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11th EDITION

Cases & Materials on



EU Law

Stephen Weatherill



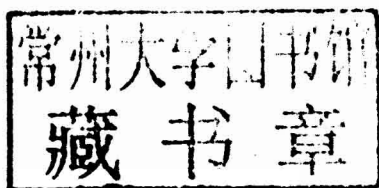
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Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
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Eighth edition 2007

Ninth edition 2010

Tenth edition 2012

Impression: 2

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2014932847

ISBN 978-0-19-968566-0

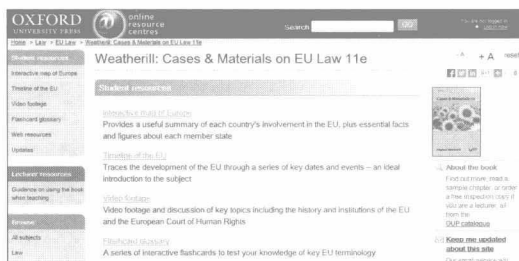
Printed in Great Britain by
Ashford Colour Press Ltd., Gosport, Hampshire

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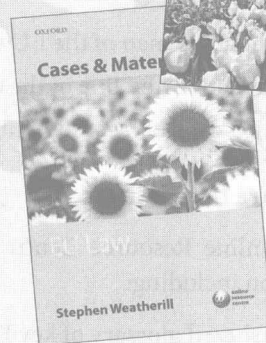
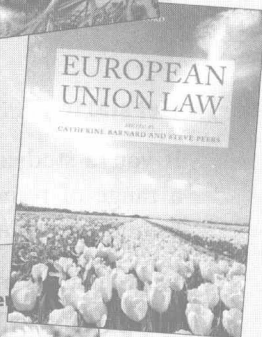
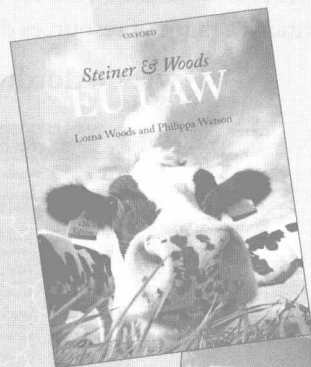
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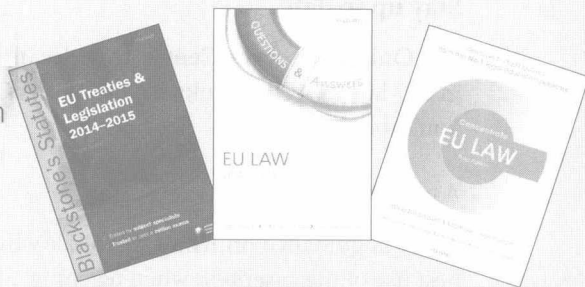


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PREFACE

It may seem perverse to begin a Preface explaining what a book is *not* about, but in the case of the law of the European Union I think it is justified. The subject has grown at such a pace over recent years that it is no longer possible to aspire to write a book which is truly comprehensive. The best that one can do is to select areas for examination which seem particularly important and then to use those areas as illustrations to draw out the themes and principles on which the law is based. In this way, one can encourage the student to develop an intellectually appropriate approach which will permit him or her to tackle substantive areas beyond the scope of this book. So, although it is easy to explain away a failure to cover the full extent of the law of the European Union simply by pointing out how much there is of it, I hope that this book has adopted a coherent principle in deciding what to include and what to exclude.

The book is *not* about English law and its reaction to membership of the Union. There is no deep exploration of Parliamentary Sovereignty, the European Communities Act 1972, or the European Union Act 2011. This is a European law book. Nevertheless, the development of the European Community legal order, and lately a European Union legal order, has not occurred in isolation and is in part dependent on action and reaction at national level. In depicting this process, I have tended to draw on the example of the British experience of the impact of membership of the EU. However, the *Cohn Bendit* decision (p. 118) will provide an example of practice in another Member State and the student should always be prepared to look beyond domestic law. Most of all, the attitudes of German courts cannot be ignored, and I have included the *Brunner* decision relating to ratification of the Maastricht Treaty (p. 589), the *Bananas* decision concerning the protection of fundamental rights (p. 592), and the *Lisbon* decision concerning ratification of that Treaty (p. 594).

