MEMORANDUM

LARRY CATÁ BACKER
Visiting Professor of Law
University of California
Hastings College of the Law

Professor of Law
Co-Dir., Comp. & Int'l
Law Center
University of Tulsa
College of Law

EUROPEAN UNION LAW
COURSE INFORMATION
Spring Semester, 1998

MEETING TIMES: 11:40 A.M. - 12:30 P.M., Monday, Tuesday and Thursday

ROOM: D

OFFICE: M208 (198 Building)
OFFICE HOURS: Tuesday and Thursday 5:00 P.M. - 6:00 P.M., AND BY APPOINTMENT

TELEPHONE: 565-4718

FINAL EXAM DUE: May 8, 1998, at 5:00 P.M.

COURSE DESCRIPTION:

In the space of thirty five years, the European Community has achieved extraordinary results in legal and economic integration. In addition, the Community has expanded from a group of six nations to fifteen, with the possibility, in the next 5 years, to incorporate significant parts of the old socialist eastern block (Poland, Czech Republic, Slovenia, and Hungary), the eastern Mediterranean (Cyprus), and the old Russian Empire (Estonia). Although principally designed to achieve economic ends, the Community has also taken on political, social, and cultural dimensions, with active programs in fields such as environmental, consumer and investor protection, occupational safety, cultural and linguistic identity, research and development, and health and education. The Community has become the largest trading partner of the United States and represents a major site of investment for U.S. companies. U.S. lawyers can no longer afford to possess only a limited knowledge of Community structure, law making processes and substantive law.
The course is intended to provide a basic understanding of the European Community (now the European Union). The course will devote substantial attention to the structure, goals, fields of actions, achievements and aspirations of the European Union. To a large extent, the first part of the course will be structured much like a comparative constitutional law course. Students will first learn about the legal and institutional framework of the European Union. Particular attention will be paid to the institutions of the Union, its legislative processes, the nature of judicial review, the reception of Union or Community law in the Member States, and the mechanisms for enforcement of Community law.

The second part of the course will focus on the core substantive law of the E.U. We will devote a substantial amount of time to the study of the "four freedoms" (Free movement of people, goods, services and capital) and the creation of the internal European market. Additional topics of study may include one or more of the following: (i) competition policy; (ii) external relations; (iii) agricultural policy; (iv) environmental and consumer protection; (v) social policy; (vi) equal rights law; and (vii) economics and monetary coordination.

The course will be taught as a traditional U.S. law school course. However, some attention will be given to teaching continental approaches to law and its process. I also hope to provide a foundation for further research, analysis and legal writing in this area of law.

REQUIRED COURSE MATERIALS: READING ASSIGNMENTS:

REQUIRED BOOKS:

1. BERMANN, GOEBEL, DAVEY AND FOX, CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW (1993) ("Text")

2. BERMANN, GOEBEL, DAVEY AND FOX, SUPPLEMENT TO CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW (1997) ("Supp.")

3. BERMANN, GOEBEL, DAVEY AND FOX, EUROPEAN COMMUNITY LAW SELECTED DOCUMENTS (1993)

RECOMMENDED BOOKS:

While these books need not be purchased, they may provide helpful reference or sources of review. Note also that the articles and books cited at the end of each of the chapters of the Text might be quite useful.


**INFORMATION SOURCES:**

European materials are difficult to get. They are especially difficult for people who do not speak French or German. However, there are a number of sources available for English speakers. I will mention two here:

1. **World Wide Web.** The European Union now operates a web site. To access, to the following address --

   \[
   \text{http://europa.eu.int}
   \]

   This site contains easy to follow background information on the E.U., as well as copies of the latest White and Green Papers. The site is maintained by the E.U. Commission. The site has been getting substantially better as the years go by. Take a moment and explore the site.

   In addition, many of the governments of the Member States now maintain web sites on which you will be able to find relevant information about the EU. In England, for instance, the Parliament web page publishes the opinions of the Law Lords. As I find new sites, I will let you know.

