

# European Tort Law

CEES VAN DAM

*Professorial Fellow*

*British Institute of International and Comparative Law  
London*

*Professor of Private Law  
Vrije Universiteit Amsterdam*

OXFORD

UNIVERSITY PRESS

# European Tort Law

CEES VAN DAM

*Professorial Fellow*

*British Institute of International and Comparative Law  
London*

*Professor of Private Law*

*Vrije Universiteit Amsterdam*

OXFORD  
UNIVERSITY PRESS

150.

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.  
It furthers the University's objective of excellence in research, scholarship,  
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi  
Kuala Lumpur Madrid Melbourne Mexico City Nairobi  
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece  
Guatemala Hungary Italy Japan Poland Portugal Singapore  
South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press  
in the UK and in certain other countries

Published in the United States  
by Oxford University Press Inc., New York

© C. van Dam, 2006

The moral rights of the author have been asserted  
Database right Oxford University Press (maker)

Crown copyright material is reproduced under Class Licence  
Number C01P0000148 with the permission of OPSI  
and the Queen's Printer for Scotland

First published 2006

All rights reserved. No part of this publication may be reproduced,  
stored in a retrieval system, or transmitted, in any form or by any means,  
without the prior permission in writing of Oxford University Press,  
or as expressly permitted by law, or under terms agreed with the appropriate  
reprographics rights organization. Enquiries concerning reproduction  
outside the scope of the above should be sent to the Rights Department,  
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover  
and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data

Data available

Library of Congress Cataloging in Publication Data

Dam, Cees van.

European tort law / Cees van Dam.

p. cm.

Includes bibliographical references and index.

ISBN-13: 978-0-19-929071-0 (alk. paper)

ISBN-10: 0-19-929071-7 (hardback : alk. paper)

1. Torts—Europe. 2. Liability (Law)—Europe. 3. Damages—Europe. I. Tide.

KJC1640.D36 2006

346.2403—dc22

2006005022

Typeset by Newgen Imaging Systems (P) Ltd., Chennai, India

Printed in Great Britain

on acid-free paper by  
Biddles Ltd., King's Lynn

ISBN 0-19-929071-7 978-0-19-929071-0

1 3 5 7 9 10 8 6 4 2

*To Reinoud Hesper*

## Preface

A preface is not destined to give an overview, only to emphasize what is essential in the prefacer's view. That is, in my view, the way in which the author searches, in chapter 6, the significance of a European *ius commune*, as it emerges from his examination of three major European liability systems, the English, the French, and the German. The concept goes back to the 12<sup>th</sup> century and was based mainly in Roman law. In the Middle Ages it was not conceived of as a system of rules enacted for a specific territory. This traditional *ius commune* disintegrated, however, with the rise of rationalism and nationalism in the 18<sup>th</sup> century during which some rulers wanted the identity of the nation supported by a national codification (at 602). Currently, harmonization and the search for a new *ius commune* are at the very heart of the European private law discourse. Sometimes, the author observes, the discussion seems to have divided the European academic world into believers and heathen. Unfortunately, in this discussion the question whether harmonization is desirable and for what purpose is less debated (at 603-2) as are the differences in attitude towards the codification phenomenon and the level of systematization in the various legal systems, and the academic involvement in it (at 607-1).

In light of these differences, the author examines basic issues in common and codified legal systems, such as the predominance of the judiciary over the legislator (607-2), as well as the characteristics of legal cultures behind the laws (608): the German fondness for legal order, the English fondness for traditions, and the French fondness for *grands principes*. He also examines the policy approaches of these systems based in diverging concepts of justice, *i.e.*, on what is considered to be just, fair and reasonable: English tort law is primarily about corrective justice and regulating conduct (609-2), French tort law is less focused on how someone should behave than on how someone can get damages whereas German law takes an intermediate position but being closer to French law in that both systems regard equality and solidarity, and victim protection, as the main concerns of tort law (609-3).

In this context the role of European law is a functional and fragmented approach, in so far as harmonisation is needed for the functioning of the internal market, even although the European Parliament and the Commission tend to favour a more systematic approach (at 611). However, is such a systematic harmonisation feasible and desirable? The answer of the author, focused on tort law, is that the case for harmonisation of tort laws is not (yet) made (at 612): '[T]he focus should not be on a Europe united in unity with pan-European rules but rather on a Europe united in diversity with harmonised rules where needed and diversity where possible' (at 613). That does not mean that the quest for a

---

## Preface

European *ius commune* should be abandoned. Quite the contrary: 'it has lifted academic discussions on private law to a European level. It has paved the way for a truly European legal scholarship rather than a national one. Comparative research has become core business and this has strongly stimulated the trans-boundary dissemination of information . . . The issue is to organize and stimulate this dynamic process but not to force it to provide results unless necessary. The results will need to be flexible and will therefore [depending on the area] to be diverse . . .' (ibid.). As the undersigned has written – a statement that is endorsed by the author: ' . . . convergence of the minds of practitioners, judges, professors and future lawyers is at least as important as convergence of laws . . .' (ibid.).

