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THE SUBSTANTIVE LAW OF THE EU

The Four Freedoms

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CATHERINE BARNARD

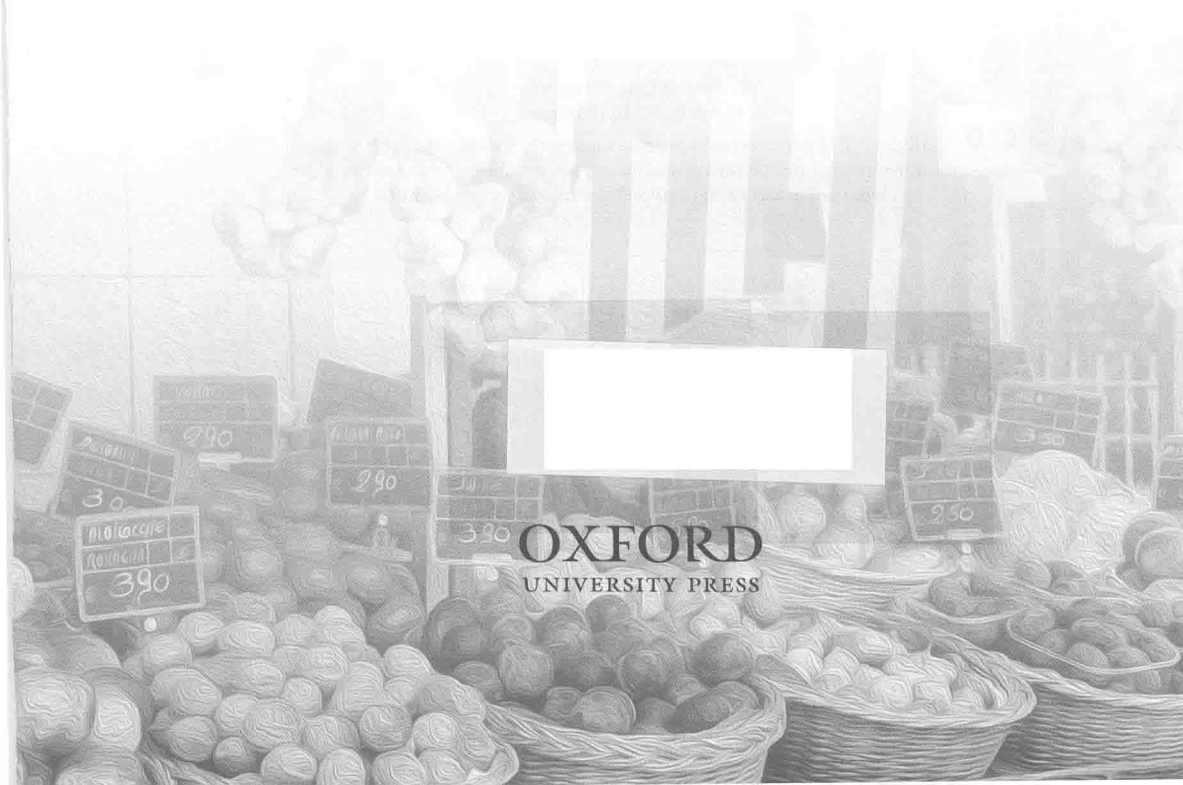
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THE FOUR FREEDOMS