2. **Lexis:** For researching the text of E.U. statutes, cases reported from the European Court of Justice, and press releases from various E.U. sources, the Lexis INTLAWlibrary is invaluable. The Westlaw libraries have not been as comprehensive in the past.
READING ASSIGNMENTS:

Reading assignments will be announced from time to time in class. On occasion, I may also pass out written notices of upcoming assignments. Most of the readings will be taken from the assigned texts. I will, on occasion, distribute additional materials. Additional readings and problems may be added or substituted throughout the semester. Please bring Text, Statutory Supplement, and any other assigned materials with you to class.

Understand that there is no guarantee that we will be able to cover in class all material assigned for that class session throughout the semester. Anticipate, therefore, that there may be occasions when you will have read ahead. Do not panic; do not become irritated; do not conclude that there is something amiss; humor me and assume that there is a reason for the pacing of the course. If in doubt, please be sure to see me.

Please keep in mind that you will be responsible for all assigned readings whether or not discussed in class, as well as for all materials covered in class, whether or not included in your reading materials.
SYLLABUS:

For those who want to read ahead, I provide the following short syllabus:

I. The History of the European Community (Text Chapter 1)

II. The Foundations of European Community Law
   A. The Treaty Framework (Text 22-29)
   B. Scope of Law: Implied Powers (Text 29-36)
   C. Scope of Law: Internal Affairs (Text 36-40)
   D. Scope of Powers: Preemption of Member State Law (Text 40-46)
   E. Scope of Powers: The Subsidiarity Principle (Text 46-50)

III. The Institutions of the Community and Community Legislative Process
   A. The Institutions (Council, Commission, Court of Justice) (Text 50-74)
   B. Forms of Community Action (Text 74-79)
   C. The Legislative Process and Community Finances (Text 79-96)

IV. Judicial Review of Community Acts
   A. Annulment (what acts can be challenged, and by whom) (Text 96-114)
   B. Complaint for Failure to Act and Illegality (Text 114-120)
   C. The Scope of Judicial Review (issues of competence, infringement of essential procedural safeguard, infringement of Treaty rights, and misuse of powers) (Text 120-152)
   D. Damage Action Against the Community (liability in tort, liability for legal acts, and the relationship between Community
and Member State liability) (Text 152-166)

V. The Relationship Between Community and Member States
   A. The Direct Effects Doctrine (Text 166-192)
   B. The Doctrine of Supremacy (Text 192-204)

VI. The Reception of Community Law in the Member States
   A. France (Text 204-213)
   B. Benelux and Germany (Text 213-228)
   C. Italy, Denmark and Ireland (Text 228-236)
   D. United Kingdom and the Newer Member States (Text 236-245)

VII. Preliminary Reference
   A. Reference Procedure, Framing the Reference and the Ruling (Text 245-257)
   B. Defining the Article 177 Court or Tribunal (Text 257-260)
   C. Discretionary and Mandatory Reference, Appealability (Text 260-272)

VIII. Enforcement of Community Law
   A. Member State Remedies (Text 276-292)
   B. Enforcement Proceedings (Text 292-317)

IX. The Four Freedoms: Free Movement of Goods
   A. Customs Duties (Text 317-324)
B. Discriminatory or Protective Internal Taxation (Text 324-341)
C. Quantitative Restrictions (Text 341-359)
D. Health, Safety and Consumer Interests (Text 359-380)
E. Public Morality, Public Policy and Socio-Cultural Issues (Text 380-396)
F. Industrial and Commercial Property Rights (Art. 36 and Accessory Rights; Scope and Protection of Rights; Exhaustion of Rights) (Text 396-428)

X. Harmonization of Laws
A. Purpose and Scope of Harmonization and the Push for Completion of the Internal Market by 1992 (Text 428-442)
B. The "New Approach" to Harmonization and Preemption of Member State Law (Text 442-466)

XI. The Four Freedoms: Free Movement of Workers
A. Introduction: Protection of Migrant Worker Against Discriminatory Treatment (Text 466-485)
B. Right of Free Entry and Residence and Exceptions (Text 485-503)
C. Issues of definition (Who is a "worker" or "spouse" or "dependant") and the Issue of Reverse Discrimination (Text 503-518)
D. The New Meaning of European Citizenship (Text 518-524)
E. The Case of Students in the New Europe and Social Security Benefits (Text 524-538)