Convergence of minds can be achieved in many ways: through national and supranational courts comparing notes and learning from each other, through national regulators spreading good practices amongst themselves, through academics providing teaching and reading materials that can be used in universities and by practitioners throughout the Union. Surely, to promote convergence may take more time than to harmonize laws and will, undoubtedly, be less spectacular than to prepare comprehensive codification (for which there is no legal basis, though, in the European treaties). But, in the long run, convergence may present a more solid basis in order for European integration to take root in the Member States' legal systems, than codification that is not supported by a sufficient convergence of the minds, will ever be able to do. However, as the author points out (at 613), to make convergence succeed in the area of tort laws, there is a pressing need for a general discourse on policy issues in European tort law in order to explore dividing issues. Issues such as: what are the driving forces and prevailing ideas behind tort law, how much protection victims and potential tortfeasors need, and should the emphasis be on the freedom to act, or on protecting interests, on corrective justice or on distributive justice? The present book is an excellent start to encourage such a policy discourse and to make it fruitful. From that angle, it is excellent reading for a large audience of academics and practitioners, students and teachers within the European Union and beyond.

Walter van Gerven

Leuven, December 2005

## Acknowledgements

At the end of the day I wrote this book, the time has come to acknowledge the contributions of the people who supported me in various ways.

First of all, I feel very honoured that *Walter van Gerven*, Emeritus Professor at the Katholieke Universiteit Leuven, and former Advocate-General at the Court of Justice of the European Communities, wrote the preface to this book. I am inspired by the leitmotifs of his research that a European *ius commune* is already present but that we should continuously engage in uncovering it, guided by the vision that the law is not so much a technique but an instrument to build society.

I am very grateful to those who kindly and voluntarily offered to read drafts and to provide me with all kinds of useful suggestions and comments. My special thanks go to the interns at the British Institute of International and Comparative Law in London: *Mahir Gul* (University of Surrey), *Daniel Lonsdorfer* (Westfälische Wilhelms Universität Münster), *Henrik Schmidt-Horix* (Universitetet i Tromsø), and most particularly to *Changez Khan* (Université Paris 1, Panthéon-Sorbonne and King's College London) and *Michael Riegner* (Universität Passau).

I also received highly appreciated comments from *Gerrit Betlem* (Professor of European Law, University of Southampton), *Philippe Delebecque* (Professeur à l'Université Paris 1, Panthéon-Sorbonne), *Ken Oliphant* (Senior Lecturer, Cardiff University), and Professor Dr. *Gerhard Wagner* (Rheinische Friedrich-Wilhelms-Universität Bonn), as well as from anonymous Oxford University Press reviewers. All remaining mistakes in the book are mine.

Professor Dr. *Helmut Koziol*, Executive Director of the European Centre of Tort and Insurance Law in Vienna, kindly provided me with the proofs of the European Tort Law Yearbook 2004.

*Karuna Herrmann*, student at the School of Oriental and African Studies in London, took meticulous care for the case law references and the case law index. If any error has remained, it was mine.

I would also like to express my sincere gratitude to:

- the Law Faculty of the *Vrije Universiteit* in Amsterdam, which I joined in 1992 as a professor of private law; in 2002 its *Board* kindly and generously granted me a research year without which this book would never have seen the light of day;
- the *British Institute of International and Comparative Law* in London and its then director Dr. *Mads Adenas*, for the hospitality provided in 2002 and 2003 when I was writing the first drafts of the book;
- the *Max Planck Institut für ausländisches und internationales Privatrecht* in Hamburg and its directors Professor Dr. Dr. h.c. *Jürgen Basedow* and Professor Dr. Dr.

### *Acknowledgements*

h.c. mult. *Reinhard Zimmermann*, for the hospitality I enjoyed and for providing me the opportunity to use the best library in the area of comparative private law during the rainy spring of 2002 and the twelve subsequent days of golden sunshine in the autumn of 2005.

Finally, I would like to thank my lovely colleagues at the *Vrije Universiteit* in Amsterdam and at the *British Institute of International and Comparative Law* in London for their invaluable support.

This book has been updated until 1 July 2005. Exceptionally, further developments have been incorporated.

