

Feedback — Module 1 - Homework

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You submitted this homework on **Sun 11 Jan 2015 7:02 AM PST**. You got a score of **9.00** out of **9.00**.

Question 1

In areas where the EU has shared competence, as soon as the EU legislates to regulate a particular area, member states are _____ also legislate on the same area.

Your Answer	Score	Explanation
<input type="radio"/> Allowed to		
<input checked="" type="radio"/> No longer allowed to	✓ 1.00	
<input type="radio"/> Encouraged to		
Total	1.00 / 1.00	

Question Explanation

In an area where the Union and the Member States share competence (such as for example, the environment, or consumer protection), then member states can exercise their competence to the extent that the Union has not yet exercised its competence. As soon as the Union exercises its competence in that area, by introducing legislation or by entering into an

international agreement, for example, then the member states are no longer entitled to exercise their competence. This is the so called 'doctrine of pre-emption'. The exercise of competence by the Union in that area pre-empts any further exercise of competence by the member states.

Question 2

Two of the following are NOT types of competence that the EU has

Your Answer		Score	Explanation
<input checked="" type="checkbox"/> Divided competence	✓	0.20	
<input type="checkbox"/> Exclusive competence	✓	0.20	
<input type="checkbox"/> Supporting competence	✓	0.20	
<input checked="" type="checkbox"/> Conferred competence	✓	0.20	
<input type="checkbox"/> Shared competence	✓	0.20	
Total		1.00 / 1.00	

Question Explanation

The three categories of competence which the Treaties give the EU are shared, exclusive or supporting.

Question 3

How many steps are there in the proportionality assessment?

Your Answer		Score	Explanation
<input checked="" type="radio"/> 3	✓	1.00	
<input type="radio"/> 4			
<input type="radio"/> 2			
<input type="radio"/> 1			
Total		1.00 / 1.00	

Question 4

An employer introduces a policy which requires all new employees to be over 180 cm height. This policy is likely to be:

Your Answer		Score	Explanation
<input checked="" type="radio"/> Indirectly discriminatory on grounds of sex	✓	1.00	

☐ Directly discriminatory on grounds of sex

☐ Not discriminatory on grounds of sex

Total

1.00 / 1.00

Question Explanation

Direct discrimination would imply that the difference in treatment is on the grounds of the person's sex. So a policy that required all new employee's to be men would be directly discriminatory. This policy, because makes the difference treatment on grounds of height, and not of sex, is not direct sex discrimination. the height requirement appears to be unrelated to sex, and to treat everyone the same way – both men and women over 180 cm are accepted. However, in practice, a much higher percentage of men would be able to meet that requirement than women, so the practice indirectly discriminates against women. Although the height requirement appears to treat everyone in the same way, in practice, a much higher percentage of men would be able to meet that requirement than women, so it is likely that this practice indirectly discriminates against women.

Question 5

What is the primary source of fundamental rights in the EU?

Your Answer

Score

Explanation

☐ General principles

☐ The EU Treaties

☐ The European Convention of Human Rights

☒ The Charter



1.00

Total

1.00 / 1.00

Question Explanation

The Charter of fundamental rights was proclaimed in Nice in 2000 and became legally binding with the entry into force of the Lisbon treaty on 1 December 2009.

Question 6

What are the specific criteria that have to be fulfilled for a provision of a directive to be given direct effect in a relation between a State and an individual? Check the right answer(s) below.

Your Answer

Score

Explanation

☐ The provision is invoked by the State towards the individual.



0.20

☒ The provision is clear, precise and unconditional.



0.20

☐ A directive can never produce direct effect, as it is directed to the Member States.



0.20

☒ The provision is invoked by the individual towards the State.



0.20

☒ The transposition period of the directive has run out.

✓ 0.20

Total

1.00 / 1.00

Question Explanation

Even though it was initially thought that directives could not produce direct effect, several exceptions to this general rule have appeared in EU law. If the provision in a directive does indeed fulfill the usual criteria of direct effect (as to its clarity, preciseness and unconditionality) it is capable of producing said direct effect as from the moment the transposition period has run out. However, it is only an individual who can invoke this direct effect against the State (and not vice versa), as the State was the one responsible for correctly implementing the directive in time.

