

## European Union

Question: Critically discuss the effect that entry into the European Union has had on the sovereignty of the UK Parliament

### Answer Guide:

1. The scope of Parliamentary Supremacy

Fundamental aspect – British Constitution (Parliament - Sovereign law making body)

Act of Parliament – supreme source of law – remains in force until repealed



Nobody can question its validity

2. UK's membership into EU

Entry - put a rather different perspective to UK supremacy which is absolute n unconditional.

ECA 1972 – expressed UK's obligations under Treaty of Rome 1957 –

In force from 1 Jan 1973.



Result – relationship between EC law n Domestic law



S2 (4) ECA 1972 – Any Act of Parliament – present or future – subjected to provisions of S2

3. What has been the attitude of the courts?

Attitudes of the ECJ – clear – decisions are binding on domestic courts (all 15 member states)



Validity of EC Law can be judged in the light of domestic law

\* Because this will endanger the uniform application of community law n undermine the system



Thus community law automatically renders invalid any domestic provision which is incompatible with it.

Simmenthal (1978) – courts of member states not only power but duty bound to prefer community law



any courts are to construe their own law in such a way – as to give effect to the purpose of EC measures – Von Colson v Lan Nordrhein-Wesfalon (1984)

\* Thus the EC law supercedes the laws passed by the Parliament in the event of any inconsistency between the two

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### 4. Has Parliament relinquished its sovereignty?



Not necessarily

Since Parliament was a voluntary signatory to the treaties, therefore, the process may always be reversed. Echoes of such thinking were sometimes seen in the British Judiciary,

For example,

Lord Denning in the case of Bulmer v Bollinger (1974) – openly embraced the superiority of the EC law, saying

- “it’s an incoming tide which cannot be held back”

BUT

In Felixstowe Dock & Railway Company v British Transport Docks Board (1976)

- Once a Bill has been made law that will dispose of all these discussions about the Treaty – the courts will therefore have to abide by the statute without regard to the Treaty.

Garland v British Rail Engineering (1982)

- The HOL held that material provisions of the Equal Pay Act 1970 had to be reconciled with Article 119 of the EC Treaty.

BUT

In Duke v GEC Reliance (1988)

- Lord Templeman maintained that S2 (4) did not constrain an English Court in situations where the EC law was not intended to be directly effective.

### 5. Conclusion

It can be concluded therefore, that whilst the notion of Parliamentary Sovereignty has clearly been dampened as a result of UK’s membership to the EU. Parliament’s Supremacy has certainly not been totally abolished. It is clearly seen that directly and forcible community law will prevail over inconsistent national law. To this extent, Parliament loses its’ supremacy.

However, should the national law expressly and deliberately conflict with the Community’s Act 1972, to this extent; the traditional view of the Parliamentary Supremacy would prevail.