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EU Law

GERARD CONWAY



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DEDICATION

To my parents and family

PREFACE

EU law is often seen by law students as amongst the most difficult of the core undergraduate subjects in a law degree. Undoubtedly, EU law possesses a complexity beyond that of national law. While to some extent this reflects the fact that it is a legal system catering to 28 different Member States, there are also instances of seemingly unnecessary complexity, such as the parallel existence of the basic treaties of the Treaty on European Union and Treaty on the Functioning of the European Union, without a very clear division of content between them (following on from the original complexity of three distinct treaties and communities with the European Coal and Steel Community Treaty 1951, European Atomic Energy Community Treaty 1957 and the European Economic Community Treaty 1957¹); sometimes unnecessary differentiation in the forms of legislative instruments and what might be called quasi-legislative instruments;² and overlap with the Council of Europe system.

This textbook seeks to highlight the distinctive features of EU law and its relationship with both national and international law. Arguably, the EU can only be fully understood in the context of the background of public international law, from which the EU originated. However, to some extent the EU has transcended international law, albeit that important aspects of the EU still reflect public international principles. It would certainly help law students to understand the EU if they first had to study public international law, which would provide a better understanding of how EU law more radically impacts on national law; this textbook seeks to do so within the limits of the space available.

As well as adopting a more contextual approach to EU law relative to principles of national law and of public international law, this textbook adopts a series of pedagogical features designed to help with the practicalities of getting to grips with EU law. Thus, basic learning points, more developed explanations of particular points and critical analysis are all highlighted in each chapter. Each chapter also contains a glossary to explain technical terms, one of the aspects of EU law that can make it seem inaccessible, although this is true of law in general as a discipline.

This book originated from an invitation by Dr Stefan Fafinski and Dr Emily Finch, who were at the time editors of the *Spotlights* series, to be an author for it. There already exists a wide range of textbooks in English on EU law. A number of these are excellent,

1 The adoption of the Merger Treaty in 1965, recognising the practical reality that the three treaties and communities in substance amount to a joint or fused entity did not change the legal complexity, as the three treaties remained operative.

2 The standard instruments of secondary legislation in the EU (regulations, directives and decisions under Article 288 TFEU, roughly equivalent to Acts of Parliament in a national system) are distinguished on the basis of their level of detail or the need for national implementing legislation and their addressees, whereas in a national system, differences in the level of detail and addressees are also found, but without differentiating the types of instruments used in this way. Although the Lisbon Treaty reduced the number of legal instruments, dropping the separate legal instruments in the former second and third pillars, it has, for example, introduced a confusing distinction between non-legislative delegated and non-legislative implementing acts in Articles 290–291 TFEU.

including *EU Law* by Alina Kaczorowska, also with Routledge. This book is distinctive in how it relates EU law more fully to national legal systems and to the international legal system, while also taking a critical – but not carping! – perspective on the subject. Owing to the detail and breadth of EU law, there is a temptation to produce a text that covers a wide range of detail, but tends towards description, rather than more contextual and crucial discussion. This book could not cover all topics of EU law – some aspects are only very briefly referred to (e.g. state aids under competition law and criminal law, while intellectual property and visa and asylum law are not included), although the book does seek both to put EU law in its broader context and to cover the essential elements of the subject.

I would like to express my thanks in particular to a number of people. First, I would like to thank especially Fiona Briden and her editorial team at Routledge. Fiona shepherded the process from the outset, and her care and sound judgement were very helpful at various points in addressing any difficulties and in bringing the process of writing the text to a successful conclusion. Damian Mitchell and then Emily Wells were both very helpful in dealing with the submission of different chapters and passing on reviewer feedback, and all three showed much patience in my various requests to extend submission deadlines (or when I missed the deadline without any prior request). Relative to their contributions, Fiona and her team deserve more than a mention in the preface. The process of text review was very helpful and brought about some notable improvements in some chapters, and I would like to thank the anonymous reviewers for their work. I am very grateful to Nicola Prior and Hazel Sharkey for their careful work in the final stages, as well as to Emily Wells for her work on the Web site. Dr Leanne O’Leary and Dr Jurgita Malinauskaite read over parts and provided very helpful advice. Finally, I would like to thank my family, in particular my parents, for support and encouragement during the lengthy process of writing the book.

This book was mostly completed by late 2014. It has been possible to include some more recent developments only quite briefly. Amongst the most recent developments that have been included to some extent, but not as fully as may be deserved, are the judgments of the Court of Justice in *Dano*³ and *Opinion 2/2013 on Accession of the EU to the ECHR*.⁴ These are more fully dealt with on the book’s accompanying Web site.

A brief note on terminology. Terminological overlaps frequently and understandably cause confusion in EU law and the study of European cooperation. In particular, the EU and Council of Europe – which are two distinct, regional international organisations for cooperation amongst European states – can be easily confused. This is especially so because two of the institutions or organs of the EU – the ‘European Council’ (meeting of national heads of government of EU Member States) and ‘the Council’ (meeting of national ministers of EU Member States) – have similar names to each other and to the Council of Europe. For clarity, the ‘Council’ is usually described in this text as ‘the Council (of Ministers)’, though technically, ‘the Council’ alone is the correct title (see especially Chapter 4).

3 Case C-333/13, *Elisabeta Dano, Florin Dano v. Jobcenter Leipzig*, 11th November 2014.

4 Opinion 2/13 on EU accession to ECHR, 18th December 2014.

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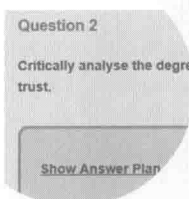
Studying law brings with it the need to master the Legal Vocabulary unique to that subject. New terms are defined throughout and key vocabulary is listed in an end-of-chapter glossary.

Anti-trust is the
for historical reasons
law. The reason
century, corporate
shares in other
means

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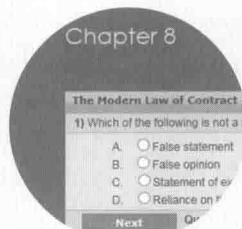
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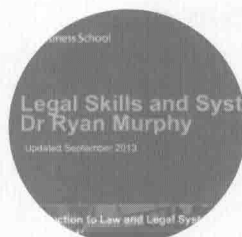
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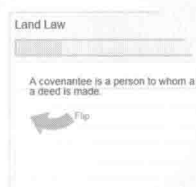
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