

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

B.A.

ESPS 2301: EU Law

COURSE CODE : ESPS2301

UNIT VALUE : 1.00

DATE : 13-MAY-05

TIME : 14.30

TIME ALLOWED : 3 Hours

ESPS2301 EU LAW

– Answer **THREE** questions.

– Do **NOT** draw substantially on the same material for more than one answer.

1. 'The classic theory of the separation of powers does not fit the EU institutional model despite considerable reforms in the past 20 years. This peculiar distribution of powers has a dramatic impact on the EU democratic process.' Discuss.
2. Discuss the need for 'dual vigilance' in the enforcement of EU law. How effective is the national enforcement level (specifically, the system of preliminary references) compared to the Community one (Art 226/227 actions)?
3. Why has the view of supremacy adopted by the European Court of Justice differed quite radically from that adopted by various Member States? What are the implications of such differing views? Your answer should take into account the role of supremacy within the Community legal order.
4. How has the European Court of Justice attempted to solve the internal inconsistencies of the principle of direct effect? Do you judge the Court's solutions to be satisfactory?
5. The current limitations on individual applicants' seeking to challenge a Community act have been described as an infringement of the rule of law. Discuss.
6. *Keck and Mithouard* represented a significant change in the attitude of the European Court of Justice to measures having equivalent effect to a quantitative restriction. However, the test devised by the Court has been judged far from satisfactory. Discuss by taking into account recent changes in the Court's jurisprudence.
7. Over the past 50 years the Community has undergone a tremendous evolution with respect to its competences, decision-making and objectives. Unfortunately, this process has often resulted in unresolved tensions. Critically analyse this evolution by referring to one of the Community's main policies.
8. On 1 April 2005 Regulation 400/2005/EC on Advertising of Certain Low-Alcoholic Beverages (fictional) was published in the Official Journal of the European Communities. It introduces a ban on advertising by any media whatsoever of drinks containing less than 2% alcohol and aimed at minors; the ban is to enter into effect on 1 January 2006.

The Regulation contains detailed provisions on the conditions under which the commercial communications shall be considered to be aimed at minors; the Regulation is intended to protect public health. Effectively, the Regulation seeks to curb the sale of so-called 'alcopops', essentially low alcohol beverages presented in such a way as to appeal to minors.

TURN OVER

A number of City of London advertising companies will suffer great economic loss when the accounts for the sales of these products will be cancelled in due course. The British government had voted against adoption of the Regulation but it was outvoted in the Council which decided by quality majority voting under Article 95 EC.

The advertising companies are seeking legal advice about any potential remedies that may be available. Please advise them.

9. 'Within the context of the free movement of persons, developments in EU law have slowly transformed people from workers and service providers into citizens. However, this transformation is neither uncontroversial, nor complete.' Discuss.
10. Lars, a Danish national, is a fully trained IT specialist. He moves to the UK in search of work with his American wife and his son. He enrolls at a local job agency and after a few weeks applies for a job-seeker's allowance. The authorities deny him the allowance because he fails to meet a compulsory residency requirement and hence in their view has no 'genuine link' to the UK employment market.

Lars subsequently finds employment with a private firm and has a baby daughter. By talking to his colleagues he discovers that he is only entitled to 4 unpaid weeks of paternity leave, whereas an EU directive which came into force in 2004 would entitle him to 6 weeks unpaid leave. The UK has not yet transposed the directive.

He is also not receiving the government monthly child payments to which all British parents are entitled. The purpose of the payments is to fight the flagging UK demographic growth by encouraging British couples to have children. The authorities deny Lars the payments because: a) his children are not British; b) his son is not even born in Britain; c) in any event, the payments can only be made to the mother, but Lars's wife is American and hence she has no rights under EU law.

Please comment on whether the position taken by the British authorities in relation to Lars's job-seeker's allowance and his child payments is lawful under EU law.

Advise Lars on his possibilities of obtaining 6 weeks unpaid paternity leave.

11. An Italian publishing company, Treccani, has come up with a new interactive dictionary based on the combination of a CD-Rom and a printed dictionary. This product is available in all EU languages and is particularly targeted at children between the ages of 10 and 16. Treccani are keen to promote their new product with a series of national television advertising campaigns across the EU, but they run into trouble in France.

The French authorities have serious concerns about the decline in reading skills of school children and have therefore banned all TV advertising of computer software or programmes. They forbid Treccani to advertise their dictionary because it contains a CD-Rom.

CONTINUED

Sales of the dictionary in The Netherlands, Slovakia and Poland are affected by further setbacks. The Netherlands considers any product given away for free with the sale of printed matter to be an unlawful incentive to purchase which will mislead consumers. Therefore, the Dutch authorities forbid Treccani to include the CD-Rom in the dictionary.

In Slovakia the law stipulates that all software has to be sold in specialist IT shops, whereas books of any kind must only be sold at licensed booksellers so that a special tax on printed matter can be collected with every purchase. Therefore, they require Treccani to sell their printed dictionary and their accompanying CD-Rom through separate outlets.

Poland has several flourishing publishing companies, but no national companies producing information software. The latter, which is by its very essence much cheaper, is taxed in such a way as to make the average CD-Rom as expensive as a book containing similar information. Since the Treccani dictionary contains a CD-Rom it is taxed at the higher rate.

Advise Treccani on its rights under EU law to challenge all of the above decisions.

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