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Introduction to Courses delivered in English

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rettssosiologi

JUR1230 - International Commercial Law (BA) 10

■ Menneskerettigheter

JUR1260 - English Law of Contract (BA) 10

JUR1440 - EU Substantive Law (BA) 10

JUR1450 - Marine Insurance 10

JUR1530 - Refugee and Asylum Law (BA) 10

JUR1560 - International Constitutional Law and Democracy (BA) 10

JUR1630 - Privacy and Data Protection 10

JUR1910 - Women's Law and Human Rights (BA) 10

JUR9020 - Internasjonalisering, overnasjonal rett og komparasjon 5

JUS5230 - International Commercial Law 10

JUS5260 - English Law of Contract 10

JUS5405 - Law of the Sea 10

JUS5411 - Petroleum Law 10

JUS5440 - EU Substantive Law 10

JUS5450 - Marine Insurance 10



General course requirements

- Knowledge of the relevant legal sources
- Ability to understand and analyse the relevant legal rules
- Ability to apply the relevant legal rules in case studies



Legal method – national, international and European

- Sources of law – same or different?
- National law- statute, preparatory materials, case law (varies among states!)
- International law – customary law (State practice) and law-making treaties are central
- EU law – primary and secondary law and case law



Sources of law (not a full list)	National	International	European
Written (formal)	Statute, regulation etc	Treaties	Treaties Charter Secondary legislative acts
	Preparatory materials	Preparatory materials	
Non-written	Principles, fairness etc	General principles of law	General principles of law
	Case law	Case law	Case law
	Customary law	Customary law	
	Literature	Literature	



- (1) Sources of international law
- (2) Sources of EU law
- (3) Relationship between international law, national (municipal) law and EU law
- (4) (Using international and EU legal texts) –
 - 4.1 Interpretation of international law sources (treaties)
 - 4.2 Interpretation of EU law



Sources of international law

- <http://www.uio.no/studier/emner/jus/jus/JUR1230/v17/index.html> (Sources of international law)
- Article 38 of the Statutes of the International Court of Justice
- Treaties as the central source for study purposes



- “Soft law” – important
 - Non-binding instruments laying down principles which are (to be) voluntarily followed by States
 - Recommendations, resolutions, principles, conclusions of conferences etc
 - Codifies customary rules of international law?



Sources of EU law

- <http://www.uio.no/studier/emner/jus/jus/JUR1230/v17/index.html> (sources of EU law)
- Constituent treaties and Charter, secondary legal acts (Regulations, Directives) and EU case law – the most central sources
- EU uses also other instruments to achieve its objectives (decisions, non-binding instruments, etc)



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European Union

- Autonomous legal order
- Supranational legal system
- Legislative and political institutions
- Court of Justice of the European Union
- System for enforcement

