

CASES AND MATERIALS ON
EUROPEAN COMMUNITY LAW

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American Casebook Series®



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Preface

The study of European Community law, always of interest since its creation, has taken on special importance in recent years. As the Community achieves its goal of an internal market and debates the ratification of the Maastricht Treaty, which would add new dimensions to its programs and policies, American lawyers and law students naturally seek to learn more about the Community.

This casebook is intended to provide a basic understanding of the Community, its structure, goals, fields of action, achievements and aspirations, as well as to lay a foundation for further research, analysis and legal writing.

There are many valid reasons to study Community law. We present here three of the most important ones. The most pragmatic reason is that the Community has become the largest trading partner of the US, constitutes the largest single market in the world, and represents a major site of investment for US firms. US lawyers, both international house counsel and outside counsel, can no longer afford to possess only a limited knowledge of Community structure, law-making processes, and substantive law. Community competition and trade law have long been staples of international practice. Today, the European Community's harmonization of health, safety and technical standards, banking, securities and company law, environmental and consumer protection measures, and action in the fields of agricultural and social policy represent matters of practical concern to US lawyers. The Community's efforts to move towards an economic and monetary union are also of great importance to the international business and legal world.

Second, Community 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. Today a rich source of comparative study is to be found in the Community programs for harmonization of laws. In some fields, as in competition, environmental and securities law, the Community has been significantly influenced by US models, but still strikes certain different notes. In other fields, such as banking, company law, consumer protection and social policy, the Community has taken quite a different path from that of US law. The divergences between US and Community law should provoke thoughtful reflection on the context and underlying values of each system.

Third, Community law provides a laboratory for study of law formation: the development of an entire legal system in modern times. The study includes the Community's constitutional framework, its institu-

The Documents Supplement also contains a large sample of important secondary legislation, excerpted lightly and with care. Students will profit from working with these complex legislative texts. The accessibility of these important Community documents should also be helpful in research.

Finally, some comments on class treatment of the text. The casebook's comprehensive coverage provides instructors with a variety of options to satisfy different course objectives.

For a basic survey course (two or three credits), we recommend that most of Parts I and II be covered, because they are critical to a fundamental understanding of the Community. Obviously, parts of chapters or entire chapters can be omitted, especially in a two-credit course. We also recommend that a basic survey include Chapter 18 on competition policy, Chapter 26 on external relations and at least one chapter from Part V, such as environmental protection and consumer rights or equal rights for women. There should be sufficient time in a basic survey course to permit coverage of further chapters in either competition policy or trade policy, but not both, because the textual treatment of each topic is lengthy and complex.

It is possible to teach a variety of advanced courses making use of parts of the casebook. For example, a course could concentrate entirely on Community competition and trade law, Parts III and IV. In the alternative, one could construct a comparative competition law or trade law course, using the relevant part of the casebook together with materials on US or other nations' antitrust or trade law. An advanced course might also center on the Community's integrated internal market, including the chapters on harmonization of laws, services, establishment and capital from Part II and the social policy, environmental and consumer rights, and monetary union chapters from Part V. Finally, a course in comparative federalism might take selected portions of the casebook and add US, Canadian, German, Swiss or other materials.

We hope that the casebook will prove easy to use and highly instructive, and that it will stimulate further scholarship centered on this rich field of study, the European Community.

*

Foreword

From any standpoint this is a remarkable work. Given the standing and experience of the authors it is not surprising that it has been well done. Rather, like Samuel Johnson's dog walking on its hind legs, it is surprising that it has been done at all given the other commitments of the authors. It has been a prodigious task since, with one or two specialist exceptions, almost the whole of Community law has been covered.

In the United Kingdom there is much debate as to whether European Community law should be taught as a separate subject or whether each branch of it should be taught interleaved with comparable related national law. Everyone agrees that the institutions and the jurisdiction of the Court, its scope, its remedies, its attitudes, have to be taught separately and the first part of the book does that.

It is no less important to study the relationship between national law and domestic law and to see how far national courts have accepted the transplant or transfusion in a union of states which is far from being a federation.

The substantive law, which I believe largely still has to be taught separately, and not just to non EEC students, is divided into four sections: (a) the four freedoms of movement of persons, goods, services and capital; (b) all aspects of competition policy; (c) external relations; and (d) specific Community policies such as agriculture and social policy.