I have touched relatively little on matters of external competence. There is, for example, passing reference only to the Common Customs Tariff, the Common Commercial Policy, and Treaty-making competence generally. The growth of a Common Foreign and Security Policy is located in the context of the three-pillar Union edifice constructed at Maastricht (p. 9) and abandoned at Lisbon (p. 19), but not examined in detail. I have adopted this primarily internal focus with regret, aware that it smacks of an unappealing 'Fortress Europe' attitude. But I think that my choice is in this respect in accordance with most British University degree courses in EU law.

The Treaty of Lisbon entered into force on 1 December 2009. Chapter 1 begins by explaining how and why this Treaty matters (pp. 19–22) and this deserves the student's immediate attention. There are, since the Lisbon Treaty entered into force on 1 December 2009, two governing Treaties, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The TFEU is the successor to the EC Treaty, and it is the main concern of this book. Chapter 1 also explains that Lisbon makes numerical changes to Articles throughout the Treaty, and the reader will be reminded of this (frustrating but unavoidable) detail time and again, chapter by chapter.

In previous editions, essential updating apart, my approach to amendment has always been to prefer to leave material untouched in cases of doubt rather than fiddle with it. I stick to that cautious approach in this new edition in the belief that it helps users. The structure of this eleventh edition is that of the tenth edition: there are three parts to the book, covering first the constitutional law of the EU, second, trade law and policy – the law of the internal market, including assessment of the status of European

citizenship – and third, policy-making, governance, and the constitutional debate. The book has of course been updated and in places freshened up but I have changed nothing merely for the sake of it. I aim at consistency.

As in the previous editions of the book, my concern remains to depict the dynamic process of evolution in the European Union. I have maintained the range of material used in the previous editions, while making some adjustment in the particular sources used. I use lawyers, practising and academic, but also economists, political scientists, and journalists. My aim remains to encourage the student to appreciate how the legal order has been developed (and is still in the process of being developed) in response to sometimes conflicting economic, social, and political pressures.

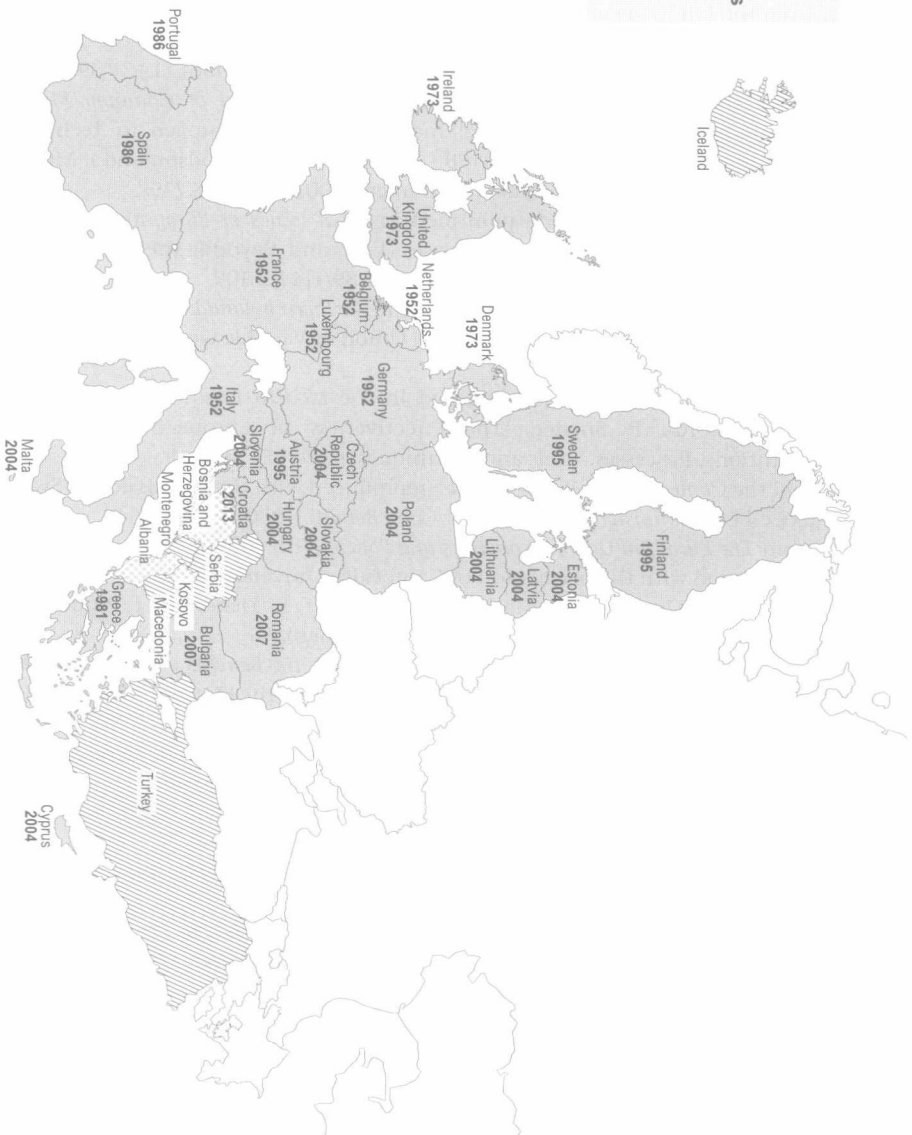
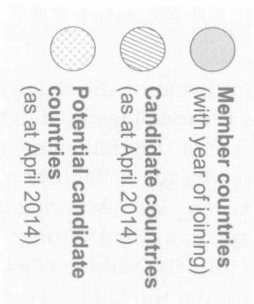
I continue to owe countless debts of gratitude. Thank you to everyone who has helped. To those who filled in the 'Questionnaires', I assure you that these are read and digested – I remain eager to receive consumer views on this book. But above all I thank Catherine Redgwell, without whom this book would have been written in a much less happy frame of mind.