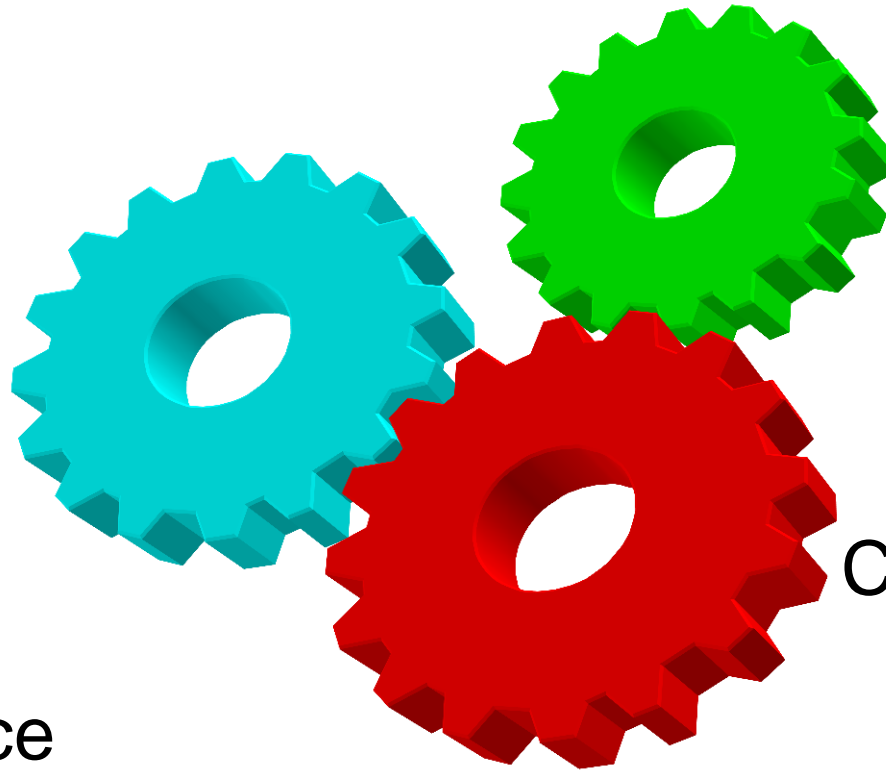




Institutions in the EU Decision making process

Commission

Initiates
(legislates)
Executes



Parliament

Legislates
Controls

Court of Justice

Interprets
Adjudicates

The European Council

Member States' leaders meet
to discuss political agenda; no
legislative competence

Council of EU

(Initiates)
Legislates
Coordinates



- **Primary legislation: the Treaties and the Charter of Fundamental Rights**
 - Lisbon Treaty, in force as of 1 December 2009:
 - » Articles (7), Protocols and Declarations
 - (amendments to) *Treaty on the European Union (TEU)*
 - (amendments to TEC) *Treaty on the Functioning of the European Union (TFEU, former EC Treaty)*



General principles of EU Law

- Developed in EU Court's practice
- Examples:
 - Non-discrimination
 - Proportionality
 - Legal certainty & legitimate expectations
 - Precautionary principle
 - Procedural justice



Secondary legislative acts of EU, Art 288 TFEU

- Regulations have general application, are binding in its entirety and directly applicable to all Member States (Art 288.2)
- Directives:
 - Binding as to the result to be achieved (Art 288.3 TFEU)
 - Leave to the national authority the choice of form and method (must be transposed in the national law)



Case law of the Court of Justice of the European Union

- Major role in developing EU law and promoting EU objectives
- “shall ensure that in the interpretation and application of the Treaties the law is observed» (Art 19.1 TEU).
- Article 344 TFEU: EU Court has exclusive jurisdiction over disputes between Member States concerning the interpretation and application of the Treaties

