

EU Law: CPE Examinations Question Bank 2010 - 2011

Topic 1 – Genesis and evolution of EU law

1. Critically evaluate the continuing role of law in securing and maintaining integrationism in the EU.

2. In *Case 26/62, van Gend en Loos*, [1963] CMLR 105, the ECJ said that: “ ... The [European Community] constitutes a new legal order of international law ... ”.

Explain how the Community constituted ‘a new legal order’ and critically evaluate the assertion that European Union law remains *sui generis* in relation to the generally recognised principles of public international law.

3. Critically evaluate the need to balance the progress towards an ‘ever closer Union’ with the legal reality of ‘multi-speed Europe’.

4. ‘Multi-speed’ Europe is not only a reality but, indeed, the only way forward if we are to embrace an enlarged European Union. However, whether this approach is compatible with ‘an ever closer union’ is debatable.

Discuss.

Topic 2 – Institutions and sources, creation & interpretation of EC law

5. To what extent, if at all, has the ordinary legislative procedure (formerly the co-decision legislative process) been instrumental in reducing the democratic deficit from ‘post-Amsterdam’ to date?

6. Answer **BOTH** parts of this question.

(a) The problem of the appropriate size of the blocking minority, when qualified majority voting applies in the Council of the European Union, was not eliminated by the provisions contained in any of the Treaties amending the Treaty of Rome that established the EEC, nor has it been simplified according to the amending provisions of the *Treaty of Lisbon*.

Critically evaluate the accuracy of this assertion.

AND

(b) The issue of the democratic deficit within the governance of the EU is being addressed, at least in part, by the increasing focus on the making of secondary legislation via the ‘ordinary legislative procedure’ as it is described in the *Treaty of Lisbon*).

To what extent, if at all, is this assertion an accurate and adequate reflection of the decreasing democratic deficit in the European Union?

[Typically, each part of this question would be worth 50% of the overall marks available].

7. The provisions of *Art.288 TFEU* (ex.*Art.249EC*) suggest that two of the binding elements of secondary legislation - *Regulations* and *Directives* – are clearly distinct measures. This has not always proved to be the case in practice, however. In part, this ‘blurring’ of the distinction has been due to the development of the doctrine of direct effect. Moreover, the ‘blurred distinction’ has not been eliminated by the ratification of the Treaty of Lisbon.

Discuss.

8. With reference to illustrative examples of the jurisprudence of the Court of Justice of the European Communities, discuss the issues involved both in deciding the legal basis of secondary legislation and in the ramifications of enacting secondary legislation on the wrong legal basis.

Topic 3 - Impact of EU law on national law

9. In *Case 152/84, Marshall v. Southampton and South West Hampshire area Health Authority* [1986] ECR 723, *Advocate General Slynn* said that:

“To give what is called ‘horizontal effect’ to Directives would totally blur the distinction between Regulations and Directives which the [EC] Treaty establishes in Articles 249 [now. *Art.288 TFEU*] and 254 [now. *Art.297 TFEU*].”

Critically evaluate the current authority of this opinion in the light of the more recent jurisprudence of the Court of Justice of the European Union.

10. Critically examine the development of the doctrine of direct effect and suggest how, if at all, the doctrine might be extended to the benefit of legal and natural persons. Address any difficulties that might have to be overcome before any suggested benefit could be implemented.

11. In *Textbook on EC Law*, 9/e, 2006, p112, *Steiner & Woods* asserted that:

“... there is no doubt that the ECJ has extended the concept of direct effects well beyond its apparent scope as envisaged by the EC Treaty.”

Critically evaluate the accuracy of this assertion now that the Treaty of Lisbon has been ratified and entered into force.

12. To what extent, if at all, has the principle of effective judicial remedies been widened by the development of the doctrine of direct effect?

13. Critically evaluate the accuracy of the assertion that “An indispensable provision resulting from the EU Treaties as the ‘constitutional charter of a [Union] based on the rule of law,’ is the primacy of Union law over the national law of Member States.”

14. “It surely is ‘novel’, and not a logical necessity of the supremacy of [Union] law, that the supremacy doctrine is extended to cases where, on the one hand, the [Union] law right is not clearly established, but rather there is a prima-facie case (not necessarily even a strong one) that such a right exists and, on the other hand, the national legislation is very clear and precise.”

