Collection Paper

Trinity Term 2020

EUROPEAN UNION LAW

Materials in the Examination Room:
The following will be supplied:

European Union Law Case (attached at end of paper)
Blackstone’s EU Treaties and Legislation (students must bring their own copy for the Collection)

Candidates should answer four questions, except for candidates for the Diploma in Legal Studies, who should answer three questions.

Do not turn over until told that you may do so.
1. What are the differences, if any, between the methods for the enforcement of the principle of conferral contained in Article 5(2) TEU and the principle of subsidiarity contained in Article 5(3) TEU?

2. Is the principle of the supremacy of EU law absolute or conditional?

3. Does the EU Charter of Fundamental Rights contain a complete and exhaustive statement of the rights and principles which the Court of Justice will enforce in its review of EU and Member State legislative and administrative acts? Should it?

4. Is the preliminary reference procedure used too often?

5. ‘It is very simple to assert that national procedures and remedies shall ensure the effective vindication of rights based on EU law. It is very difficult to provide a consistent account of what this in fact entails. The Court of Justice needs to adopt a more systematic and principled approach’.

Discuss.

6. ‘The Court's judgment in Kőbler makes sense in principle. Of course judicial malpractice should be subject to complaint and open to correction, just as administrative and legislative malpractice is subject to complaint and open to correction. The problem is that in practice the judgment in Kőbler entails that national judges shall review the compatibility with EU law of decisions of their fellow national judges. Who can be surprised that the conditions of liability identified by the Court of Justice are so infrequently established?’

Discuss.

7. ‘Widening the rules on standing which are found in Article 263(4) TFEU is a very good way to allow private parties who have failed to win the debate through the political process to have a second bite of the cherry, this time in a judicial forum. And it is therefore a very bad idea’.

Discuss.

8. Is the Court's interpretation of the status of Citizenship of the Union consistent with the motivations for the insertion of that status into the Treaties as a result of the amendments made by the Treaty of Maastricht?
9. The Commission has received a number of complaints from commercial undertakings that the rules in the Member States governing the donation of blood are different. The reported variations include the extent to which payment may be made to the donor and the regularity with which donations may be made. The Commission is also advised that in one Member State, Alpha, it is planned to prohibit donation of blood entirely, as a result of religious sensitivities. The complaints which the Commission has received advocate the adoption of common EU rules covering the field in order to secure a better functioning internal market in blood.

The Commission is considering whether to propose an EU legislative intervention, which, it intends, will cover as a minimum matters associated with payment and regularity of donation and which will also require that blood donation must be lawful in all Member States. It is, however, unsure whether the Treaty grants a competence to act in this way. It is moreover concerned to meet objections that such intervention, even if in principle constitutionally permitted, would violate the principles of subsidiarity and proportionality. It is concerned too about the possible relevance of the Charter of Fundamental Rights to the question whether such a measure would be valid.

The Commission seeks your advice on the applicable rules of EU law.

Advise the Commission.

10. X owns a shop in Carpathia, a Member State of the European Union, which specializes in the sale of cultural memorabilia and political literature, some of which is locally produced and published, some of which is imported from other Member States. X learns that Carpathia plans to introduce a 35-hour weekly limit on the hours worked by employees in shops of the type owned by X. Currently the matter is unregulated, and depends on negotiation between employers and employees. Most employees work much more than 35 hours per week. The proposed change is a consequence of strong pressure in favour of statutory protection of workers exerted by trade unions, who are major sources of funding for the governing party in Carpathia. X is anxious that the consequential extra costs involved in hiring supplementary staff will significantly damage his business, which is in fierce competition with similar shops located in neighbouring Member States which offer more flexible and cheaper regimes of labour market regulation.

X learns that Carpathia also plans to introduce rules which will require shops of the type owned by X to display the national flag of Carpathia in a prominent position. This is a consequence of strong pressure exerted by nationalist groups on whose support the governing party in Carpathia is periodically dependent in Parliament. The government has announced that the requirement to display the flag will promote Carpathian national identity and constitutional values. X believes that the requirement will harm his business, in particular by making his shop much less attractive to buyers of books and items which champion tolerance and multiculturalism who, he believes, will be offended by the flag display. He also considers that the obligation to display the flag would infringe his right to freedom of expression.

