7. Connecting EU law to domestic law: the preliminary reference procedure

This chapter assesses how conflicts between national law and EU law actually reach the Court of Justice of the European Union (CJEU). The Treaties have created a distinct role for the CJEU: it can decide cases where the validity of an EU law is not necessarily at issue, but rather its meaning is not entirely clear to a body that is meant to apply it. That process is set out in Article 267 TFEU (Treaty on the Functioning of the European Union), and involves two separate but related steps. First, a domestic court has to refer (or ask) a question of the CJEU about the meaning of EU law at stake in a dispute it is hearing. Second, the CJEU offers an interpretation of EU law to the domestic court, enabling the domestic court to decide the dispute before it. The chapter then looks at the attitude of the UK courts towards the preliminary reference process, and considers judicial law-making. It also discusses the impact of Brexit on the preliminary reference process.
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