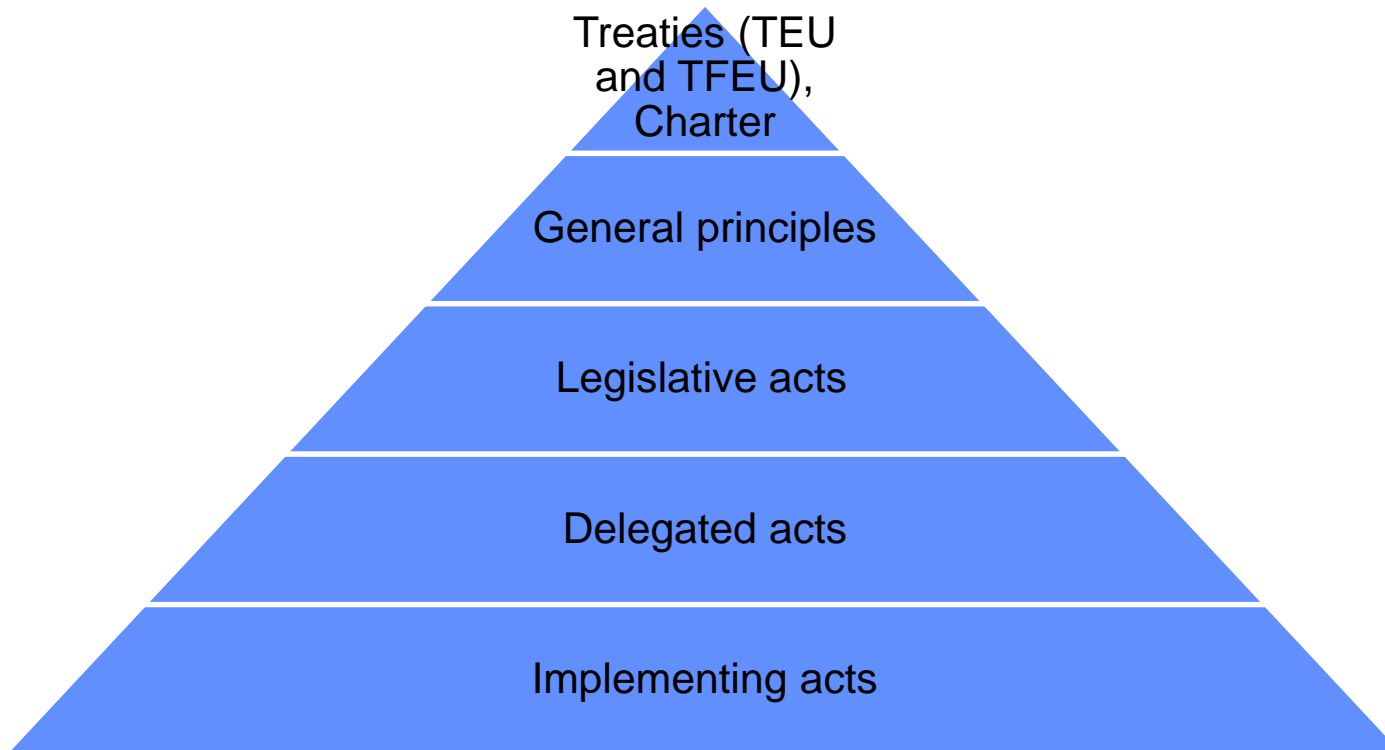


Human rights in the EU

- General principles of EU law
- Human rights are integrated in many EU policies
- The EU Charter of Fundamental Rights (based on ECHR provisions) has equal legal status with constituent Treaties
- EU and European Convention on Human Rights:
 - Article 6 TEU
 - a «special source of inspiration» for ECJ
 - EU «shall accede» to ECHR (NB: Opinion 2/13 of 18 December 2014...)



Hierarchy of legal norms of EU





Summary

- Treaties and other written international instruments (“soft law”) are most important for study purposes
- Relevant international case law?
- EU law sources: case law very important alongside Treaties and secondary legal acts
- What international and EU law sources are most relevant for your course? Reading materials and lectures



- Are national law and international law (and EU law) different legal systems?
- What effect does international law (and EU law) have on national legal systems?
- Will national courts apply international law (and EU law) as well as national law?
- Which law takes precedence?



International law in the national (Norwegian) legal system

- Dualistic system with some elements of monism
- International law rule must be made a part of domestic law to become applicable/enforceable in Norwegian courts
 - By transformation or incorporation method



- Supremacy of domestic law in case of conflict between domestic and international rule (*Forrangsprinsippet*)
- Presumption of conformity of Norwegian domestic law with international law (*Presumsjonsprinsippet*)
 - National courts will try to interpret national provisions in such a way so as to avoid conflict with international law, to the extent possible



Relationship between EU law and municipal law (of a Member State)

- Is EU law different from the international law with regard to its implications on domestic laws of Member States?
 - Does EU law have direct effect in Member States?
 - Does EU law override conflicting national provisions?



- How will a conflict between EU and national law be resolved?
- Who can be granted enforceable rights under EU Law?
- What is the principle of supremacy?
- What is the meaning of direct effect?