*London,*  
*December 2005*

## *List of Abbreviations*

|                  |                                                                 |
|------------------|-----------------------------------------------------------------|
| A                | Atlantic Reporter                                               |
| ABR              | Australian Bar Review                                           |
| AC               | Appeal Cases                                                    |
| AcP              | Archiv für die civilistische Praxis                             |
| AG               | Advocate General                                                |
| AJCL             | American Journal of Comparative Law                             |
| AJDA             | Les actualités juridiques—Droit administratif                   |
| al.              | alinéa                                                          |
| All ER           | All England Reports                                             |
| ALR              | Australian Law Reports                                          |
| App. Cas.        | Law Reports Appeal Cases, House of Lords                        |
| Ass. plén.       | Assemblée plénière de la Cour de Cassation                      |
|                  |                                                                 |
| B & Ad           | Barnewall & Adolphus' King's Bench Reports                      |
| BAG              | Bundesarbeitsgericht                                            |
| BGB              | Bürgerliches Gesetzbuch                                         |
| BGH              | Bundesgerichtshof                                               |
| BGHZ             | Entscheidungen des Bundesgerichtshofes in Zivilsachen           |
| BIICL            | British Institute of International and Comparative Law          |
| Bull. ass. plén. | Bulletin des arrêts de la Cour de cassation, assemblée plénière |
| Bull. civ.       | Bulletin des arrêts de la Cour de cassation, chambres civiles   |
| Bull. crim.      | Bulletin des arrêts de la Cour de cassation, chambre criminelle |
| BVerfG           | Bundesverfassungsgericht                                        |
| BVerfGE          | Entscheidungen des Bundesverfassungsgerichtes                   |
| BVerwG           | Bundesverwaltungsgericht                                        |
| BVerwGE          | Entscheidungen des Bundesverwaltungsgericht                     |
| BW               | Burgerlijk Wetboek                                              |
|                  |                                                                 |
| C                | Chronique                                                       |
| CA               | Court of Appeal                                                 |
| Cal.             | California Reporter                                             |
| Cam LJ           | Cambridge Law Journal                                           |
| CC               | Code civil                                                      |
| CE               | Conseil d'État                                                  |
| CFI              | Court of First Instance                                         |
| Ch               | Official Law Reports (Chancery Division)                        |

### *List of Abbreviations*

|              |                                                                                                          |
|--------------|----------------------------------------------------------------------------------------------------------|
| Ch. mixte    | Chambre mixte de la Cour de cassation                                                                    |
| Ch. réun.    | Chambres réunies de la Cour de cassation                                                                 |
| Civ.         | Cour de cassation (chambre civile)                                                                       |
| CLR          | Commonwealth law reports                                                                                 |
| CMLR         | Common Market Law Review                                                                                 |
| CMR          | Convention on the Contract for the International Carriage of Goods by Road                               |
| COM          | Document of the European Commission                                                                      |
| Com.         | Chambre commerciale de la Cour de cassation                                                              |
| comm.        | comments                                                                                                 |
| Cons. const. | Conseil constitutionnel                                                                                  |
| CP           | Common Pleas (Law Reports)                                                                               |
| Crim.        | Chambre criminelle de la Cour de cassation                                                               |
| D            | Recueil Dalloz et Sirey                                                                                  |
| DAR          | Deutsches Autorecht                                                                                      |
| DC           | Recueil critique Dalloz                                                                                  |
| DDR          | Deutsche Demokratische Republik                                                                          |
| DH           | Dalloz Hebdomadaire                                                                                      |
| DLR          | Dominion Law Reports                                                                                     |
| DM           | Deutschmark                                                                                              |
| DP           | Recueil périodique et critique Dalloz                                                                    |
| E & B        | Ellis & Blackburn's Queen's Bench Reports                                                                |
| EC           | European Community<br>Treaty establishing the European Community                                         |
| ECC          | Draft for a European Civil Code (Von Bar Group) (nr 603–1)                                               |
| ECHR         | European Convention on Human Rights                                                                      |
| ECJ          | Court of Justice of the European Communities                                                             |
| ECR          | Reports of Cases before the Court of Justice of the European Communities and the Court of First Instance |
| ECSC         | European Coal and Steel Community                                                                        |
| ECtHR        | European Court of Human Rights                                                                           |
| ECU          | European Currency Unit                                                                                   |
| EEA          | European Economic Area                                                                                   |
| EEC          | European Economic Community                                                                              |
| EFTA         | European Free Trade Association                                                                          |
| ELJ          | European Law Journal                                                                                     |
| ELR          | European Law Review                                                                                      |
| EMLR         | Entertainment and Media Law Reports                                                                      |
| ER           | English Reports                                                                                          |

