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CASES AND MATERIALS ON  
EUROPEAN UNION LAW

Fourth Edition



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George A. Bermann, Jeffrey Atik,  
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# CASES AND MATERIALS ON EUROPEAN UNION LAW

Fourth Edition



by

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*To the memory of my father, Frank L. Goebel,  
and to the memory of my mother,  
Anne M. Goebel*

R.J.G.

*To Jerry, and to my children  
Doug & Jody, Margot & David, and Randy & Tricia*

E.M.F.

*To my wife, Sandra, and to the children:  
Sloan, Suzanne, Mark and Grant*

G.A.B.

*To Chiara and Matteo*

J.A.

*To Salma*

F.E.

*To Kirsten, and to the memory of Richard de le Court*

D.G.

# PREFACE

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The study of European Union (or EU) law has steadily gained importance in recent years. The EU today consists of twenty-eight Member States with a complex constitutional, political and legal structure. This casebook is intended to provide a basic understanding of the European Union and its predecessor, the European Community, including their governance and judicial institutions, goals, fields of action, achievements and aspirations, providing a foundation for further research, analysis and legal writing.

There are many valid reasons to study European Union law. We present here three of the most important ones. The most pragmatic of them is that the EU has long been the largest trading partner of the US, represents a major site of investment for US firms and is the principal site of overseas offices of American law firms. Indeed, its total Gross Domestic Product surpasses that of the US.

US law firms and international house counsel significantly benefit from a knowledge of Union structure, law-making processes and substantive law. European Union competition and trade law have long been staples of international practice. Today, the EU's harmonization of health, safety and technical standards, company, banking and securities law, environmental protection measures, and legislation in the field of employment law (to name just a sampling of sectors) represent matters of practical concern to American enterprises and their lawyers. The Economic and Monetary Union, with a single currency and a single monetary policy for a majority of EU States, is also of evident importance to the international business and legal world.

Second, European Union law is a rewarding field for comparative law study. This has long been true in competition and trade law, where academics and practitioners have found provocative points of comparison and contrast. A rich source of comparative study is also to be found in the EU programs for harmonization of laws. In some fields, the EU has been significantly influenced by US models, but still strikes certain different notes. In other fields, such as banking, company law, employment law, and anti-discrimination law, the EU has taken quite a different path from the US. Constitutional comparisons and contrasts between the US and EU enrich legal analysis on both sides of the Atlantic.

Third, European Union law provides a laboratory for study of law formation: the development of an entire legal system in modern times. The study includes its evolving constitutional framework, its institutions, substantive legislation and judicial law. The study of EU law presents a

constant interplay of policy and politics in an evolving federal legal system, one comprised of twenty-eight nations having many common features, but also quite diverse legal and political systems, demographics and interests.

Students who take a basic EU law course for any or all of these reasons will find the casebook of great value. The book covers virtually all major fields of European Union law (except for certain technical fields, such as agriculture, transport, energy and public procurement). The notes and questions are intended to facilitate reflection on how and why the EU institutions, and especially the Court of Justice and the General Court (formerly the Court of First Instance) have reached their legal and policy conclusions. The text and notes make frequent comparisons with US law. The authors hope that students will thereby achieve not only a solid comprehension of European Union law, but also one permitting critical evaluation.

The casebook follows traditional US teaching methods which give central attention to primary materials, notably the Treaty provisions, legislation and court judgments, inviting students to examine these materials critically through focused questions. Accordingly, Court judgments and EU legislation are subjected to the same kind of analytic review as US laws and Supreme Court opinions would be in a standard constitutional law casebook.

Study of the European Community, and now the European Union law, is complicated by its constitutional nature. Chapter 1 on the history provides the story of its evolution via the different Treaties. The initial European Economic Community, launched in 1958, its successor European Union and European Community, commencing Nov. 1, 1993, and the current European Union, which commenced Nov. 1, 2009, are all based on separate complex Treaties.

The text and the presentation of excerpted judgments in the subsequent chapters strives to make clear the precise Treaty basis for the evolution of the constitutional doctrines and the substantive law. Customarily, the relevant initial Treaty provision (European Economic Community Treaty, or EECT; European Community Treaty, or ECT, following the Treaty of Maastricht) is indicated, followed by the successor provision in the current Lisbon Treaty on European Union (Lisbon TEU) and its accessory Treaty on the Functioning of the European Union (TFEU).

