

SUMMER EXAMINATIONS 1998/99

LL.B. - SECOND, THIRD & FOURTH YEARS

EUROPEAN COMMUNITY LAW (LW224)

Professor D. O'Keeffe

Mr. T. Carney

Time allowed: THREE hours.

Answer FOUR Questions.

Answer at least ONE question from Part A and at least ONE question from Part B.

PART A

(Answer at least ONE question from this Part)

1. *"There exists in the European Community a democratic deficit which has not been fully addressed by the founding or amending treaties".*

Critically assess the correctness of this statement having regard to the powers and functions of the institutions of the European Community.

2. Last week in a Circuit Court action, a defendant raised as part of his defence a point of European Community law. The judge, not being very familiar with the area of Community law concerned, decided to refer the matter to the European Court of Justice, despite arguments by the plaintiff that the European Court of Justice had ruled on a similar point of law two years ago. The plaintiff is considering an appeal, at national level, against the judge's decision to refer.

Please advise the plaintiff on the substantive and procedural law of Article 177 of the EC Treaty.

3. *"Article 173 of the EC Treaty provided for a system of judicial review of the legality of all acts of the Council and Commission other than recommendations or opinions. This was transformed by the European Court of Justice into a review of all measures adopted by the institutions, whatever their nature or form, which were intended to have legal effects including those adopted by the European Parliament".*

Discuss.

4. *"The scope of the direct effect of directives is important, but it is not the only possible means for an individual to invoke the provisions of a directive before the national courts." Discuss.*

PTO

PART B

(Answer at least **ONE** question from this Part)

5. *"An agreement that falls foul of Article 85(1) of the EC Treaty is automatically void under Article 85(2), unless an exemption had been granted by the Commission pursuant to Article 85(3)".*

Critically examine this statement having regard to the decisions of the EC Commission and the European Community Courts.

6. *"The bare Treaty provisions offer relatively little specific elaboration of the basic right of freedom of movement of workers within the Community".*

Discuss the accuracy of this statement having regard to the derived law of the European Community on the free movement of workers and the decisions of the European Court of Justice.

7. John is an Irish importer of sugar. The Irish Government has recently passed a law with effect from 1 February 1999. The law provides for the imposition of a charge of 10 pence on every kilogramme of sugar imported into this country. Government sources report that receipts from this charge and all taxes on sugar will be channelled into the research and development activities of domestic sugar producers. John contacts officials in the Department of Finance who advise that the charge is "justified" under the EC Treaty. He is further advised that the Government intends to impose by Statutory Instrument a similar charge on sugar produced in Ireland. However, the Government has decided that this similar charge on domestically produced sugar will not enter into force until 1 August 1999. John, who imports most of his sugar from Germany, believes that any charge on imported sugar is unlawful and is contemplating an action before the national courts against the Irish Government.

Advise John of his rights under European Community law. Will his argument be assisted by the entry into force of the Statutory Instrument on 1 August 1999?

8. Rupert is a German national with a business idea. He believes that there is a niche in the Irish market for retransmitting in Ireland television programmes initially broadcast in Germany. His primary target market will be German nationals living in the West of Ireland. He intends to rebroadcast German signals using inexpensive deflector equipment. He applies to the Irish Government for a licence to rebroadcast. The Government immediately refuses to grant a licence without due consideration of his application. Rupert considers that the Irish Government's refusal amounts to a restriction of his freedom to establish and provide services in Ireland. The Irish Government believes that it is justified in its refusal claiming that Rupert's proposal for rebroadcasting will interfere with the broadcast spectrum in Ireland. Rupert complains to the EC Commission. You are the EC Commission case handler charged with preparing a report on the matter.

Examine the European Community law to be applied to this scenario.