Supremacy of EC Law

Case 6/64 *Costa v. ENEL* [1964] ECR 585

... the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

Case C-213/89 *Factortame* [1990] ECR I-2433

Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125



Supremacy of EU law

- EU law will always take precedence over conflicting national sources of law (*Costa v Enel*)
- Including where conflicting national law was enacted after the EU rule (cf. with *lex posterior* rule), *Costa v Enel*
- EU law is supreme over all sources of law, also constitutional principles (*IHG*)
- The national court hearing the action must immediately give effect to EU law (*Simmenthal*)



The direct effect of EU law

- *Case 26/62 Van Gend en Loos* [1963] ECR 1
 - Infringement of Art 30 TFEU (then Art 12 EEC)
- Two aspects of ‘direct effect’:
 - EU law provides individuals as well as Member States with rights and obligations
 - Such rights and obligations are enforceable by national courts



Conditions for direct effect as developed by ECJ

- Not all Treaty provisions are capable of having direct effect. Certain conditions must be met.
- Legal provision in question must be:
 - Sufficiently clear and precise
 - Unconditional (provision does not open for discretion not subject to judicial control)
 - Not subject to any further implementing measures by EU or national authority



- «Vertical» direct effect: Individual versus State
- «Horizontal» direct effect: Individual versus individual





- EU Regulations have direct effect (once they are in force)
- EU Directives?
 - As a starting point, not directly applicable because directives require implementation (Art 288 TFEU)
 - Principle of harmonious interpretation («indirect effect»)
 - May have direct effect, assuming certain criteria are satisfied
 - Only ‘vertical’ direct effect



European Economic Area (EEA)

- Agreement between EU, EU Member States and European Free Trade Agreement / EFTA States (Iceland, Liechtenstein and Norway) of 1992 (in effect as of 1994)
 - Agreement (Main part) with Appendices and Declarations
 - ODA-agreement (ESA and EFTA Court)
 - Secondary acts taken in the appendices
- EEA extends the internal market to EFTA States
- Other (bilateral) agreements between Norway and EU
 - E.g. Schengen Agreement



- TFEU which evolved from EC Treaty now contains provisions that are not part of EEA-Agreement, e.g.
 - EU Citizenship provisions (NB Norway adopted EU Citizenship directive)
 - AFSJ



Supremacy of the EEA law?

- Homogeneous/uniform EEA law
 - EU-conformity
 - EU Court's practice is relevant
 - Duty of loyal application
- Implemented EEA law will have supremacy (para. 2 of EEA-law)
 - *Main part of EEA Agreement implemented by EEA-law*
 - New secondary acts require implementation



- Implementation of EEA secondary acts:
 - (1) EEA committee
 - (2) Transposition in the Norwegian legal order
- Not implemented (transposed) secondary acts will not have direct effect in the Norwegian legal system



Summary

- EU is a supranational legal order which is a part of the legal systems of Member States and may apply directly
- EEA is a (complex) international agreement and applies in national systems on conditions similar for international law generally
- Both EU and EEA systems have some supervision and enforcement structures (unlike international law)



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Using legal texts: statutes, treaties and cases





Interpretation methods

- Grammatical (literal)
- Contextual; a legal instrument / legal system as a whole
- Purposive (teleological)
 - objective and purpose of the legal instrument; underlying values and principles
- Historic



- A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
 - Vienna Convention on the Law of Treaties, 1969,
SECTION 3. INTERPRETATION OF TREATIES, Art 31



Multi-lingual treaties

- International treaties: official languages equally authoritative
 - Difference of meanings to be removed through interpretation
 - » Art 33 of the 1969 Vienna Convention
- EU law
 - All languages are original
 - Comparison of different language versions (*CILFIT*)



- The context includes the text of the treaty and related agreements or instruments
- Parties may also enter subsequent agreement or establish practices regarding the interpretation of the treaty or the application of its provisions
- States may agree to give a special meaning to particular terms used in the treaty



– *Donau-case (1997, Gabčíkovo-Nagymaros project)*

» «the purpose of the Treaty, and the intentions of the the Parties in concluding it, which should prevail over literal interpretation...



