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Model Essay (European Union Law)

How to write a law essay

Depending on the required work length, writing a law essay can be a long and involved process. START AS EARLY AS POSSIBLE! Many students develop their own style of attacking an essay topic. Generally however it is useful to break the essay-writing process down into the following steps:

1. Analysing your essay topic

Before you can create an effective argument, you must determine exactly what you are being asked to answer. Your lecturer would have chosen his/her words carefully when setting the essay topic so avoid making generalisations and interpreting the question to suit your interests or level of knowledge. Seek clarification from your lecturer where necessary. It is often a good idea to highlight key words in the essay question and use them to structure your essay.

2. Researching

Be thorough in your researching and try to locate as wide a variety of sources as possible i.e. books, journals, texts, internet articles. Make extensive use of the westlaw and lexis nexis databases for tracking down journal articles (see the lawskool research guide). Many law journals are available online these days and you'll find that printing out web articles is much cheaper than photocopying from the hard-copy journals.

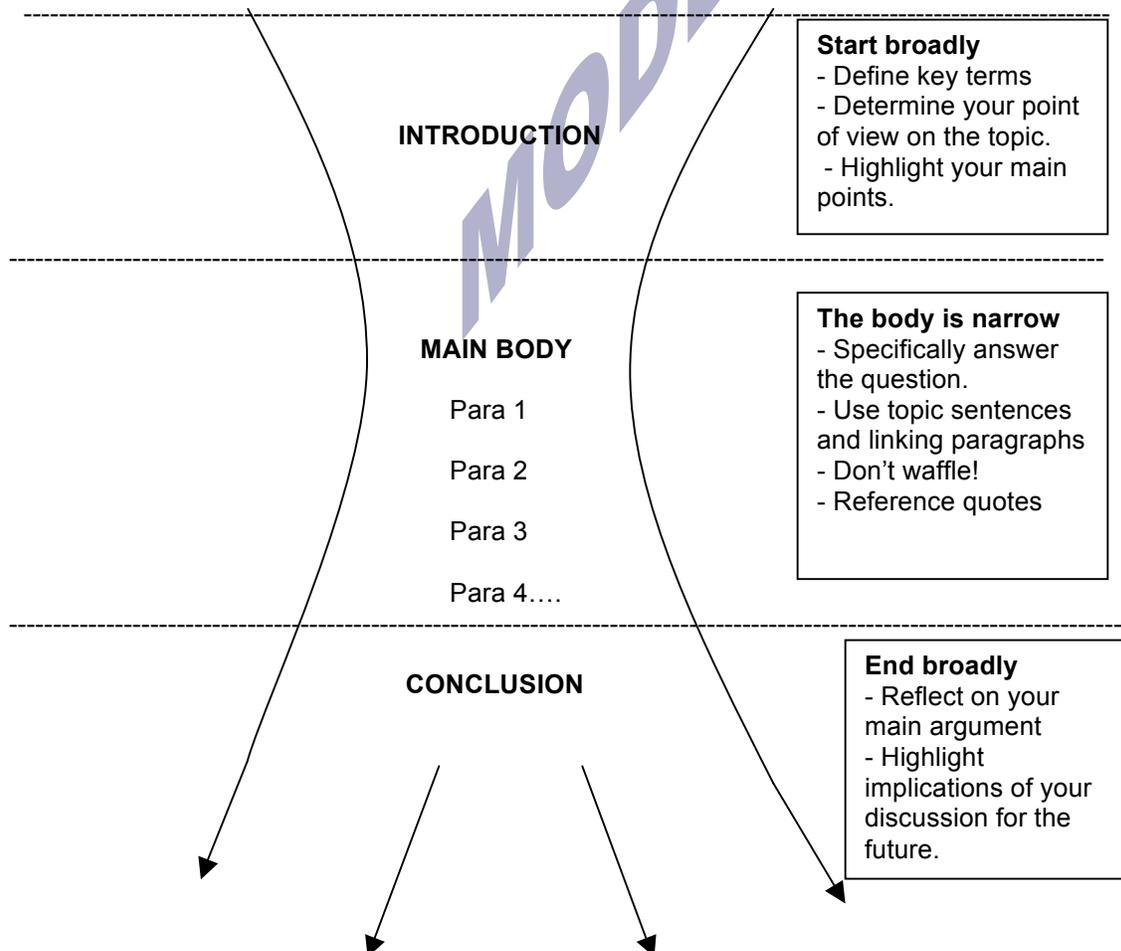
3. Reading/note taking

This will no doubt be the longest part of the essay-writing process. You should have a tentative essay plan in mind at this stage.

