

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 : 05–MAY–06

TIME : 10.00

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 EU today is the product of an ambiguous integration process which has resulted in a severe democratic deficit and an increasing lack of legitimacy.’ Discuss.
2. ‘Supremacy of EU law is a cornerstone principle of the Community legal order. However, the boundaries of this principle remain vague and controversial and could hypothetically lead to catastrophic failure. Even the new EU Constitution has failed to provide a definite answer to this issue.’ Do you agree or disagree with this statement, and why?
3. ‘Direct effect might well be a “child of creative jurisprudence”. However, this child’s behaviour will remain fickle and arbitrary as long as it will not be allowed to mature into a responsible and predictable adult. The price to pay for this eternal youth is quite simply unacceptable.’ Discuss.
4. The effectiveness and uniformity of EU law is paramount to the proper functioning of the Community legal order. Apart from the principles of direct effect and supremacy, which other EU legal instruments and principles are designed to guarantee effectiveness? How adequate do you judge them to be?
5. ‘The European Court of Justice’s restrictive interpretation of the right of individual standing in Art. 230 actions is inconsistent with its more generous approach towards other types of applicants and is completely at odds with its general jurisprudential interventionism.’ Analyse this statement by referring to the possible reasons for such a restrictive interpretation and to the various solutions that have been suggested.
6. ‘EU competence has been steadily expanding and it now encompasses a large number of policy areas often of a non-economic nature. Each of these policy areas replicate in a microcosm a number of major controversial issues that also afflict the EU as a whole.’ Analyse this statement by referring to one particular policy area of your choice.
7. *Either* (a) ‘A successful Internal Market entails the elimination of all fiscal, physical or technical barriers to the free circulation of goods. The European Court of Justice has actively contributed to the achievement of this goal through its jurisprudence. However, its decision in *Keck and Mithouard* seems to contradict its earlier efforts.’ To what extent do you judge this statement to be accurate? Answer the question by taking into account post-*Keck* jurisprudential developments.

Or (b) Jens produces an eco-friendly motorised tricycle that is easy to park, has extremely low petrol consumption and virtually no emissions thanks to its patented catalytic converter. The tricycle consists of a small ultra-light capsule that can carry up to three passengers (it basically looks like a Smart car on three wheels).

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The tricycle has taken Denmark by storm and Jens is now planning to market and sell it in Italy where small vehicles are extremely popular due to incredibly high traffic congestion.

Italy only manufactures cars, motorcycles and mopeds but no vehicles such as tricycles. Fiat, the only Italian car manufacturer (which controls 80% of the car/moped market), is apprehensive about Jens's new tricycle. After intensive lobbying by Fiat, the Italian government decides to adopt the following measures:

- (i) Italy has a graded road tax on all motorised vehicles charged according to their engine size and their polluting emissions. The stated aim of the road tax is to preserve the environment and to encourage energy-saving and energy-efficiency. All tricycles are to pay a road tax equivalent to the one applied to a small car with medium to low emissions, despite the fact that the tricycle engine is smaller than that of a small moped and its emissions are virtually nil. Italy justifies its decision by claiming that the tricycle cannot be classed as a moped because it can transport more than two people and therefore according to Italian law it is a car. Furthermore, according to Italian law the fact that the tricycles have no polluting emissions should earn them a substantial discount on the applicable road tax. However, the Italian authorities decline to apply the discount because they are unsure of how to calculate it since no other vehicle has zero emissions.
- (ii) Italian customs authorities block the first shipment of tricycles at the border and subject them to a technical safety inspection that is charged back to Jens. They claim that the inspection is in Jens's favour because it certifies that his tricycles are to be classed as small cars and therefore only a reduced road tax will apply to them. Furthermore, the inspection charge is paid into a research fund for green technologies.
- (iii) Italy prevents Jens from advertising his tricycle on TV before the 10 pm watershed by claiming that it needs to protect children as impressionable consumers. It argues that teenagers will prefer to drive his tricycles rather than mopeds because they are faster and resemble a car. Please note that minors between the age of 14 and 18 will be able to drive the tricycle because of its small engine, despite the fact that theoretically it is classed as a car for road tax purposes. Italy fears that teenagers will be less prudent in their driving if they have the false comfort of a vehicle frame around them instead of being completely exposed as on a moped. Jens is particularly disappointed by Italy's decision as market research shows that the tricycle would sell particularly well to Italian teenagers. With this in mind Jens added particular safety features to the tricycle. These have won a special safety certification from the Danish transport ministry.

Advise Jens on his ability to challenge all of the above Italian measures under EU law.

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8. *Either* (a) The European Court of Justice has remarked that 'Union citizenship is destined to be the fundamental status of nationals of the Member States' (*Grzelczyk*). How has the ECJ justified such an extraordinary statement? Why is the ECJ jurisprudence on citizenship proving increasingly controversial?

- Or* (b) Kiriakos and Dimitri are two Greek nationals who travel to the UK in search of work. Dimitri is refused entry because he belongs to a religious sect called the Sons of Satan. The two leaders of this sect have a string of convictions for rape, paedophilia, kidnapping and extortion. Dimitri himself has been investigated and prosecuted several times by the Greek authorities, but this has resulted in only one conviction for the kidnapping of a minor that he finished serving two years ago. The rest of the charges were dropped because of a lack of evidence. The Greek police informed the British authorities that they were unable to prosecute him fully because he is very skilled at intimidating the witnesses. He is also on a watch-list in Greece for people considered to be extremely dangerous. At the moment the UK has not banned the Son of Satan Sect because it has no known members in Britain. However, they are minded to do so if the sect shows any signs of becoming popular.

Kiriakos is admitted into the UK, but as soon as the authorities find out that he is a friend of Dimitri they serve him with an expulsion order. Kiriakos has never been a member of the Sons of Satan Sect, but he has an old conviction for shoplifting from when he was a teenager.

Kiriakos eventually manages to convince the UK authorities to revoke the expulsion order and enrolls at the jobcentre. He applies for the UK job-seeker's allowance but gets turned down. He eventually finds a job as a cook/waiter in a hotel working 10 hours per week. He lives with his grandmother in London who provides him with board and lodging.

After two and a half years, Kiriakos's grandmother suddenly died leaving him a small sum of money. He sees it as a once in a life-time opportunity to realise his dream of becoming a hospitality manager and enrolls in an intensive course at his local college. He applies for a student loan in order to concentrate on his studies, but is turned down on the grounds that he has not lived and worked in the UK for the previous three years.

Kiriakos obtains a private loan and graduates from his course. He applies for a job as a high-level butler at Buckingham palace, but is turned down because he is not British. The authorities argue that all royal household employees must have military training as they might occasionally be called to protect royal family members. The British Army will only train British citizens.

Kiriakos finally gets a job as a hospitality manager at a hotel. His partner Costas and his severely handicapped son Alex from a previous relationship apply to join him (Kiriakos and Alex are not blood related). Kiriakos and Costas have been in

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a civil partnership for the last five years. The UK authorities first deny Kostas and his son entry, but eventually relent on the condition that Kiriakos undertakes to pay all the medical care bills for Alex.

Please advise on the legality under EU Law of the following points:

- (i) Dimitri being denied entry into the UK;
- (ii) Kiriakos being served with an expulsion order by the UK;
- (iii) Kiriakos being denied a job-seeker's allowance;
- (iv) Kiriakos being denied a student loan;
- (v) Kiriakos being denied a butler's job at Buckingham Palace;
- (vi) Kostas and Alex being denied entry into the UK and the UK authorities request that Kiriakos foot all Alex's medical bills.

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