In what situation can treating two persons the same be discriminatory?

1) When the persons come from different countries

Well done! On the contrary, in many situations treating people of different nationality differently is discriminatory

2) When the persons are of different sex

Well done! Again, treating a person of one sex differently from a person of the other sex will often be discriminatory

3) When the two persons are not in a comparable situation (Answer)

Well done! Treating two persons who are not in a comparable situation differently can be discriminatory

4) When it will be unfair to treat them so

Well done! We may consider non-discrimination and fairness to be connected, but the relevant legal test for discrimination in EU law is where

It is against EU law for a member state to treat citizens from other EU member states differently than it treats its own nationals?

True

False

Well done! False – In some situations citizens from other member states are not in a comparable situation. A good example of this is the fact that member states can expel citizens from other EU member states, but not their own nationals. This is because their own nationals are not in a comparable situation, as international law does not permit a state to expel its own nationals, while it permits it to expel foreigners.   
In addition, treating non-nationals differently may be permitted under EU law if the member state can justify the difference of treatment, either by relying on one of the exemptions which the Treaties expressly allow member states, or by showing that the difference of treatment is justified by reference to other objective requirements.