

EU Law

Prior to these lessons you should have read & précised Chapter 6 of *'The English Legal System'* by Jacqueline Martin.



PRECIS NOTES WILL BE CHECKED

The first thing to remember is that EU law is easy!

You only need to know four things:

1. **The institutions of the EU** – who sits in them, their role, how they operate etc.
2. **The Sources of EU Law.**
3. **How to refer issues to the ECJ.**
4. **Sovereignty Issues.**

EU Institutions

Can you name all four?

- The Council of Ministers.
- The Commission.
- The EU Parliament/The Assembly.
- The ECJ.

Note: the role of the Economic and Social Committee.

Member States of the EU

See page 68 of '*The English Legal System*'

- Can you name the **founder members**?
- What **year** did the UK join?
- Who were the last two countries to join in **2007**?

The Council of Ministers

Who Sits?

- A Minister from each Member State. The Member States take it in turn to provide the President of the Council.

Role?

- Main decision making body of the EU.

How do they operate?

- Meet twice a year at Summit and discuss issues of policy.

The Commission

Who Sits?

- A Commissioner for each Member State
- Note: Who is currently the UK's Commissioner?
- <http://news.bbc.co.uk/1/hi/world/europe/8453971.stm>

Role?

- Proposes policy and presents drafts of legislation for the Council;
- Guardian of the treaties.

How do they operate?

- Each Commissioner is in charge of their own department of responsibility.

The EU Parliament / Assembly

Who Sits?

MEPs elected by the people of the Member States.

Role?

- Discuss Commission proposals;
- Report to Parliament for debate;
- To decide which countries joins the EU (assent).

How do they operate?

- Meet about once a month;
- Members form together via political allegiances, not national.

The European Court of Justice

Who sits?

- A judge from each Member State – but 11 sit for full court, 5 or 3 for chambers.

Role?

- Ensures law is applied uniformly in Member States by -
- Hearing cases against Member States;
 - Making preliminary rulings on points of EU Law referred by national courts under Art 234.

How do they operate?

- Court assisted by 9 Advocates General.

European Court of Justice

Major differences between UK courts and ECJ...

- Cases on paper – why?
- Advocate General – role?
- No dissenting judgments.
- Not bound by previous decisions.

Article 267 Rulings (ex-234)

• **Mandatory Referrals** – Supreme Court

• **Discretionary referrals** – Bulmer v Bollinger (1974).

The ECJ only makes a *preliminary ruling* on the point of law; the case then returns to the original court.

Bulmer v Bollinger (1974)

- This case provides guidelines for a discretionary referral to the ECJ.
- You must know this case by heart.

Activity:

Write down an explanation of these guidelines in your own words.

European Sources of Law

- **Primary Sources – Treaties** –
- Signed by our head of government, becomes part of English law automatically.
- Can you name any treaties?
- Can you name two cases that enable you to rely on the Treaty of Rome directly?
 - Van Duyn v Home Office (1974)
 - Macarthys Ltd v Smith (1980).

Regulations...

- Have *direct effect*, i.e. can be relied on by an individual in any case in the UK.
- Re Tachographs: Commission v UK (1979)
- Established that regulations automatically become law of Member States – they cannot pick and choose.

Directives...

- **Directives** require Member States to introduce laws within a time limit that fulfil the object and purpose of the Directive.
- Concept of "Direct effect" when Member States have failed to implement in time – Vertical and Horizontal.
- Reproduce the diagrams on p.76

Directives...

- Marshall v Southampton AHA (1986)
 - > Vertical effect because D was an arm of the state. Thus she could rely on the ETD 76/207.
- Duke v GEC Reliance Ltd (1988)
 - > Mrs Duke unable to rely on ETD as her employer was a private company.

Failure to Implement a Directive

May be possible to claim damages against the Member State.

The case of *Francovich v Italian Republic* (1991) lays down conditions for such a claim.

Explain in writing the conditions laid down by the court in *Francovich*.

Activity....

- o Using your knowledge from these lessons and your read and precis, complete the activity on p.78

The Issue of Sovereignty is Vital...

This issue frequently comes up in examinations. Essentially, it can be answered by a detailed discussion of just two cases – *Van Gend en Loos* (1963) and the later case of *Factortame*.

Van Gend en Loos (1963)

➤ *"Member States have limited their sovereignty, albeit within limited fields, and have thus created a body of law in which they bind their nationals and themselves".*

Simply, if a country joins the EU and becomes a Member State then they must follow the rules of the EU and work towards achieving its aims.

EU Law is supreme over UK Law

- Factortame (1990) - This case involved Spanish Fishermen operating in UK waters. The Thatcher Government introduced legislation to limit such fishing to UK companies.
- It was held in this case that a state is liable to compensate for breaches of Community Law – this involved Spanish Fishermen and the Merchant Shipping Act 1988.

Activity

Plan answers to the exam questions on page 80

Princess Anne and the EU

What are the central issues?

- Who should be the next monarch?
- Can Princess Anne rely on the ETD?
- Is the ETD directly effective?
- Is there employment?
- Is the ETD supreme over Act of Settlement?
- The big issue - Sovereignty!

PLAN A DETAILED ANSWER IN PAIRS!