XII. The Four Freedoms: The Right of Establishment
A. Treaty Provisions and Case Law on the Freedom to Provide Services (Text 542-569)

B. The Right of Establishment for Business Firms and Company Law Harmonization (Text 569-584)

C. The Right of Lawyers and Others to Practice Throughout the Community (Text 584-606)

XIII. The Four Freedoms: Free Movement of Capital

A. Treaty Provisions and Case Law (Text 606-630)


XIV. External Relations and Commercial Policy

A. The External Relations Powers of the European Community (Text 891-928)

B. The Community's Commercial Relations (The E.U. and Europe, the Developing World, GATT and the Industrialized World) (Text 928-965)

C. The Common Customs Tariff (Text 965-989)

D. European Union Remedies for Unfair International Trade Practices · Dumped Imports (Text 989-1036)

E. European Union Remedies for Unfair International Trade Practices · Regulation of Subsidized Imports and Illicit Commercial Practices (Text 1035-1049)

F. Import and Export measures (Text 1049-1063)

XV. Environmental and Consumer Protection

A. The Environment (Text 1101-1123)
B. Consumer Protection (Text 1123-1134)

XVI. Social Policy

A. Treaty Provisions and the Protection of Workers (Text 1134-1151)
B. The New Social Action (Text 1151-1158)

XVII. Equal Rights For Women

A. Basic Concepts and Equal Pay Issues (Text 1158-1171)
B. Equal Treatment for Men and Women (Text 1171-1184)
C. Social Security, Pensions and Pensionable Age (Text 1184-1193)
GRADING

The course grade will be based on a take-home exam. I will give you the take-home exam at the conclusion of the last class of the semester, and it will be due one week later, May 8, 1998 at 5:00 P.M. I will let you know where you may deliver the completed finals well before the deadline.

ATTENDANCE AND CLASS PARTICIPATION

Class attendance is required. Hastings policy imposes on students the obligation to attend class regularly and punctually. I will take attendance. You will be required to sign in at each class session. While failure to attend class will not result in a lower grade, it might help both you and me explain poor performance on the exam. Also, I remind you that material not in your readings and for which you will be responsible will likely be covered in class from time to time during the course of class discussion (and may find its way into the final exam).

Class Meeting Times. Class meets three times a week, Mondays, Tuesdays and Thursdays from 11:40 A.M. through 12:30 P.M.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). It is my policy to call on students at random. However, at the end of each class session, I may designate two or more students to act as discussion leaders for the next class session. Any student who is called on and is unprepared (whether or not a discussion leader) will be expected to act as discussion leader for the next two class sessions. Discussion leaders who fail to show up for class will serve as discussion leaders for the following two class sessions. Students unprepared for any three class sessions in a semester will have their grade lowered by one letter (i.e., from, A to B+, or C+ to C. etc.).

Seating is assigned. To make seat selection somewhat less arbitrary, the seat you choose on Monday, January 11, 1998 will be your assigned seat. I will circulate a seating chart on Monday for you to fill in.

A word on my approach to class. This is not a lecture course. I hope to begin to teach you not only the substantive rules of European Union law, but also how to
approach problems involving a legal system similar to, but in some respects very
different from our own. To that extent I hope to provide you with the ability to
begin to think like your European counterparts, at least enough so that you will be
able to understand (and anticipate) their view of matters touching on this area of
the law. To that end, the bulk of each class session will consist of discussion. **You
should expect to be challenged** consider this semester as a long meeting with your
counterpart in a negotiation, say, somewhere in the European Union. **Aggressive
questioning will sometimes be the norm. Don’t take it personally,** aggressively
testing your ideas and answers to questions (as well as the level of your
preparation) doesn't mean that I don't like or respect you.

**Class Notes and Tape Recording.** Please feel free to get together with your
classmates for studying and sharing notes. It is sometimes efficient. Take as many
notes as you like. . . **No Tape Recording of Class. Sorry.**

**CONFERENCES**

I maintain an open door policy. I encourage you to see if me should you have
any questions or concerns. While I prefer you try to see me during office hours, we
can make arrangements to meet at other times. If all else fails, just come by my
office and, if I am there, we can play it by ear. Please feel free to e-mail me. My
address is larryc-bcker@juno.com.