All of this is admirably done and I have been astonished by the wealth of detail which the text contains. It is also very up-to-date, even including references to the controversial and little understood principle of subsidiarity and to other changes proposed in the Maastricht Treaty.

The technique is different from that followed in the United Kingdom and on the Continent but it seems to me to be one which we need to study. For each subject there is a valuable and valuably concise introduction followed by the cases. For each case there is a summary of the issues or facts followed by extracts from the judgment and then questions, comments and cross references including comparative law comments.

It is not easy for the student or indeed the national lawyer or judge always to find the crucial parts of a judgment quickly. The authors have done a great service to the study of Community law by their careful selection of paragraphs which omits what can be omitted but, unlike some books which give brief extracts, gives enough for the principles to be seen in their context and to be fully understood.

This is not a book to be read quickly, indeed many of the questions raised, whether to educate or to indicate criticisms, will need a long

Acknowledgments

The authors of every project of this scope owe a multitude of debts to those who have inspired and assisted them along the way. While it is not possible to acknowledge all those who have helped us, a number of contributions deserve special mention.

We jointly give our thanks to those who have made suggestions that have helped to shape the coverage or text of this casebook. Preeminent among them are Bernhard Schloh of the Council Legal Service, Peter Oliver of the Commission Legal Service, and Professor Valentine Korah of University College, London.

George Bermann wishes to thank especially Professor Henry G. Schermers and Bernhard Schloh for their profound guidance in Community law over the years, as well as Judges Koen Lenaerts, Pierre Pescatore and Lord Gordon Slynn and Professor Meinhard Hilf for their helpful comments on his text. Mary Dominick, Lee Neuman, Carlin Stratton, April Tash and Sally Zelikovsky afforded essential research assistance. The secretarial help of Susan Martin and Kam Metcalf is also warmly appreciated.

Roger Goebel thanks the many members of the Court of Justice, the Council and the Commission who have enriched his knowledge of Community law, in particular Judge David Edward and former Judges Pierre Pescatore and Lord Gordon Slynn, Raffaello Fornasier, Hans-Joachim Glaesner and Bernhard Schloh of the Council Legal Service, Karen Banks, Daniel Calleja, Bernd Langeheine, Jörn Pipkorn, Rolf Wägenbaur and Richard Wainwright of the Commission Legal Service, Auke Haagsma, Helmut Schröder and John Temple Lang of DG IV, Christopher Cruickshank and Severine Israel of DG XV, and George Zavvos, Member of the European Parliament. Thanks are also due to Jacques Buhart, Stephen Spinks and Paulette Vander Schueren, his former colleagues at Coudert Brothers. He is most appreciative of the aid provided by his research assistants, Diane Duszak, Stephen Jones and Stewart Muglich, and the faculty secretaries, Carol DeVito and Mary Whelan.

William Davey would like to thank Professor Eric Stein for kindling his interest in EC law many years ago, as well as Judge Pierre Pescatore, Jacques Bourgeois, Edwin Vermulst and his former colleagues at Cleary, Gottlieb, Steen and Hamilton in Brussels, Donald L. Holley, Dirk Vandermeersch and Marc Hansen, for comments on various draft chapters and for assistance in obtaining materials. He would also like to acknowledge the invaluable help of his research assistant, Gordon Wagner, and his secretary, Terri Macfarland.

Legal Sources and Citation Forms

American students, academicians and lawyers encountering European Community law for the first time may find it difficult to deal with the source material, which is quite different in character and style from US legislation, case law and legal commentary. The purpose of this note is to explain briefly how to access European Community documents and secondary research materials, as well as to indicate the mode of citation used in this casebook.

1. The Treaties of the European Communities

The European Communities treaties are published by the EC Office for Official Publications, Luxembourg, in both a complete and abridged edition. The 1987 abridged edition contains the EEC Treaty, the ECSC Treaty, the Euratom Treaty, the Single European Act and certain related documents. The EEC Treaty and the Single European Act are included in the Documents Supplement published in conjunction with this casebook.

The Treaty on European Union (TEU) or Maastricht Treaty, signed on February 7, 1992 but still in the process of ratification, appears in the Official Journal at O.J.C. 224/1 (Aug. 31, 1992). The complete text has also been published by the EC Office for Official Publications. The TEU is likewise included in the Documents Supplement.