X seeks your advice on the extent to which EU law might help him to challenge the plans.

Advise X.

END OF QUESTIONS
LEGAL AND CONSTITUTIONAL LIMITS ON EUROPEAN LAW-MAKING

(a) Legal limits on European law-making – competence
Case C-547/14 Philip Morris v Secretary of State for Health (4 May 2016) ECLI:EU:C:2016:325.

(b) Constitutional limits on European law-making – Proportionality and Subsidiarity
Case C-114/01 AvestaPolarit Chrome Oy, [2003] ECR I-8725.
Case C-547/14 Philip Morris ECLI:EU:C:2015:853.

THE SOURCES OF EU LAW AND ITS SUPREMACY OVER NATIONAL LAW IN THE EVENT OF CONFLICT

GENERAL PRINCIPLES AND FUNDAMENTAL RIGHTS

General Principles
Cases 117/76 and 16/77 Ruckdeschel [1977] ECR 1753.
Case C-144/04 Mangold [2005] ECR I-9981.
Fundamental Rights.

Case C-60/00 Mary Carpenter [2002] ECR I-6279.
Case T-177/01 Jégo-Quéré.
Case C-432/05 Unibet v Justitiekanslern [2007] ECR I-2271.
Case C-617/10 Fransson 26 February 2013.
Joined Cases C-293/12 and C-594/12 Digital Rights Ireland et al, judgment of 8 April 2014.
Case C-544/10 Deutsches Weintor eG v Land Rheinland-Pfalz, judgment of 6 September 2012.
Case C-134/15 Lidl GmbH (30 June 2016).
C-203/15 and C-698/15 Tele2 Sverige, & Watson, Brice, Lewis (21 December 2016).
Case C-64/16 Associação Sindical dos Juízes Portugueses
Opinion 2/13 Accession to the ECHR (judgment of 18 December 2014).

SUPREMACY OF EU LAW

In the European Court
Case 11/70 Internationale Handelsgesellschaft (as above).
Case C-399/11 Stefano Melloni, judgment of 26 February 2013.
Case C-614/14 Ognyanov (5 July 2016), ECLI:EU:C:2016:514.

In the national courts
‘Bananas’.
Opinion on the German ratification of the Lisbon Treaty, BVerfG, 2 BvE 2/08.
Ajos.
Pham v Secretary of State for the Home Department [2015] UKSC 19.

THE RELATIONSHIP BETWEEN EU LAW AND NATIONAL LAW: PRELIMINARY REFERENCES; DIRECT EFFECT, INDIRECT EFFECT AND INCIDENTAL EFFECT

Preliminary References on the Interpretation of EU law and the validity of EU acts
Case C-160/14 Ferreira da Silva e Brito, Judgment of 9 September 2015.
Case C-68/85 T Port v Bundesanstalt, etc [1996] ECR I-6065.

Direct Effect
Case 26/62 Van Gend en Loos (as above).
Case 41/74 Van Duyn [1974] ECR 1337.
Case C-188/89 Foster v British Gas [1990] ECR I-3313.
Case C-413/15 Elaine Farrell judgment of 10 October 2017.
Joined Cases C-397/01 to C-403/01 Pfeiffer and Others [2004] ECR I-8835.
Case C-144/04 Mangold [2005] ECR I-9981.
Case C-176/12 Association de médiation sociale, judgment of 15 January 2014.
Case C-122/17 David Smith v Patrick Meade 7 August 2018.
Case C 68/17 IR v JQ judgment of 11 September 2018.

**Indirect Effect**

Cases C-387 etc/02 Silvio Berlusconi [2005] ECR I-3565.
Cases C-397/01 to C-403/01 Pfeiffer etc. [2004] ECR I-8835.
Case C-441/14 Dansk Industri (19 April 2016).