*List of Abbreviations*

|            |                                                               |
|------------|---------------------------------------------------------------|
| ERPL       | European Review of Private Law                                |
| ETL        | Yearbook on European Tort Law (see Bibliography)              |
| EU         | European Union                                                |
| EWCA Civ.  | England and Wales Court of Appeal (Civil Division)            |
| Ex         | Court of Exchequer                                            |
|            |                                                               |
| F          | Federal Reporter                                              |
| Fam        | Official Law Reports: Family Division                         |
| FamRZ      | Zeitschrift für das gesamte Familienrecht                     |
| FLR        | Family Law Reports                                            |
| FRF        | Franc français                                                |
| FSR        | Fleet Street Reports                                          |
|            |                                                               |
| Gaz. Pal.  | Gazette du Palais                                             |
| GDR        | German Democratic Republic                                    |
| GG         | Grundgesetz                                                   |
| GmbH       | Gesellschaft mit beschränkter Haftung                         |
| GmbHG      | Gesetz betreffend die Gesellschaften mit beschränkter Haftung |
| GMO        | Genetically Modified Organism                                 |
|            |                                                               |
| Harvard LR | Harvard Law Review                                            |
| HL         | Judicial Committee of the House of Lords                      |
| HPfIG      | Haftpflichtgesetz                                             |
| HR         | Hoge Raad                                                     |
|            |                                                               |
| ICCPR      | International Covenant on Civil and Political Rights          |
| ICLQ       | International and Comparative Law Quarterly                   |
| ICR        | Industrial Cases Reports                                      |
| IR         | Informations rapides                                          |
| ITL        | Italian Lire                                                  |
|            |                                                               |
| JCP        | Juris-Classeur périodique (also: Semaine Juridique)           |
| JW         | Juristische Wochenschrift                                     |
| JZ         | Juristenzeitung                                               |
|            |                                                               |
| KB         | King's Bench                                                  |
| KG         | Kammergericht                                                 |
|            |                                                               |
| LG         | Landesgericht                                                 |
| LGR        | Local Government Reports                                      |
| LJ         | Lord Justice                                                  |

### *List of Abbreviations*

|                   |                                                               |
|-------------------|---------------------------------------------------------------|
| Lloyd's Rep.      | Lloyd's List Law Reports                                      |
| LQR               | Law Quarterly Review                                          |
| LR                | Law Reports                                                   |
| LT                | Law Times                                                     |
| LuftVG            | Luftverkehrsgesetz                                            |
| MDR               | Monatschrift für Deutsches Recht                              |
| Mod. Rep.         | Modern Reports                                                |
| Mod LR            | Modern Law Review                                             |
| N                 | Randnummer                                                    |
| NE                | North Eastern Reporter                                        |
| NJ                | Nederlandse Jurisprudentie                                    |
| NJW               | Neue Juristische Wochenschrift                                |
| NJW-RR            | NJW-Rechtsprechungsreport Zivilrecht                          |
| NPC               | New Practice Cases                                            |
| NZLR              | New Zealand Law Reports                                       |
| obs.              | observation                                                   |
| OJ                | Official Journal of the European Communities                  |
| OJ C              | Official Journal of the European Communities, Cases           |
| OJ L              | Official Journal of the European Communities, Legislation     |
| OJLS              | Oxford Journal of Legal Studies                               |
| OLG               | Oberlandesgericht                                             |
| P                 | Pacific Reporter                                              |
| PACS              | Pacte civil de solidarité                                     |
| PC                | Judicial Committee of the Privy Council                       |
| PETL              | Principles of European Tort Law (Vienna Group) (nr 603–1)     |
| PIBD              | Propriété industrielle, Bulletin documentaire                 |
| PIQR              | Personal Injuries and Quantum Reports                         |
| PNLR              | Professional Negligence and Liability Reports                 |
| QB                | Queen's Bench                                                 |
| QBD               | Queen's Bench Division                                        |
| RabelsZ           | Rabels Zeitschrift                                            |
| rapp.             | rapporteur                                                    |
| Rb.               | Rechtbank                                                     |
| Rec. CE           | Recueil des décisions du Conseil d'État (also: Recueil Lebon) |
| Rec. cons. const. | Recueil des décisions du Conseil constitutionnel              |