- Firstly skim through your sources and try to work out some categories for your notes.
- Now read through each source thoroughly, highlighting your printouts and tabbing your books, as you go.
- Record extensive dot-point notes for each category (either on paper or on your word processor). Write/type out direct quotes verbatim. Ensure that you record all of your references as you go (trust us, this will make your life so much easier later on).

4. Planning

You probably won't be able to finalise a definitive essay plan until after you have teased out all of the relevant information from your sources. The following diagram provides you with a useful way of planning out your essay.



5. Draft

The hard part! Personal writing styles will differ; some preferring to stick rigidly to their plan and whittle down the essay in chunks; others taking a stream of consciousness approach in order to just get everything up on the screen before worrying about the text making any sense. Try to follow your plan but by no means worry about writing in perfect English at this stage. That's what the next step is for. Make liberal use of direct quotes and ensure that they are properly sourced.

6. Revising and refining

This is where you turn your shambolic 'essay' into a piece of solid gold that you can be proud of hurling through the essay chute on due date day. Be sure that you fully ANSWER THE QUESTION. It is imperative that there is a logical argument flowing through your entire essay that is easy for your marker to ascertain. If you have time, take your essay to a university law writing clinic. The dedicated individuals will be happy to read over your essay and give you thoughtful criticism and advice.

6. Footnoting

Everything must be fully referenced in a law essay, not just direct quotes. EVERY SINGLE PARAGRAPH MUST BE REFERENCED. Don't underestimate how long this can take you. Legal referencing is very precise and particular. Find out which legal referencing style your lectures prefer. If you keep a record of all your references as you go along, you will avoid having to frantically fumble through your notes at 2am the morning before its due, trying to work out where you pulled your quotes.

Happy essay-writing!

Do you think that the Treaty of Lisbon (if ratified) effectively builds on the Treaty of Nice to provide a suitable instrument for enlargement?

In preparation for the accession of ten new member states in 2004, The Treaty of Nice made the institutional changes needed to improve the decision-making process. Although Nice was hailed by Javier Solana as ‘a significant milestone down the road to enlargement’¹, further changes were necessary to facilitate the accession of additional member states². The Treaty of Lisbon (if ratified) will build on the changes that Nice made to the main institutions and addresses a number of other issues, such as membership conditionality and the alleged democratic deficit within the EU³.

Prior to Nice, the larger Member States each had two commissioners within the European Commission; this was reduced to one each. It was indicated that once there were more than twenty seven Member States, the overall number of commissioners would be reduced and a rotation system would be introduced. Lisbon took this up and indicated that from 2014 there would no longer be a commissioner from every country, but instead, from two thirds of the Member States⁴, selected on an equal rotation basis to serve terms of five years. This approach was favoured because preserving the collegiality of the Commission was seen as more important than ensuring that each country was represented⁵. Its small size would maximise the effectiveness of decision-making; a feature

¹ David Galloway, *The Treaty of Nice and Beyond: Realities and Illusions of Power in the EU* (Sheffield: Sheffield Academic Press, 2001) p7

² Marise Cremona, *The Enlargement of the European Union* (New York: Oxford University Press, 2003) p210

³ European Union

⁴ http://europa.eu/lisbon_treaty/faq/index_en.htm

⁵ Galloway, p50

which would be unsustainable if the number of commissioners increased with each enlargement. However, this lack of representation is problematic because countries that are not represented will be unable to put forward their own interests. Even though the Commission is collegial in nature, it is fair to say that national interests will play a part in the decision-making process. Member States who are not represented at the Commission and do not have a supportive neighbour to put forward their interests may be at a disadvantage e.g. the UK. Additionally, two posts in the Commission were merged to create the High Representative of the Union for Foreign Affairs and Security Policy. This Commissioner will represent the EU globally on foreign affairs, which may mean that the importance of foreign affairs ministers in Member States will diminish with time.

