

# Contents

Preface	v
Foreword	
<i>Miguel Poiares Maduro</i>	vii
Contributors	xii
I Introduction	
Introducing the Principle of Prohibition of Abuse of Law	
<i>Rita de la Feria</i>	xv
II The Framework: General Principles of EU Law and the Prohibition of Abuse	
1 Prohibition of Abuse of (European) Law: The Creation of a New General Principle of EC Law through Tax: A Response	
<i>Paul Farmer</i>	3
2 What is a General Principle of EU Law?	
<i>Anthony Arnall</i>	7
3 What is a General Principle of EU Law? A Response	
<i>Karsten Engsig Sørensen</i>	25
4 The Abuse of Rights in the Civil Law Tradition	
<i>James Gordley</i>	33
III The Origins: Free Movement of Services	
5 Fitting ‘Abuse of Rights’ into EU Law Governing the Free Movement of Goods and Services	
<i>Stephen Weatherill</i>	49
6 Free Movement of Broadcasting Services and Abuse of Law	
<i>Dimitrios Doukas</i>	63
7 The Notion of Abuse and the Freedom to Provide Services: A Labour Lawyer’s Perspective	
<i>Catherine Barnard</i>	93
IV The Development: Freedom of Establishment, Company Law and Competition Law	
8 Sparking Regulatory Competition in European Company Law: The Impact of the <i>Centros</i> Line of Case Law and its Concept of ‘Abuse of Law’	
<i>Wolf-Georg Ringe</i>	107
9 Sparking Regulatory Competition in European Company Law: A Response	
<i>John Vella</i>	127

x Contents

10	Abuse of Law in the Context of European Insolvency Law <i>Horst Eidenmüller</i>	137
11	Abuse of European Insolvency Law? A Discussion <i>John Armour</i>	157
12	Abuse of Rights in EU Law: Some Reflections with Particular Reference to Financial Law <i>Takis Tridimas</i>	169
13	Comments on Abuse of Rights in EU Law <i>Pierre Schammo</i>	193
V	The Test: Free Movement of Goods and Common Agricultural Policy	
14	The <i>Emsland-Stärke</i> Abuse of Law Test in the Law of Agriculture and Free Movement of Goods <i>Panos Koutrakos</i>	203
15	The Notion of and a General Test for Abuse of Rights: Some Normative Reflections <i>Jukka Snell</i>	219
VI	The Unknown: Private Law and International Civil Procedure	
16	Abuse of Law in EU Private Law: A (Re-)Construction from Fragments <i>Axel Metzger</i>	235
17	Comments on 'Abuse of Law' in European Private Law <i>Simon Whittaker</i>	253
18	The Rejection of Abuse in International Civil Procedure <i>Adrian Briggs</i>	261
19	The Discreet Influence of Abuse of Law in International Civil Procedure <i>Gilles Cuniberti</i>	279
VII	The Exceptions? Free Movement of Workers and Citizenship	
20	'Prohibition of Abuse of Law': A New General Principle of EU Law <i>Jonathan Faull</i>	291
21	'Abuse of Law' in the Context of the Free Movement of Workers <i>Katja S Ziegler</i>	295
22	Comments on Abuse of Law and the Free Movement of Workers <i>Eleanor Spaventa</i>	315
23	Citizenship of the Union: Above Abuse? <i>Cathryn Costello</i>	321
24	Some Comments on the Idea of a General Principle of Union Law Prohibiting Abuses of Law in the Field of Free Movement for Union Citizens <i>Michael Dougan</i>	355

## VIII The Confirmation? Tax Law

- |    |  |     |
|----|--|-----|
| 25 | The Anatomy of Tax Avoidance Counteraction: Abuse of Law in a Tax Context at Member State and European Union Level<br><i>Judith Freedman</i>                                 | 365 |
| 26 | Abuse of Law in the Context of Indirect Taxation: From (Before) <i>Emsland-Stärke 1</i> to <i>Halifax</i> (and Beyond)<br><i>Pasquale Pistone</i>                            | 381 |
| 27 | Abuse of Law in the Context of Indirect Taxation: Why We Need the Subjective Intention Test, When is Combating Abuse an Obligation and Other Comments<br><i>Dennis Weber</i> | 395 |
| 28 | <i>Cadbury Schweppes</i> and Abuse from an EU Tax Law Perspective<br><i>Frans Vanistendael</i>   | 407 |
| 29 | <i>Cadbury Schweppes</i> and Abuse: Comments<br><i>Richard Lyal</i>  | 427 |
| 30 | <i>Cadbury Schweppes</i> ' Line of Case Law from the Member States' Perspective<br><i>Michael Lang</i>   | 435 |
| 31 | <i>Cadbury Schweppes</i> : Breach, Abuse Justification and Why They Are Different<br><i>Julian Ghosh</i>   | 459 |
| 32 | A Single Principle of Abuse in European Union Law: A Methodological Approach to Rejecting a Different Concept of Abuse in Personal Taxation<br><i>Ana Paula Dourado</i>      | 469 |
| 33 | Is There a Role for a European Principle Prohibiting Abuse of Law in the Field of Personal Taxation? A Comment<br><i>Edwin Simpson</i>                                       | 485 |
| 34 | State Aid, Taxation and Abuse of Law<br><i>Timothy Lyons</i>   | 493 |
| 35 | Comments on State Aid, Taxation and Abuse of Law<br><i>Conor Quigley</i>   | 509 |

## IX Conclusion

- |    |   |     |
|----|---|-----|
| 35 | The Prohibition of Abuse of Law: An Emerging General Principle of EU Law<br><i>Stefan Vogenauer</i> | 521 |
|----|---|-----|

<i>Table of Cases</i>	573
<i>Table of Legislation</i>	615
<i>Index</i>	629