The law described is that in force on 1 January 2014.

Stephen Weatherill
January 2014

NEW TO THIS EDITION

The book remains faithful to its long-standing structure but it has been revised and fully updated to give a clear account of the law at the beginning of 2014. Additions for this new edition include material relevant to the rising prominence of the Charter of Fundamental Rights, including the Court's highly significant rulings in *Fransson* and *Melloni*, which deal with the scope of application of the Charter and its relationship to the supremacy of EU law. Chapter 8 addresses the shaping of the widened scope for private parties to seek the annulment of EU acts introduced by the Treaty of Lisbon, while Chapter 15 deals with the Court's burgeoning case law on Citizenship, including decisions which challenge the need for a cross-border element as an essential trigger to the invocation of EU law. Chapter 18 pays attention to current trends associated with subsidiarity and enhanced co-operation: both, in different ways, reveal increasing discomfort with old-style narratives about ever closer Union.



ACKNOWLEDGEMENTS

- The permission of the following authors and publishers, who have kindly agreed to allow the use of material in this book, is gratefully acknowledged:
- Extracts from the following articles published in the *Common Market Law Review* (© Kluwer Academic Publishers):
- O. Brouwer, 'Free Movement of Foodstuffs and Quality Requirements: Has the Commission Got it Wrong?' (1988) 25 CML Rev 237.
- F. Mancini, 'The Making of a Constitution for Europe', (1989) 26 CML Rev 595.
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- Extracts from the following article published in *Legal Issues of European Integration* (Kluwer Academic Publishers): R. Dehousse, '1992 and Beyond: the Institutional Dimension of the Internal Market Programme' [1989/1] LIEI 109.
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- Extract from *The Guardian* of 13 March 1987.
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- Extracts from the following articles printed in the *European Law Journal* (published by Basil Blackwell, Oxford): J. Habermas, 'Remarks on Dieter Grimm's "Does Europe Need a Constitution?"' (1995) 1 ELJ 303; and from J. Scott and D. Trubek, 'Mind the Gap' (2002) 8 ELJ 1. Extract from M. Höpner and A. Schäfer, 'A New Phase of European Integration: Organized Capitalisms in Post-Ricardian Europe' MPiFG Discussion Paper 07/4 Max-Planck-Institut für Gesellschaftsforschung, Köln, 2007.
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