*List of Abbreviations*

|                    |                                                      |
|--------------------|------------------------------------------------------|
| Req.               | Chambre des requêtes de la Cour de cassation         |
| Resp. civ. et ass. | Responsabilité civile et assurances                  |
| RG                 | Reichsgericht                                        |
| RGAR               | Revue générale des assurances et des responsabilités |
| RGZ                | Entscheidungen des Reichsgerichtes                   |
| RIDC               | Revue de droit international et de droit comparé     |
| RJDA               | Revue de jurisprudence du droit des affaires         |
| RM Themis          | Rechtsgeleerd Magazijn Themis                        |
| RPC                | Reports of Patent, Design and Trade Mark Cases       |
| RTD civ.           | Revue trimestrielle de droit civil                   |
| RTD pub.           | Revue trimestrielle de droit public                  |
| RTR                | Road Traffic Reports                                 |
| RvdW               | Rechtspraak van de Week                              |
| S                  | Recueil Sirey                                        |
| SC                 | Session Cases                                        |
| SI                 | Statutory Instrument                                 |
| SLT                | Scottish Law Times                                   |
| SO                 | Southern Reporter                                    |
| Soc.               | Chambre sociale de la Cour de cassation              |
| Somm.              | Sommaires                                            |
| StGB               | Strafgesetzbuch                                      |
| StVG               | Straßenverkehrsgesetz                                |
| TBBR               | Tijdschrift voor Belgisch Burgerlijk Recht           |
| TC                 | Tribunal des Conflits                                |
| TGI                | Tribunal de grande instance                          |
| TLR                | Times Law Reports                                    |
| Tulane LR          | Tulane Law Review                                    |
| UK                 | United Kingdom                                       |
| UKHL               | House of Lords (United Kingdom)                      |
| UmweltHG           | Umwelthaftungsgesetz                                 |
| UWG                | Gesetz gegen unlauteren Wettbewerb                   |
| VAT                | Value Added Tax                                      |
| VersR              | Versicherungsrecht                                   |
| VLR                | Victorian Law Reports                                |
| VR                 | Verkeersrecht                                        |
|                    | Victorian Reports                                    |

*List of Abbreviations*

|         |                                                      |
|---------|------------------------------------------------------|
| WAM     | Wet Aansprakelijkheidsverzekering Motorrijtuigen     |
| WHG     | Wasserhaushaltsgesetz                                |
| WLR     | Weekly Law Reports                                   |
| Yale LJ | Yale Law Journal                                     |
| ZEuP    | Zeitschrift für Europäisches Privatrecht             |
| ZfS     | Zeitschrift für Schadensrecht                        |
| ZGB     | Zivilgesetzbuch                                      |
| ZIP     | Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis |
| ZPO     | Zivilprozessordnung                                  |