The Treaty of Maastricht added the co-decision procedure to the TEU⁶ (Article 251) which empowered the European Parliament⁷ to adopt instruments jointly with the Council⁸ on certain policies, e.g. free movement of workers. Nice extended the areas in which the co-decision making procedure applied and Lisbon extended this to almost fifty new areas. The effect of the increased use of the procedure is that it ‘strengthens the democratic control of the European Union’⁹.

Previously, the Council had the final say on choosing the President of the Commission. As a consequence of Article 9 of Lisbon, the European Parliament

⁶ Treaty of the European Union

⁷ The only democratically elected body in the EU.

⁸ The Council of Ministers

⁹ http://europa.eu/lisbon_treaty/faq/index_en.htm

now elects the President. It also has rights equalling those of the Council in respect of decisions on the EU budget. As the EU continues to enlarge, it becomes more difficult for it to retain its current institutional framework and remain democratic¹⁰. Provisions like these are a response to the concerns of this democratic deficit. However, in practice, few people vote in the European parliamentary elections¹¹, so it is not particularly representative and it could be said that it lacks legitimacy¹². The strengthening of the European Parliament and the impact that the EU has on people's lives¹³, means that it is essential to increase participation¹⁴ to make the EU more democratic¹⁵. One way in which the EU has tried to do this is through transparency in the way that the Council conducts its business. Its meetings must be open to the public and thus, the media, ensuring greater accountability.

Additionally, under Lisbon, 'National parliaments are for the first time fully recognised as part of the democratic fabric of the European Union.'¹⁶ Under Article 8, national parliaments are invited to act as 'watchdogs' over the subsidiarity principle and can look at draft legislative acts at a very early stage, take part in revision procedures and in inter-parliamentary cooperation with the European Parliament. However, the provisions indicate that while national governments will be consulted, their views can ultimately be dismissed. As the

¹⁰ If it could ever have been regarded as democratic at the beginning.

¹¹ The turn-out for the European parliamentary elections has traditionally been low (e.g. just twenty four per cent at the last UK election for MEPs)

¹² Although it should be noted that it reflects a growing trend whereby fewer people are exercising their right to vote, even in national elections.

¹³ Galloway, p18

¹⁴ Especially considering the recent enlargements.

¹⁵ Christophe Hillion, *EU Enlargement* (Oregon: Hart Publishing, 2004) p49

¹⁶ http://europa.eu/lisbon_treaty/faq/index_en.htm

EU enlarges and the cultural diversity of its members increases, it becomes more important that democratically elected governments have a greater say in the legislative process, especially new Member States, who have had no say in the *acquis communautaire*¹⁷ which they have had to adopt.

QMV¹⁸ in the Council was extended to additional policy areas at Nice and to more politically sensitive areas at Lisbon, e.g. criminal law, immigration and public services. Each enlargement means that unanimity in the decision-making process will be less probable, necessitating the extension of QMV. However, the weighting of the votes was altered at Nice as part of attempt to compensate the larger Member States who each lost a commissioner, and to allay their fears that smaller countries could unite and vote against them¹⁹. Now, the balance has been redressed and a double majority voting system will take effect from 2014, which will see agreement being established where fifty five per cent of the membership, representing at least sixty five percent of the EU population votes on a particular measure. Consequently, the larger Member States²⁰ will again have greater influence, because inevitably, their citizens will account for a large part of the EU population and will mean that the smaller countries will have little say in the decision-making process.

Article 8 of the Treaty introduces the principle of democratic equality which confirms the idea that all states are sovereign and of equal value. This recognises that the smaller states still have rights and should have a say (even

¹⁷ The legislation of the EU. It is required that Member States must adopt all of the *acquis communautaire*.