(Adapted from *Weatherill, S & Beaumont, P. EC Law*, 2nd edn., 1995, pp372/73).

Discuss

15. “ ... even the most minor piece of technical [Union] legislation ranks above the most cherished constitutional norm.”

(*Weatherill, S. Law and Integration in the European Union*. Oxford: OUP, 1995, p106)

Critically evaluate the accuracy of this assertion in relation to the concept of the supremacy of EU law.

16. ‘The development of the general principles of Community law has been via the Court of Justice of the European Communities (the ECJ) extending its duty beyond that provided for in *Article 19 TEU*.’

Discuss.

17. Critically evaluate the assertion that the apparently unlimited scope for developing the general principles of EU Law is at variance with the duty of the *Court of Justice of the European Communities (ECJ)* under *Art.19 TEU* to “ensure that in the interpretation and application of the Treaties the law is observed.”

18. Answer **BOTH** parts of this question

(A) Discuss the legal bases and contentious issues that were associated with the early development of general principles of Union [formerly Community] law and explain why the continuing development is no longer so contentious.

[Typically, this would be worth 20% of the overall Marks for this question]

AND

(B) Critically evaluate the origins and evolution of **TWO** of the following three general principles, viz:

(i) **Equality;**

[Worth 40% of the overall Marks for this question]

AND / OR

(ii) **Fundamental Rights;**

[Worth 40% of the overall Marks for this question]

AND / OR

(iii) **Proportionality.**

[Worth 40% of the overall Marks for this question]

Topic 4 – Preliminary Rulings & Contentious Jurisdiction of the ECJ

18. Critically evaluate the assertion that ‘*Article 234EC* (now *Art.267 TFEU*) has been one of the keys, if not the key, to EU legal integration.’

[Adapted from: *de la Mare* ‘*Article 177 and Legal Integration*’ in *Craig & de Burca* (eds) ‘*The Evolution of EU Law*’. Oxford: OUP 1999, p249].

19. Critically evaluate the assertion that: ‘The preliminary ruling system is the veritable cornerstone of the operation of the internal market, since it plays a fundamental role in ensuring that the law established by the Treaties retains its [Union] character with a view to guaranteeing that the law has the same effect in all circumstances in all the Member States of the European Union’

[From ‘*The Future of the Judicial System of the European Union (Proposals and Reflections)*’, Chapter IV, Part 3. Submitted to the Commission, January 2000].

20. It is difficult to defend any of the grounds on which a reference to the ECJ for a preliminary ruling under *Article 267 TFEU* may be avoided by a court of a Member State.

Discuss.

21. Critically evaluate the potential effectiveness of actions in respect of breaches of Community law brought by:

(a) the Commission under *Art.258 TFEU* proceedings;

and

(b) individuals who bring claims before their national courts against the relevant national authorities.

22. The manner in which *Article 263 TFEU* has been interpreted and applied by the Court of Justice of the European Communities has been unhelpful to an individual who seeks to challenge the validity of acts of Community Institutions. Accordingly, an individual seeking to challenge the validity of such acts should contemplate doing so by means other than invoking Article 263.

Discuss.

23. Answer **BOTH** parts of this question.

(a) Discuss the requirements to which a natural or legal person must conform if there is to be a challenge to:

(i) a decision addressed to that person;

(ii) a decision addressed to another person or a Member State of the EU;

(iii) a Regulation.

AND:

Address the assertion that the requirements of *Article 263 TFEU* are unduly restrictive to natural and legal persons.

24. Your brother, John, has informed you that his business will be adversely affected if a binding piece of secondary legislation is enforced. Evaluate precisely what information you want from John so as to ascertain if the measure is susceptible to judicial review and whether you are able to advise him of any action he may be able to take under *Art.263 TFEU*, particularly since the measure is scheduled to take effect from the beginning of next month.

25. Answer **BOTH** parts of this question.

(a) Discuss the assertion that ‘those who have had the standing to invoke *Art.265 TFEU* have found it to be of very limited benefit’.

AND:

Discuss the assertion that ‘those who have had the standing to invoke *Art.277 TFEU* have found it to be of very limited benefit’.

26. Discuss the assertion that ‘whilst *Art.340 TFEU* provides for an action for damages against Union Institutions, the practical benefit of doing so is questionable given the unduly restrictive provisions’.