# Table of Cases

## EUROPEAN COMMUNITY

### European Court of Justice

|                                                                                                                                                                     |              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| ECJ 5 February 1963, Case 26/62, ECR 1963, 1 ( <i>Van Gend en Loos v Nederlandse Administratie der Belastingen</i> ) .....                                          | 204-2        |
| ECJ 14 July 1967, Cases 5, 7, 13-24/66, ECR 1967, 245 ( <i>Kampffmeyer v Commission</i> ) .....                                                                     | 1106         |
| ECJ 6 October 1970, Case 9/70, ECR 1970, 825 ( <i>Franz Grad v Finanzamt Traunstein</i> ) .....                                                                     | 204-3        |
| ECJ 17 December 1970, Case 11/70, ECR 1970, 1125 ( <i>Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel</i> ) ..... | 203-2        |
| ECJ 28 April 1971, Case 4/69, ECR 1971, 325 ( <i>Lütticke v Commission</i> ) .....                                                                                  | 1106         |
| ECJ 2 December 1971, Case 5/71, ECR 1971, 975 ( <i>Zuckerfabrik Schöppenstedt v Council</i> ) .....                                                                 | 1805-1       |
| ECJ 13 June 1972, Cases 9 and 11/71, ECR 1972, 391 ( <i>Compagnie d'Approvisionnement and Grands Moulins de Paris v Commission</i> ) .....                          | 1806         |
| ECJ 2 July 1974, Case 153/73, ECR 1974, 675 ( <i>Holtz &amp; Willemsen v Council</i> ) .....                                                                        | 1106         |
| ECJ 4 December 1974, Case 41/74, ECR 1974, 1337 ( <i>Van Duyn v Home Office</i> ) .....                                                                             | 204-2        |
| ECJ 12 December 1974, Case 36/74, ECR 1974, 1405 ( <i>Walrave and Koch v Association Union cycliste internationale and Others</i> ) .....                           | 205-3        |
| ECJ 22 January 1976, Case 60/75, ECR 1976, 45 ( <i>Russo v Aima</i> ) .....                                                                                         | 205-3        |
| ECJ 8 April 1976, Case 43/75, ECR 1976, 455 ( <i>Defrenne v Sabena</i> ) .....                                                                                      | 204-2, 205-3 |
| ECJ 21 May 1976, Case 26/74, ECR 1976, 677 ( <i>Roquette v Commission</i> ) .....                                                                                   | 1106         |
| ECJ 16 December 1976, Case 33/76, ECR 1976, I-1989 ( <i>Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland</i> ) .....               | 205-2, 1217  |
| ECJ 16 December 1976, Case 45/76, ECR 1976, I-2043 ( <i>Comet BV v Produktschap voor Siergewassen</i> ) .....                                                       | 205-2, 1217  |
| ECJ 25 May 1978, Joined Cases 83/76, 94/76, 4/77, 15/77 and 40/77, ECR 1978, I-1209 ( <i>Bayerische HNL and Others v Council and Commission</i> ) .....             | 206-1, 1806  |
| ECJ 4 October 1979, Joined Cases 64 and 113/76, 167 and 239/78, 27, 28 and 45/79, ECR 1979, 3091, ( <i>Dumortier Frères v Council</i> ) .....                       | 1106, 1806   |
| ECJ 4 October 1979, Case 238/78, ECR 1979, 2955 ( <i>Ireks-Arkady v Council and Commission</i> ) .....                                                              | 1806         |
| ECJ 4 October 1979, Joined Cases 241, 242 and 245-250/78, ECR 1979, 3017 ( <i>DGV v Council and Commission</i> ) .....                                              | 1806         |
| ECJ 4 October 1979, Joined Cases 261 and 262/78, ECR 1979, 3045 ( <i>Interquell Stärke-Chemie v Council and Commission</i> ) .....                                  | 1806         |
| ECJ 7 July 1981, Case 158/80, ECR 1981, 1805 ( <i>Rewe v Hauptzollamt Kiel</i> ) .....                                                                              | 205-3        |
| ECJ 17 December 1981, Case 247/80, ECR 1981, 3211 ( <i>Ludwigshafener Walzmühle v Council and Commission</i> ) .....                                                | 1106         |
| ECJ 6 October 1982, Case 283/81, ECR 1982, 3415 ( <i>CILFIT and Others v Ministry of Health</i> ) .....                                                             | 205-4        |
| ECJ 26 October 1982, Case 104/81, ECR 1982, 3641 ( <i>Hauptzollamt Mainz v Kupferberg</i> ) .....                                                                   | 204-3        |

