

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For the following qualifications :-

B.A.

Laws C6: Law and Institutions of the European Communities

COURSE CODE : **LAWSC006**

UNIT VALUE : **1.00**

DATE : **08-MAY-02**

TIME : **10.00**

TIME ALLOWED : **3 hours 15 minutes**

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TURN OVER

LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES

Answer **FOUR** questions.

1. “In discussing the so-called democratic deficit within the European Union, much is made of the need to achieve the correct power balance between the Council, the Commission and the European Parliament. While important progress has been made in this respect, ultimately the problems of democracy and transparency in the EU go much deeper than this, and cannot be solved merely by giving the Parliament a greater say in the legislative process.”

Explain and evaluate this commentator’s view.

2. The doctrine of direct effect is one of the most fundamental doctrines of European Community law.

Describe and define the doctrine in detail and highlight its advantages and drawbacks.

3. “There has always been a tension within the doctrine of Supremacy in EC law, owing to the different understandings of this concept by the European Court of Justice on the one hand, and the Member States on the other. The time has now come to eradicate this tension; to formulate a decisive stance on what Supremacy really means, and to enshrine this meaning in a Constitution for the European Union.”

Explain and evaluate this statement, with reference to the relevant case law.

4. “When the European Court of Justice created the principle of state liability to individuals for breach of EC law in the *Francovich* judgment, it claimed that this liability was inherent in the scheme of the treaty, and in the Member States’ obligations under Art 10 EC. This was a completely inadequate justification for judicial interventionism in the area of remedies in EC law on such an unprecedented scale.”

Do you agree with this commentator? Explain with reference to the ECJ’s approach to the question of remedies in EC law.

5. “The law on Article 28 is now quite simple. A measure falls within that Article’s ambit if it directly or significantly affects trade in imports.”

Discuss.

TURN OVER

6. Dougal MacDougal is a producer and exporter of Scottish malt whisky. He is married to Anna, who runs a vodka exporting business based in her native country, Sweden. Dougal attempts to export a shipment of Glenshoogle single malt from Scotland to France, but his goods are held up at UK customs and he is told that they will not be released until he pays a fee to cover the cost of random purity sampling tests on the whisky. These tests, he is told, are necessary to ensure quality control of the product. Dougal is particularly upset at this, because he already feels that whisky producers receive a raw deal from the UK government. In the UK, the tax levied on spirits such as whisky and vodka is almost four times as much as that which is levied on fortified wines. When Dougal wrote to his MP about this, he eventually received a reply which explained that it is the policy of the UK government to use the tax system to encourage domestic fortified wine production, because this is a fledgling industry in the UK which is struggling to hold its own in the international wine market. The malt whisky industry, by contrast, is already successful and well-established and hence does not need the benefit of tax breaks.

Both Dougal and Anna have been angered by the effect of this tax system on their respective businesses in the past. But in light of recent events concerning the impounding of Dougal's whisky at customs, they decide that now is the time to act. They visit you, their lawyer, and ask for advice as to whether EC law can be of any assistance to them.

7. Maria is an Irish national who has been living in the UK for the last four years. She has had a succession of casual jobs but has not worked for the last six months. She has a daughter aged 18 and a son aged 10. Maria has enrolled on a graduate course in history in London and wishes to apply for both a grant to assist with her living expenses while she is on the course, and for a child care allowance that is available for full-time students with children.

Maria's daughter, Aine, wishes to return to Ireland to study law. She has been told that she is not eligible for a grant from the Irish education authorities because she has not been resident in Ireland for the last three years. She applies for a grant from the UK to cover her studies in Ireland.

Maria's partner, Pablo (they are not married) is living with her in the UK. Pablo was formerly of Honduran nationality but became a UK national in 1990. He is a qualified engineer and his Honduran qualifications are recognised by Ireland. When Pablo applies for a position as an engineer with a local authority in the UK he is told that his qualifications are not recognised by the UK and that he will have to sit an exam to show that he meets UK standards. He is also told that he will have to sit a language examination to assess his competence in English.

Discuss the application of EC law to the positions of Maria, Aine and Pablo.

CONTINUED

8. "The European Court of Justice is a radical, freewheeling legal institution. Nowhere is this more apparent than in the field of environmental protection."

Discuss, critically comparing and contrasting the European Court of Justice's treatment of environmental protection legislation with ONE other area of EC law.

9. "The law of the European Union against sexual discrimination has, just, managed to keep pace with social change - particularly the trend towards part-time working mothers, and increased paternal care of children. It has spectacularly failed, though, to address questions of sexual discrimination on grounds of sexual orientation. This is its great failure."

Discuss.

END OF PAPER