¹⁸ Qualified majority voting

¹⁹ Sadurski, W, Czarnota, A, and Krygier, M, *Spreading Democracy and the Rule of Law?* (The Netherlands: Springer, 2006) p285

²⁰ For example, Germany and France.

though in practice they will not be as influential as larger Member States).

However measures such as the changes to QMV and the institutions, which tip the balance in favour of the larger Member States, suggest that further changes need to be made so that smaller Member States are treated equally.

Conditionality of membership is an important issue in respect of accession and retention of membership and the benefits of it. Initially, the Treaty of Rome, Article 237 only required one condition to be satisfied: European identity. At the meeting of the European Council in Copenhagen during 1993, the Copenhagen Criteria were created. Applicants had to demonstrate that they could satisfy political and economic conditions as well as the *acquis communautaire*. There is also a condition of 'good-neighbourliness'; the necessity of demonstrating good relations with geographical neighbours. These conditions were considered by the Commission but were not formally binding, which meant that the Commission had flexibility.

The Treaty of Amsterdam altered this in Article 49 of the TEU by stating that applicants should satisfy the principles which were laid down in Article 6(1)²¹. However, references to the other political criteria, e.g. minority rights, equality and the Charter of Fundamental Rights of the European Union were conspicuously absent in Amsterdam and Nice, and remained so, until Lisbon. Article 49 now requires new Member States to abide by these values, which are laid down in Article 1A. These values are particularly important when considering the anticipated accession of Turkey in 2014 which has a poor human rights

²¹ '...liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law....'

record and in respect of the equal treatment of men and women²² and the EU wishes to ascertain it can satisfy principles expected in a stable democracy. It is also necessary to consider Article 1A in the context of retaining the benefits of membership. Amsterdam added a sanction mechanism, Article 7, whereby membership could be revoked upon a breach of the TEU. This was undoubtedly in preparation for the accession of the Eastern European countries. However, its shortcomings were revealed during the Austrian crisis in 2000, when a far-right, suspected Nazi sympathiser formed part of the coalition. The EU was powerless to invoke official sanctions²³ against Austria, as it has not actually breached the provisions laid down in Article 6(1); it simply appeared as though it would in the future. Nice altered Article 7 so that all that was needed was a 'clear risk of a serious breach' rather than an actual breach. Article 7 was amended at Lisbon so that it was only necessary to demonstrate a breach of the values of Article 1A in order to suspend membership.

This change has addressed the ongoing problem with minority rights in some Eastern European countries, e.g. Hungary and Slovakia, where Roma people suffer from serious discrimination even today²⁴. Although these Member States were subject to stringent conditions at accession, concern has been expressed by academics such as Pogany and de Witta, that paradoxically, once these countries became members, they were no longer subject to close scrutiny which

²² A problem that the EU associate with Muslim countries, which will not be seen as a problem in countries that are predominantly Christian.

²³ Although its members gave Austria the 'cold shoulder'.

²⁴ Sadurski, p200

meant that minority rights could worsen, rather than improve²⁵. Therefore, it is submitted that Article 1A will become important if the situation worsens in the Eastern European countries and as Sajo has argued, it is a response to the fear that although these countries wish to be democratic, that ultimately, they may be unable to sustain the rule of law²⁶.

It is suggested that the EU is attempting to protect its achievements so far²⁷ by including the Copenhagen political criteria in its entirety which makes it so difficult for members to join that there is little incentive for countries such as Turkey and Russia to meet it halfway. Also there may be justifiable resentment from new Member States at being treated like second class EU citizens and having to meet additional criteria to its predecessors. The fact that some of the larger Member States have been able to opt out of certain provisions²⁸ sends the message that some members are more equal than others. As Sadurski pointed out, there will be much closer scrutiny of the Slovakian elections than the Italian elections, for example²⁹. Membership criteria have been applied more strictly with each enlargement³⁰ and while this trend aims to protect the achievements of the EU, in the long run, it may backfire. Although it wishes to develop a good relationship with neighbouring countries (e.g. Russia), as apparent from Article 7a(1), (in the hope that they will join in the distant future) the way that the political criteria are now applied put them off membership, and a vague reference in Lisbon will not be sufficient to re-establish its weakening partnership with Russia.