## Table of Cases

|                                                                                                                                                                                                |                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| ECJ 9 November 1983, Case 199/82, ECR 1983, 3595 ( <i>Amministrazione delle Finanze dello Stato v SpA San Giorgio</i> ).....                                                                   | 205-3                                                                                  |
| ECJ 10 April 1984, Case 14/83, ECR 1984, 1891 ( <i>Von Colson and Kamann v Nordrhein-Westfalen</i> ) .....                                                                                     | 204-4, 1217                                                                            |
| ECJ 6 December 1984, Case 59/83, ECR 1984, 4057 ( <i>Biovilac v EEC</i> ) .....                                                                                                                | 1806                                                                                   |
| ECJ 26 February 1986, Case 152/84, ECR 1986, 723 ( <i>Marshall v Southampton and South-West Hampshire A. H. A (Marshall (No1))</i> ).....                                                      | 204-3                                                                                  |
| ECJ 24 June 1986, Case 267/82, ECR 1986, 1907 ( <i>Développement SA and Clemesey</i> ) .....                                                                                                   | 1806                                                                                   |
| ECJ 18 September 1986, Case C-178/84, ECR 1987, I-1227 ( <i>Commission v Germany</i> ).....                                                                                                    | 205-2                                                                                  |
| ECJ 8 October 1986, Joined Cases 169/83 and 136/84, ECR 1986, 2801 ( <i>Leussink and Others v Commission</i> ) .....                                                                           | 1210, 1607-1                                                                           |
| ECJ 29 September 1987, Case 81/86, ECR 1987, 3677 ( <i>De Boer Buizen v Council and Commission</i> ) .....                                                                                     | 1806                                                                                   |
| ECJ 15 October 1987, Case C-222/86, ECR 1987, 4097 ( <i>Unectef v Heylens and Others</i> ).....                                                                                                | 205-3                                                                                  |
| ECJ 15 May 1990, Case C-365/88, ECR I-1845 ( <i>Hagen GmbH v Zeehaghe</i> ).....                                                                                                               | 1217                                                                                   |
| ECJ 19 June 1990, Case C-213/89, ECR 1990, I-2433 ( <i>R v Secretary of State for Transport, ex parte Factortame Ltd. and Others, Factortame I</i> ).....                                      | 205-3                                                                                  |
| ECJ 13 November 1990, Case 106/89 ECR 1990, I-4135 ( <i>Marleasing v La Comercial Internacional de Alimentación</i> ).....                                                                     | 204-4                                                                                  |
| ECJ 25 July 1991, Case C-221/89, ECR 1991, I-3905 ( <i>Factortame II</i> ) .....                                                                                                               | 205-2                                                                                  |
| ECJ 19 November 1991, Joined cases C-6/90 and C-9/90, ECR 1991, I-5357 ( <i>Francovich and Bonifaci v Italy</i> ) .....                                                                        | 205-1, 205-2, 1805-2                                                                   |
| ECJ 13 March 1992, Case C-282/90, ECR 1992, I-1937 ( <i>Vreugdenhil v Commission (Vreugdenhil II)</i> ).....                                                                                   | 1809                                                                                   |
| ECJ 7 April 1992, Case C-358/90, ECR 1992, I-2457 ( <i>Compagnia Italiana Alcool v Commission</i> ) .....                                                                                      | 1106                                                                                   |
| ECJ 19 May 1992, Joined Cases C-104/89 and C-37/90, ECR 1992, I-3061 ( <i>Mulder and Others v Council and Commission (Mulder)</i> ).....                                                       | 1806                                                                                   |
| ECJ 9 November 1993, Case C-479/93, ECR I-3313 ( <i>Francovich v Italy</i> ) .....                                                                                                             | 205-1                                                                                  |
| ECJ 13 April 1994, Case C-128/92, ECR 1994, I-1209 ( <i>Banks v British Coal</i> ).....                                                                                                        | 205-3                                                                                  |
| ECJ 14 July 1994, Case C-91/92, ECR 1994, I-3325 ( <i>Dori v Recreb Srl</i> ) .....                                                                                                            | 204-3                                                                                  |
| ECJ 5 March 1996, Joined cases C-46/93 and C-48/93, ECR 1996, I-1029 ( <i>Brasserie du Pêcheur and Factortame III</i> ) .....                                                                  | 201-1, 204-5, 205-1, 205-2, 205-4, 905-1, 905-2, 906-2, 1804-5, 1805-1, 1805-2, 1805-3 |
| ECJ 26 March 1996, Case C-392/93, ECR 1996, I-1631 ( <i>The Queen v H.M. Treasury, ex parte British Telecommunications</i> ).....                                                              | 205-1, 205-2, 1805-1                                                                   |
| ECJ 23 May 1996, Case C-5/94, ECR 1996, I-2553 ( <i>The Queen v Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland) Ltd</i> ).....                                   | 205-1, 205-2                                                                           |
| ECJ 30 July 1996, Case 84/95, ECR 1996, I-3953 ( <i>Bosphorus Hava Yolları Turizm ve Ticaret v Minister for Transport, Energy and Communications, Ireland and the Attorney General</i> ) ..... | 203-2                                                                                  |
| ECJ 8 October 1996, Joined cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94, ECR 1996, I-4845 ( <i>Dillenkofer and Others v Germany</i> ) .....                                       | 205-1, 205-2, 905-1, 906-2, 1805-2, 1805-3                                             |
| ECJ 17 October 1996, Case 283, 291 and 292/94, ECR 1996, I-5063 ( <i>Denkavit International v Bundesamt für Finanzen</i> ) .....                                                               | 1805-1                                                                                 |
| ECJ 29 May 1997, Case C-300/95, ECR 1997, I-2649 ( <i>Commission v United Kingdom</i> ) .....                                                                                                  | 1410-2                                                                                 |