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CATHERINE BARNARD



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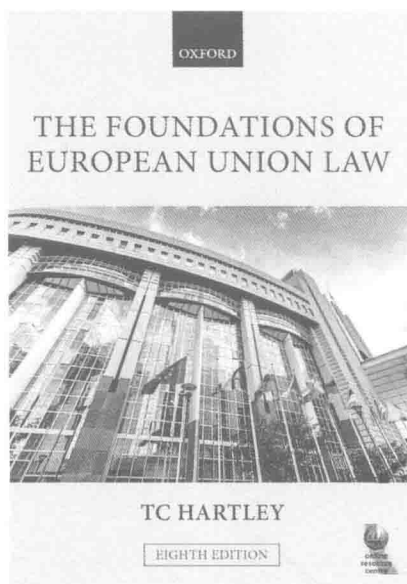
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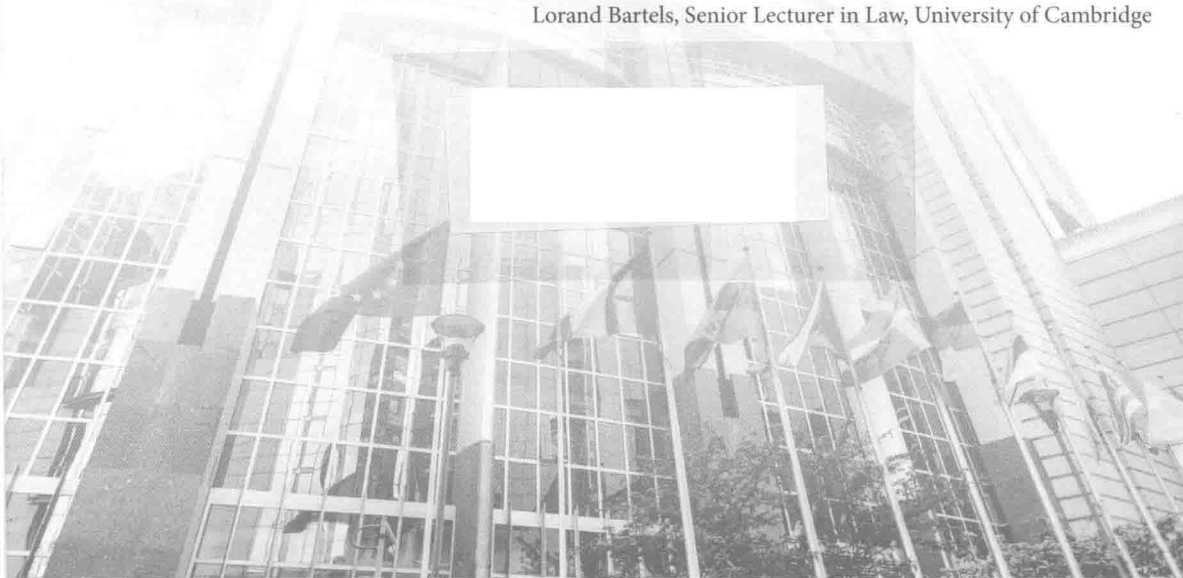
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NEW TO THIS EDITION

- The addition of further reading at the end of each chapter with an indication of coverage
- Restructuring of the material, especially in the section on persons, with a chapter on the free movement of workers and the self-employed, a chapter on free movement of services, and a separate chapter on the free movement of legal persons
- Coverage of the Intellectual Property Rights (IPR) case law in Chapter 6
- Detailed examination of the rapidly evolving case law on citizenship of the Union, including the controversial decision in *Dano* and its progeny

PREFACE

To entitle a book *The Substantive Law of the EU* inevitably offers a hostage to fortune. To do full justice to the sheer breadth of the subject requires several volumes, not just a single text. I am, therefore, more aware than most of the limitations imposed by producing a single volume. To keep the book within the bounds of the manageable, I have assumed that the reader has a basic knowledge of the institutional and constitutional structure of the EU. This allows this text to concentrate on an examination of the four freedoms, primarily in respect of the rules that regulate movement internally within the EU and, to a lesser extent, in respect of the rules that regulate movement from outside the EU. It is my hope that an understanding of the principles which underpin the four freedoms can be used as a guide to readers wishing to explore more closely specialist areas of EU substantive law. To assist with that process, I have used a number of free-standing case studies in the text, both to help illustrate the main points and to demonstrate how the general principles apply to more specialist areas.