Question 7

Below you'll find statements about the key principles of direct applicability, direct effect and primacy. Which one of them is false?

Your Answer

Score

Explanation

☐ A directive cannot produce direct effect before its transposition period has run out.

☒ If an EU provision lacks direct effect, it can never be accorded primacy over a national legal provision.

✓ 1.00

☐ Regulations are directly applicable in the national legal order.

☐ A provision in an EU regulation enjoys primacy even over a national provision of constitutional nature.

Total

1.00 / 1.00

Question Explanation

According to article 288 TFEU, regulations are directly applicable in the national legal order. As a part of EU law, they generally enjoy primacy over national law – even if the latter is of constitutional nature. A directive cannot produce direct effect before its transposition period has run out, but even if an EU provision lacks direct effect, it still retains its primacy in relation to national legal provisions. E.g. even before the transposition period of a directive has expired, the Member State has to refrain from adopting any measures liable to seriously compromise the result prescribed by the directive (see Case C-129/96, Inter-Environnement Wallonie). The primacy of EU provisions (that do not have direct effect) also manifests itself through the mandatory EU conform interpretation.

Question 8

Which of the below statements are correct about the principle of legal certainty, as expressed in EU law? (Select all that apply)

Your Answer	Score	Explanation
<input checked="" type="checkbox"/> The principle of legal certainty has been recognized as a general principle of EU law.	✓ 0.20	
<input type="checkbox"/> An individual cannot invoke the principle of legal certainty to question the validity of an EU regulation.	✓ 0.20	

☐ The principle of legal certainty exists exclusively in EU law and a similar principle cannot be found in the national legal orders of the Member States. ✓ 0.20

☒ In general terms, the principle of legal certainty requires legislation to be clear, precise and for its application to be foreseeable ✓ 0.20

☐ The EU principle of legal certainty can never be invoked against national legislation. ✓ 0.20

Total 1.00 / 1.00

Question Explanation

One can find versions of the principle of legal certainty in just about every society claiming to apply with the rule of law – including all of the EU Member States. The EU principle of legal certainty can be invoked both to question the legality of EU acts, but also to question the compatibility of national legislation with EU law (when the national legislation in question falls within the scope of EU law).

Question 9

Which one of the following phenomena would be the least problematic in light of the EU principle of legal certainty?

Your Answer	Score	Explanation
<input checked="" type="radio"/> When interpreting the Treaties, the Court of Justice of the EU comes to the conclusion that Member States should ensure that there is a possibility within the	✓ 1.00	

national legal order to sue the State for a breach of EU law. This solution comes unexpected to many Member States, who have not introduced such a possibility.

☐ An EU regulation, adopted in 2014, which declares that companies who have caused a certain type of water pollution should be pay a fine which is calculated on the basis of the total length of the polluting activity – regardless of whether this activity has been carried out before or after the date of entry into force of the regulation.

☐ A national VAT* regulation which introduces retroactive penalties for tax fraud. (*“Value Added Tax”, the regulation of which is harmonized on the EU level.)

☐ An EU regulation that gives the European Commission the discretion to condemn large companies to pay a sort of “Robin Hood”-contribution to smaller companies acting on the same market, where the European Commission independently decides on a case-by-case basis which companies are to be considered small or big at any given point in time on a given market.

Total

1.00 / 1.00

Question Explanation

Penalties with retroactive effect are always problematic in light of the EU principle of legal certainty, whether these penalties are introduced in an EU regulation or in national regulation that would fall within the scope of EU law (with regards to national penalties targeting VAT tax frauds, see Case C-617/10, Åkerberg Fransson). Furthermore, an EU regulation that would give Commission unfettered discretion to impose penalties on obscure grounds would also be problematic in light of the EU principle of legal certainty, as such a system would be highly unforeseeable to the companies. However, the last phenomena is not particularly problematic in light of this principle, because the Court of Justice of the EU is the ultimate interpreter of EU law, and its interpretation of the Treaties is the interpretation that should have been given to the Treaties all along (regardless of the Member States' own interpretations). It is only in very rare cases that said court would limit – in the name of legal certainty – the effects of its judgment, and then usually to spare private parties (not Member States) from unforeseen

burdensome effects.