The Selected Documents, which accompanies the casebook, should prove quite helpful in this regard. It contains the 2009 Lisbon TEU, TFEU and the ECT (as amended by the Treaty of Nice, effective Feb. 1, 2003). The Selected Documents also include the Charter of Fundamental Rights of the European Union, given Treaty legal force by the TEU, and certain key Protocols. Finally, there are a considerable number of secondary legislative

measures that are important to the understanding of relevant casebook text. The accessibility of these documents should be helpful in research and writing.

Clearly there is more material in this casebook than can be responsibly covered in a single semester course. There is a range of possibilities. Teachers who wish especially to emphasize constitutional and institutional issues will find that Part I of the book provides a comprehensive picture of the legal and institutional framework of the European Union, furnishing material for the start of the semester of teaching, thereby allowing constitutional and institutional themes to become the course's leitmotif. They may then assign substantive law chapters that best match their own and their students' interests. We recommend that any such substantive law selection include several chapters in Part II on the Common and Internal Market, one or two basic chapters on competition policy (from Part III), and one or two basic chapters on external relations and trade (from Part IV) or economic and monetary union and free movement of capital (from Part V).

Other teachers may wish to concentrate in a course or seminar on certain substantive aspects of Union law. Thus, a course might concentrate on the common market, or internal market, in Part II, perhaps with the addition of Part V on free movement of capital and the Economic and Monetary Union, and some chapters from Part VI. Another course may be centered on competition law, the topic of Part III, perhaps joined with selected materials from Parts I and II, e.g., the institutional framework, and free movement of goods and services including intellectual property. Any of the assorted substantive law topics in Part VI, environmental protection, consumer rights, social policy, equal employment rights, and jurisdiction and judgments, might appropriately be covered either in a basic course or advanced seminar.

We hope that the casebook will prove easy to use while also highly instructive, and that it will stimulate further study and scholarship in the ever-widening fields of European Union law.

RJG, EMF, GAB, JA, FE & DG



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# EU LAW RESEARCH GUIDE

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Throughout this case book you will encounter references to EU treaties, cases, legislation and policies which you may wish to research in greater detail. The European Union maintains a number of freely available websites designed to help you access this information which are provided here by Alison Shea,\* including:

- EUROPA

<http://www.europa.eu>

Europa is the main information portal for the European Union. This page is best for finding general information on how the European Union works, and will provide links to other relevant EU websites of interest, including EUR-Lex (see below). The “EU by topic” entries are particularly useful for providing an overview of the various activities of the EU; each topical entry will provide links to the relevant EU bodies which regulate that area, as well as links to the relevant legislation which controls in that area.

- EUR-LEX

<http://www.eur-lex.europa.eu>

EUR-Lex provides free and easy access to EU treaties, legislation, cases, preparatory documents, and international agreements to which the EU is a party. Although the main page features a full-text search option, if you already have a citation the easiest way to retrieve it is by entering the relevant information in the “Find results by” box directly below the full-text search box, making sure to select the relevant type of document for which you are searching. EUR-Lex also features separate pages for the following sources:

- Treaties

<http://eur-lex.europa.eu/collection/eu-law/treaties.html>

This page lists all current, founding and accession EU treaties and is the easiest way to retrieve the authentic full text of these treaties.

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\* Alison Shea, J.D., M.S.L.S., Catholic University School of Law, is the Reference Librarian/ Foreign & International Specialist, and Adjunct Professor of Law, Fordham Law School.

- Official Journal

<http://eur-lex.europa.eu/oj/direct-access.html>

The Official Journal is the official publication source of EU legislation and other official documentation. To retrieve an item in the Official Journal using its OJ cite, or to browse recent Official Journal issues in their entirety, use this page. Note that as of July 1, 2013, only the electronic version of the Official Journal (“e-OJ”) is considered authentic and has legal force.

- Summaries of EU Legislation

<http://eur-lex.europa.eu/collection/eu-law/eu-case-law.html>

This is an excellent place to start if you are unsure of the relevant legislation in any particular area of EU activity. Simply choose the topic that best fits your area and then browse through the relevant sub-topics to locate relevant commentary and citations to controlling legislation for that topic.

- CURIA

<http://www.curia.europa.eu>

Curia is the website for the Court of Justice of the European Union. Although cases can be retrieved using EUR-Lex, Curia provides a good basic search engine for accessing EU case law by party name or case number. It also provides an excellent advanced search feature which allows users to search by a variety of facets, including judge, nationality of the party, and subject matter. Note that as of 2012, the Court of Justice now publishes its cases using a “European Case Law Identifier” (ECLI) number; the *European Court Reports* (ECR) is no longer published. Cases can be retrieved using the ECLI in the advanced search menu.



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