CELEX, the Community's computer-based information retrieval system, contains all of the treaties of the European Communities. CELEX is available in the US through WESTLAW and, in part, through LEXIS. Major compilations of Community law, such as the Commerce Clearing House (CCH) Common Market Reporter and the Encyclopedia of European Community Law (K. Simmonds, ed. Sweet & Maxwell looseleaf), also contain all of the treaties.

2. Secondary Legislation

Community legislation consists of regulations and directives. These, together with legally binding decisions and proposals for legislation, are published in a journal in each of the nine working languages of the Community (Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish). The English language version is called the Official Journal (O.J.), the French the Journal Officiel (J.O.), etc. The journal is published daily, except for holidays. (Occasionally more than one number is printed on the same date.)

There are two different series in the journal. Council regulations and directives, Commission decisions in competition and antidumping cases and similar items are found in the "L" (for "Laws") series; proposed legislation, proceedings of the Parliament, recommendations of

summaries of the judgments and opinions, appearing about two months after they are rendered. Moreover, the French text (the working language of the Court), as well as the text of the language initially used in each case, are both available on request from the Court's information office, usually within a few weeks after the date of the judgment or opinion. Incidentally, it is often useful to consult the French text of judgments, because it represents the initial formulation of the Court's thinking, and the English translations are sometimes imprecise or awkward.

CELEX, and accordingly WESTLAW and LEXIS, contains all judgments and opinions after their publication in the ECR. Many, but not all, Court of Justice judgments and opinions are also published unofficially. The two primary English language sources are the CCH Common Market Reporter and the Common Market Law Reports (Sweet & Maxwell), or CMLR. Both often publish judgments before the ECR does so. In addition, the Common Market Law Reports publishes selected judgments from UK and other Member State courts dealing with Community law issues. Because many US law libraries do not contain the European Community Reports, but may have either the CCH Common Market Reporter or the Common Market Law Reports, we have given parallel cites to these two sources in the Table of Cases at the beginning of the casebook. CCH publishes recent cases in its current binders, which are then periodically transferred to permanent volumes, cited since 1989 as the CEC.

It is customary to cite Court of Justice decisions by name, case, number, year and page and to abbreviate the title of the reports as ECR. Where the name of the case is common (e.g., *Commission v. Belgium* or *Commission v. Council*), we have devised (or borrowed from other sources) descriptive names as a means of identification and put them into parentheses following the official name in the casebook. These descriptive names are not part of the official name in the ECR.

Thus, we use the following citation forms: *Commission v. Council* (ERTA), Case 22/70, [1971] ECR 263; *In re Kramer*, Cases 3, 4 & 6/76, [1976] ECR 1279; *GB-INNO-BM v. Confederation de Commerce Luxembourgais*, Case C-362/88, [1990] ECR I-683. For clarity, we include a parenthetical reference to the Court of First Instance for judgments rendered by that Court. See, e.g., *Hilti AG v. Commission*, Case T-30/89, [1991] ECR —(Dec. 12, 1991) (Ct. First Instance). Finally, if a judgment excerpted or cited in the casebook has not yet been published in the ECR, we indicate the ECR year, leave the page blank, and provide a parenthetical reference to the date. The *Hilti* citation, above, illustrates this.

We deliberately do not follow the "Bluebook" citation forms, either for judgments, legislation or other materials. Our citation forms are adapted from those commonly used by European writers and are designed to provide maximum clarity in use.

law are the Common Market Law Review (Kluwer) and the European Law Review (Sweet & Maxwell). Other reviews concentrate on Community competition or trade law, or economic aspects of Community law. There are counterpart specialized Community journals in most of the Member States such as *Europarecht* in Germany, and *Revue de Marché Commun* and *Revue Trimestrielle de Droit Européen* in France. In the US, the Boston College International Law Journal and the Fordham International Law Journal devote one issue each year to Community law. The Fordham Corporate Law Institute (Transnational Juris) publishes each year a volume devoted to Community and international antitrust.

6. EC Information Service

The Community's Delegation to the United States includes an information service and library. The information service not only permits academic use of the library, but can provide assistance, within reasonable limits, in research on current topics. Its address is 2100 M St., N.W., Suite 707, Washington DC 20037, Tel: (202) 862-9500.

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