. Council</i>	18
The internal market and external trade	21
The Uruguay Round and Maastricht	23
The joint competence settlement of <i>Opinion 1/94</i>	26
Trade in goods	26
Trade in services	28
Transport	31
Intellectual property	32
Trade and foreign policy	35
Trade and environment	39
The Treaties of Amsterdam and Nice	48
The draft Constitution	53
Conclusions	55
 3. The doctrine of implied powers	 58
Introduction	58
The <i>AETR</i> case: implied v. conferred powers?	59
The parallelism approach of <i>Opinion 1/76</i>	64
The clarity of <i>Opinion 2/91</i>	69
The meanderings of <i>Opinion 1/94</i>	74
GATS	75
TRIPs	80
The limits of <i>Opinion 2/94</i>	82

The air transport cases	87
<i>Opinion 1/76</i> -type competence	89
<i>AETR</i> -type competence	92
Conclusions	94
4. Express and implied powers under the EC Treaty	101
Introduction	101
Association agreements	103
Development co-operation and other co-operation policies	106
Development co-operation prior to the TEU	106
The EC Treaty provisions on development co-operation	109
<i>Portugal v. Council</i>	111
The Treaty of Nice and the Convention on the Future of Europe	117
Environment	119
The internal market	121
Social policy	125
Economic and Monetary Union	126
Area of freedom, security, and justice	131
Introduction	131
Visas, asylum, and immigration	132
Judicial co-operation in civil matters	135
Conclusions	136
5. External powers under the Treaty on European Union	138
Introduction	138
CFSP objectives and powers	141
Interaction with EC external policies and powers	145
Treaty language and practice	145
Delimitation of competences	147
Consistency	152
International legal personality and power to conclude agreements	154
The EU and international legal personality	154
The concept of international legal personality	155
Treaty evolution and practice	157
Police and judicial co-operation in criminal matters	161
The draft Constitution	162
Conclusions	164
Part II—International Foundations: Treaties and International Law	
6. The life-cycle of international agreements	169
Introduction	169
Negotiations	170
Article 300 EC	170

Article 111 EC	174
Article 24 TEU	174
Signature and conclusion	175
Article 300 EC	175
Article 111 EC	181
Article 24 TEU	182
Cross-pillar mixity	184
Implementation, amendment, and adoption of	
Community positions	184
Suspension and termination	186
The draft Constitution	186
Conclusions	188
7. Mixed external action and membership of international organizations	190
Introduction	190
Cause and practice of mixed agreements	191
Competence	191
Practice and case law	192
Causes	198
Membership of international organizations	199
Membership and non-membership	199
International organizations and the autonomy of the Community legal order	206
The duty of co-operation	209
Problems and questions	215
Negotiation	215
Clarification of the division of powers	216
Ratification and conclusion	218
Representation and voting	219
Implementation, interpretation, and effect	220
International responsibility	222
Partial mixity	223
Conclusions	223
8. The courts and international agreements	226
Introduction	226
Requests for an Opinion	227
Preliminary rulings on questions of interpretation	233
General	233
Mixed agreements—first developments	236
Mixed agreements—case law on TRIPs	237
Review of legality	243
Review of an agreement	243
Review on grounds of violation of an agreement	246

Non-contractual liability	252
Enforcement actions	253
Methods of interpretation	256
Introduction	256
Early case law	258
Case law of the early 1990s	261
The EEA Agreement	264
Recent case law	267
Assessment	269
Conclusions	270
9. The legal effects of international law	274
Introduction	274
Direct effect	274
Agreements are binding	276
Transposition and implementation	277
Judicial application—direct and indirect effects	278
Structure of the chapter	280
A survey of the case law on direct effect	281
GATT and Yaoundé	281
Early case law on free-trade and association agreements	283
Further case law on co-operation, free-trade, and association agreements	288
GATT and WTO law	292
Other multilateral agreements	299
Grounds for recognizing or denying direct effect	301
The distinction between structure and nature of the agreement and direct effect of specific provisions	301
Structure and nature of GATT	302
Structure and nature of the WTO Agreement	303
The role of the political institutions	309
The contrast with other international agreements	311
A rights-based approach towards direct effect	312
Clear, precise, and unconditional	314
The principle of consistent interpretation	314
The principle of implementation	316
Origins	316
Rationale and further application	319
General international law	324
Early case law	324
<i>Opel Austria</i>	326
<i>Racke</i>	328

Assessment	332
Agreements binding on the Member States	333
First paragraph	334
Second paragraph	340
Conclusions	342

Part III—Policies

10. Common commercial policy	347
Introduction	347
Principles	348
The principle of uniformity	349
The principle of assimilation	352
Towards a principle of non-discrimination?	354
Instruments	355
Conventional and autonomous instruments	355
Common Customs Tariff	356
Generalized tariff preferences	359
Applying the CCT	360
General import regulations	361
Anti-dumping	362
Anti-subsidy	364
The trade barriers instrument	364
Export policy	365
Actors	365
Judicial review of commercial policy measures	367
General observations	367
Standing in anti-dumping cases	370
Standards of review	374
Bananas: a case-study in judicial review of commercial policy measures	381
The banana imports regime	381
The challenge to the banana regulation before the ECJ	382
Challenges in the context of GATT and in the WTO	386
Further case law by the EU courts—effects of	
GATT and WTO law	388
Cases in national courts—interim protection and fundamental rights	391
Conclusions	394
11. Common Foreign and Security Policy	396
Introduction	396
Instruments	398

Introduction and overview	398
Joint actions	399
Common positions	402
Common strategies	405
Other instruments	407
Budget	408
Actors	409
European Council	409
Council	410
Commission	415
Parliament	416
Court of Justice	417
The draft Constitution	418
Conclusions	420
12. Trade and foreign policy	422
Introduction	422
Economic sanctions	424
A short history	424
Interpretation and application	425
The legal status of UN Security Council resolutions	436
Protection of fundamental rights	444
Sanctions by the Member States	447
Export controls	453
Member State action	454
European Union action	460
Conclusions	463
13. Human rights policy	465
Introduction	465
Defining and developing the policy	467
The question of powers	470
Instruments and scope	473
Human rights clauses	475
Origins	475
Typology of human rights clauses	476
Application	479
Autonomous trade measures	481
Conclusions	483
<i>Index</i>	485