When the first edition of the book was being written, the Constitutional Treaty was being negotiated. With the second edition, the French and Dutch 'no' votes had just put paid to the Constitutional Treaty. As the third edition was being put to bed, the Irish were persuaded to vote 'yes' to the Lisbon Treaty and, at the eleventh hour, the Czech President agreed to sign the text. The Treaty therefore came into force on 1 December 2009. The fourth edition was being written at a time when the economic crisis was still raging, when major constitutional change was on the cards to deliver full economic and monetary union for the Eurozone states. The fifth edition was being written as the UK Prime Minister, David Cameron, was renegotiating the terms of UK membership prior to a referendum on 23 June 2016. I have been able to incorporate some of the changes agreed by the Decision of the Heads of State or Government meeting within the European Council (the so-called 'New Settlement' deal) in this edition. However, just as the book was about to be printed the UK took the momentous decision to vote to leave the European Union. The consequences of this decision are only beginning to be explored. It will have major ramifications for the UK and for the rest of the EU for years to come.

For UK law students EU law remains and will remain important and relevant for three reasons. First, the UK is still a member of the EU and EU law continues to apply until withdrawal occurs. Second, the future relationship between the UK and the EU remains uncertain but many argue that the UK should have access to the single market which means benefiting from the four freedoms, the subject of this book. While the UK New Settlement deal will not now come into effect it might help to shape the UK's negotiations with the EU. So once again, a knowledge of the deal as well as the detailed content is important. Third, many UK law students will go on to work in law and accountancy firms as well as in business; they will need to know about EU law since the EU is the UK's largest trading partner.

So there is a strong case for studying—and enjoying EU law for UK and EU/EEA students alike.

At least this edition of the book has not witnessed a renumbering of the Treaty. I have used the Lisbon numbering throughout, even in respect of cases decided under the Rome or Amsterdam numbering. Occasionally I have used the Rome or Amsterdam numbering where I believe this helps to explain a particular decision of the Court or where the

language of the old Treaty provision is significantly different to its Lisbon content. I have also decided to refer to the 'European Union' and 'Union law' throughout, except when talking historically where the distinction between EU, EC, and EEC was significant. I have not changed titles of books and articles which use the pre-Lisbon terms. Finally, I have used the abbreviation 'TEU' after Treaty numbers to identify provisions of the Treaty on European Union after Lisbon, and 'EU' to identify provisions of the Treaty on European Union before Lisbon. 'TFEU' is used to identify provisions of the Treaty on the Functioning of the European Union, 'EC' to indicate provisions of the European Community Treaty, and 'EEC' to identify provisions of the European Economic Community Treaty.

I owe debts of gratitude to many people who helped me complete the various editions of this book. I am particularly grateful to those who have read and commented on various chapters for the different editions—Albertina Albors-Llorens, Bill Asquith, Cathryn Costello, Marise Cremona, Alan Dashwood, Simon Deakin, Michael Dougan, Julian Ghosh, Rosa Greaves, Elspeth Guild, Hannes Hofmeister, Clive Lewis, Steve Peers, Catherine Seville, Jukka Snell, John Tiley, Helen Toner, Takis Tridimas, Joanne Scott, Eleanor Spaventa, Stephen Weatherill, John Usher, and Carsten Zatschler—as well as to the various anonymous referees provided by OUP and students who have written to me with suggestions. Their contributions have been invaluable, though, of course, any errors remain my own. Generations of students have helped shape my ideas, together with friends and colleagues in EU law both at Cambridge and elsewhere, and I am grateful to them all.

Matthew Cotton, Kate Salkild, and Penelope Woolf at OUP patiently saw the first edition through to completion; Melanie Jackson the second edition; Alex Clabburn, Jeremy Langworthy, Jonathon Price, and Anya Aghdam the third; Abbey Nelms, Sarah Stephenson, Marie Gill, and Gill Clack the fourth; and Emily Hoyland, Joy Ruskin-Tompkins, Philip Moore, and Sarah Stephenson the fifth. I owe them all deep gratitude, especially for their patience and forbearance. However, my most heartfelt thanks go to my patient and understanding family, especially to my men—large, larger, and medium—and my smaller woman, who is very much in charge.

Cambridge, January 2016

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