## Table of Cases

|                                                                                                                                                                            |                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| ECJ 9 December 1997, Case 265/95, ECR 1997, I-6959 ( <i>Commission v France</i> ) .....                                                                                    | 1805-2                             |
| ECJ 15 January 1998, Case C-15/96, ECR 1998, I-47 ( <i>Schöning-Kougebetopoulou v Hamburg</i> ) .....                                                                      | 205-4                              |
| ECJ 2 April 1998, Case C-127/95, ECR 1998, I-1531 ( <i>Norbrook Laboratories Limited v Ministry of Agriculture, Fisheries and Food</i> ) .....                             | 205-1, 205-2                       |
| ECJ 24 September 1998, Case C-319/96 ECR 1998 I-5255 ( <i>Brinkmann Tabakfabriken</i> ) .....                                                                              | 1805-1, 1805-2                     |
| ECJ 15 June 1999, Case C-140/97, ECR 1999, I-3499 ( <i>Rechberger</i> ) .....                                                                                              | 1805-2                             |
| ECJ 6 June 2000, Case 281/98, ECR 2000-I, 4139 ( <i>Roman Angonese v Cassa di Risparmio di Bolzano SpA</i> ) .....                                                         | 205-3                              |
| ECJ 15 June 2000, Case C-237/98, ECR 2000, I-4549 ( <i>Dorsch Consult v Council and Commission</i> ) .....                                                                 | 201-1, 1806                        |
| ECJ 4 July 2000, Case 352/98, ECR 2000, I-5291 ( <i>Laboratoires Pharmaceutiques Bergaderm SA and Goupil v Commission</i> ) .....                                          | 205-2, 1805-1, 1805-3, 1806        |
| ECJ 4 July 2000, Case C-424/97, ECR 2000, I-5123 ( <i>Salomone Haim v Kassenzahnärztliche Vereinigung Nordrhein (Haim II)</i> ) .....                                      | 205-2                              |
| ECJ 5 October 2000, Case C-376/98, ECR 2000, I-8419 ( <i>Germany v European Parliament and Council</i> ) .....                                                             | 612                                |
| ECJ 10 May 2001, Case C-203/99 ( <i>Veedefalds v Arhus Amtskommune</i> ) .....                                                                                             | 1217, 1407-1, 1409, 1411           |
| ECJ 20 September 2001, Case C-453/99, ECR 2001, I-6297 ( <i>Courage v Crehan</i> ) .....                                                                                   | 205-3, 205-4                       |
| ECJ 12 March 2002, Case C-168/00, ECR I-2631 ( <i>Simone Leitner v TUI Germany</i> ) .....                                                                                 | 607-2, 1217                        |
| ECJ 25 April 2002, Case C-52/00 ( <i>Commission v French Republic</i> ) .....                                                                                              | 1406, 1407-1, 1407-2, 1409, 1410-2 |
| ECJ 25 April 2002, Case C-154/00 ( <i>Commission v Hellenic Republic</i> ) .....                                                                                           | 1407-2                             |
| ECJ 25 April 2002, Case C-183/00 ( <i>Maria Victoria González Sánchez v Medicina Asturiana SA</i> ) .....                                                                  | 1407-2                             |
| ECJ 17 September 2002, Case C-253/00, ECR 2002, I-7289 ( <i>Antonio Muñoz y Cia SA and Superior Fruiticola SA v Frumar Ltd and Redbridge Produce Marketing Ltd</i> ) ..... | 205-3                              |
| ECJ 17 December 2002, Case C-253/00, ECR I-7289 ( <i>Antonio Muñoz y Cia SA and Superior Fruiticola SA v Frumar Ltd and Redbridge Produce Marketing Ltd</i> ) .....        | 1217                               |
| ECJ 8 February 2003, Case C-312/00, ECR 2003, I-11355 ( <i>Commission v Camar and Tico</i> ) .....                                                                         | 1805-1                             |
| ECJ 23 August 2003, Case C-472/00, ECR 2003, I-7541 ( <i>Commission v Fresh Marine</i> ) .....                                                                             | 1805-1                             |
| ECJ 30 September 2003, Case C-224/01, ECR 2003, I-1023 ( <i>Gerhard Köbler v Austria</i> ) .....                                                                           | 201-1, 205-4                       |
| ECJ 5 October 2004, Joined Cases 397–403/01, ECR 2004, I-8835 ( <i>Pfeiffer a.o. v Deutsches Rotes Kreuz</i> ) .....                                                       | 204-4                              |
| ECJ 12 October 2004, C-222/02 ( <i>Peter Paul v Federal Republic of Germany</i> ) .....                                                                                    | 905-2                              |
| ECJ 16 June 2005, Case 105/03, nyp ( <i>Pupino</i> ) .....                                                                                                                 | 204-4                              |
| ECJ 30 June 2005, Case C-537/03 ( <i>Candolin a.o. v Pohjola a.o.</i> ) .....                                                                                              | 1214, 1405-2                       |
| ECJ 12 July 2005, Case C-198/03 P ( <i>Commission v CEVA and Pfizer</i> ) .....                                                                                            | 1805-1                             |
| <b>Court of First Instance</b>                                                                                                                                             |                                    |
| CFI 6 July 1995, Case T-572/93, ECR 1995, II-2025, 2050 ( <i>Odigitria v Council and Commission</i> ) .....                                                                | 1106                               |