**TURN OVER**

**Incidental Effect/ application in “triangular” situations**


Case C-201/02 R (Wells) v Secretary of State for Transport, Local Government and the Regions

**NATIONAL REMEDIES FOR BREACH OF INDIVIDUAL RIGHTS UNDER EU LAW**

**Remedies in the National Courts**

Case C-213/89 Factortame (No. 1) [1990] ECR 1-2433.
Case C-432/05 Unibet v Justitiekanslern [2007] ECR I-2271.
Case C-392/04 & C-422/04 i-21 Germany and Arcor v Germany [2006] ECR I-8559.
Case C-119/05 Lucchini [2007] ECR I-6199.

Actions for damages in cases of breach of EU law
Case C-173/03 Traghetto del Mediterraneo [2006] ECR I-5177.
Case C-452/06 ex parte Synthon BV [2008] ECR I-7681.
Case C-160/14 Ferreira da Silva e Brito, Judgment of 9 September 2015.

CHALLENGES TO EU ACTS, AND LIABILITY OF THE UNION

JUDICIAL REVIEW

Grounds for annulment

Locus standi - Standing
Case C-376/98 Germany v Parliament and Council above.
Case C-380/03 Germany v Parliament and Council above.
Case C-491/01 R v Secretary of State ex parte BAT and Imperial Tobacco [2002] ECR I-11453.
Case C-432/05 Unibet v Justitiekanslern, above.
Case T-238/14 EGBA, RGA v Commission (General Court, 26 April 2016), ECLI:EU:T:2016:259.

**ACTION FOR DAMAGES AGAINST THE EU**
Cases C-48/93 Factortame (No. 3) / Brasserie du Pêcheur et al above.

**THE FREE MOVEMENT OF GOODS AND SERVICES**

**Defining the Trade Barrier: Quantitative restrictions and measures having equivalent effect**
Case 33/74 van Binsbergen [1974] ECR 1299.
Case C-333/14 Scotch Whisky Association judgment of 23 December 2015.
Case C-60/00 Mary Carpenter [2002] ECR I-6279.
Case C-110/05 Commission v Italy [2009] ECR I-519.

**Justifications**

**Goods**
Case 120/78 Cassis de Dijon above.
Case C-333/14 Scotch Whisky Association, above.
Case C-203/96 Dusseldorp and others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer [1998] ECR I-4075.
Case C-28/09 Commission v Austria (judgment of 21 December 2011).

Services

Free movement and fundamental rights
Case C-112/00 Schmidberger v Austria [2003] ECR I-5659.
Case C-71/02 Herbert Karner [2004] ECR I-3025.
Case C-60/00 Mary Carpenter [2002] ECR I-6279.
Case C-36/02 Omega Spielhallen [2004] ECR I-9609.
Case C-341/05 Laval [2007] ECR I-11767.

On Exports
Case C-15/15 New Valmar BVBA (21 June 2016).

THE FREE MOVEMENT OF PERSONS AND THE ROAD TO CITIZENSHIP OF THE UNION

WORKERS

Who is a worker?
Case C-457/12 S and G, judgment of 12 March 2014.

TURN OVER

ESTABLISHMENT

Mutual recognition of qualifications

EUROPEAN CITIZENSHIP
Case C-60/00 Mary Carpenter [2002] ECR I-6279.
Case C-200/02 Zhu and Chen [2004] ECR I-9925.
Case C-434/09 Shirley McCarthy [2011].
Case C-256/11 Dereci 16 November 2011.
Case C-40/11 Iida (judgment of 8 November 2012).
Case C-86/12 Alokpa (judgment of 10 October 2013).
Case C-115/15 Secretary of State for v NA (30 June 2016).
Case C-209/03 Dany Bidar [2005] ECR I-2119.
Case C-456/02 Trojani [2004] ECR I-7573.
Case C-192/05 Tas-Hagen [2006] ECR I-10451.
Case C-353/06 Stefan Grunkin [2008] ECR I-7639.
Case C-67/14 Jobcenter Berlin Neukölln v Alimanovic, judgment of 15 September 2015.
Case C-82/16 KA et al judgment of 8 May 2018.

THE END