²⁵ Sadurski, p356, Cremona, p240

²⁶ Sadurski, p175

²⁷ The EU wishes to continue widening, but does not want to do so at the expense of deepening.

²⁸ For example, the UK opted out of certain parts of the Charter on Human Rights at Lisbon

²⁹ Sadurski, p32

³⁰ Hillion, p15

Additionally, there are still problems with the way that the geographical criterion is applied, which was not addressed at Lisbon. Karen Smith has suggested that it is vague, has become 'virtually meaningless'³¹ and should either be altered or abandoned³². Lisbon left this untouched, and it is submitted that it should be altered as the EU apply the geographical criteria inconsistently. Cyprus is now a Member State and it is even further away from Europe, than a country which had its application rejected: Morocco. Only three per cent of Turkey is in Europe, and yet Israel³³ had its application rejected. It is suggested that the EU may be influenced by political situations in countries, rather than simply geographical location which makes it more important to clarify this criterion.

Nice did not deal with the democratic deficit at all and Lisbon has certainly attempted to deal with some of the elements which have been criticised.

However, with little participation in the European parliamentary elections (making it less than representative of all of the Member States) and the limited role of national governments in the legislative process, one cannot help but feel that the EU is paying lip service to democracy. It is in danger of making smaller countries feel powerless as a consequence of the new double majority voting system and making new Member States feeling like second class citizens due to being subjected to more stringent accession measures than previous members. If all of the EU members have ratified the treaty by January 1, 2009, Lisbon will facilitate further enlargements to a certain extent, but leaves some problems unresolved.

³¹ Cremona, p118

³² Ibid. p32

³³ A country which has views broadly in line with the EU, but which may have had its membership refused for political rather than geographical reasons.

BIBLIOGRAPHY

Books:

Cremona, Marise, *The Enlargement of the European Union* (New York: Oxford University Press, 2003)

Galloway, David, *The Treaty of Nice and Beyond: Realities and Illusions of Power in the EU* (Sheffield: Sheffield Academic Press, 2001)

Hillion, Christophe, *EU Enlargement* (Oregon: Hart Publishing, 2004)

Mair, P, and Zielonka, J, *The Enlarged European Union: Diversity and Adaptation* (Oregon: Frank Cass Publishers, 2002)

Neuwahl, Nanette, *European Union Enlargement: Law and Socio-Economic Changes* (Montreal: Editions Themis, 2004)

Sadurski, W, Czarnota, A, and Krygier, M, *Spreading Democracy and the Rule of Law?* (The Netherlands: Springer, 2006)

Warleigh, Alex, *Understanding the European Union Institutions* (London and New York, Routledge, 2002)

Westlake, Martin, *The European Union beyond Amsterdam* (London: Routledge, 1998)

Websites:

http://europa.eu/lisbon_treaty/glance/index_en.htm

http://www.saxonbooks.co.uk/treaty_of_lisbon.htm

<http://www.eurointelligence.com/article.581+M5aca4ee4d7b.0.html>

<http://www.parliament.uk/commons/lib/research/rp2008/rp08-009.pdf>

<http://www.teameurope.info/modules.php?name=News&file=article&sid=148>

<http://www.fco.gov.uk/>

<http://www.euromove.org.uk/index.php?id=6502>

http://ec.europa.eu/external_relations/russia/summit_05_02/sp02_237.htm

http://ec.europa.eu/external_relations/russia/intro/index.htm

<http://mondediplo.com/2007/01/06russia>
<http://www.eubusiness.com/news-eu/1203441420.58>

<http://www.eurunion.org/newsweb/HotTopics/EU-RussiaRels2007.pdf>

http://ec.europa.eu/comm/nice_treaty/summary_en.pdf

http://en.wikipedia.org/wiki/European_Central_Bank

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1184758215286>

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