- **Dynamic interpretation**
 - Article 31(3)(c) of the 1969 Vienna Convention provides that «any relevant rules of international law applicable in the relations between the parties» shall be taken into account together with the context.



- “there are situations in which the parties’ intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used – or some of them – **a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law**” (*Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment of 13 July 2009, para. 64).
 - *Namibia-saken* (1971)
 - *Costa Rica/Nicaragua* (2009)



- «the [ECHR] is a living instrument which ... must be interpreted in the light of present-day conditions» (Soering v UK, 1989)



Supplementary means of interpretation

- preparatory work of the treaty and the circumstances of its conclusion
 - to confirm the meaning resulting from the application of the main rule (Art 31)
 - or to determine the meaning when the interpretation according to the main rule
 - » leaves the meaning ambiguous or obscure; or
 - » leads to a result which is manifestly absurd or unreasonable.



Interpretation of EU legal acts

- *Harmonization* and *homogeneity* as important arguments for national courts to comply with the EU Court's method and reasoning
- Purposes of EU law (teleological interpretation) is central in EU Court's practice
 - Harmonization objective
 - Common market and integration
 - Equality, non-discrimination



Interpretation of EU legal acts

- Textual (grammatical) analysis has probably more importance for the interpretation of secondary legislative acts than Treaties
 - Still, recitals (preamble) are very important for determining the contents of substantive provisions of Directives, Regulations etc
- Multiple language versions



Interpretation of contracts

- Subjective or objective interpretation?
- Common intention of the parties
 - Wording of the contract and commonly used terminology
 - Context of the conclusion
 - Subjective/individual conditions of the parties(statement of the parties, conduct, practices and usages between them)
 - Purpose of the contract
 - Declaratory rules of law
 - Good faith

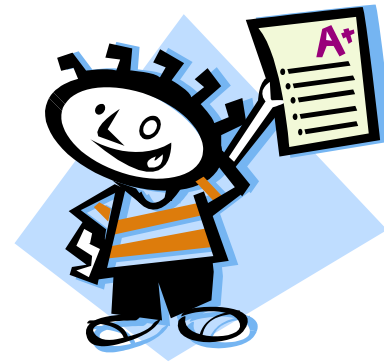


- What is the standard for assessment if the common intention is unclear?
- Legitimate expectations/»reasonable» person-test
 - Art 4.1 UNIDROIT Principles



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Some practical suggestions on studies and exams





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Prior to the exam ...

- Become familiar with the learning requirements of your topic!



- Master's level (10 credits): A **good understanding** is required
- Bachelor's level (10 credits): A **general understanding** is required
- How advanced, broad or deep knowledge is expected?
 - Specific requirements for individual topics are listed on the home pages of these topics



- Look at the previous exam papers – what kind of assignment are you likely to get?
- A theoretical question
- A case analysis
- Or both?
- Additionally: skills in practical finding of law sources, making presentations, mock trials etc



- Textbooks , treatises or other academic writings assigned for reading are useful because
 - Give a general overview of legal issues
 - Give an overview of relevant statutes, international instruments, cases
 - Provide with a deep in-sight into the substance of legal rules



- Obtain a good overview over the contents of study materials, central provisions in the treaties, case law etc
 - Work with your study material throughout the course!
- Know what materials can be brought to the exam (permitted examination support material)



- Make appropriate references in the materials:
 - It will help you to navigate through them easier at the exam
 - NB: rules on making references in the permitted exam material!

<http://www.jus.uio.no/studier/regelverk/auxiliary-materials.html>



- Theory questions – how to write these?
 - Interpretation of a rule (see above) + relevant examples
- Practical assignments (case analysis) - ?
 - Interpretation and application of a rule to a set of facts



At the exam

- Analyze the requirements of the question very carefully
- Prepare an answer plan
- Write a concise and up-to-the point introduction to set the scene and explain what and why will be answered



- Make sure you provide arguments to support your statements
- The main part of the answer: the law and its application? Your evaluation? Both? (depends on the question)
- Reveal all important stages in your argumentation: write them down. Do not jump directly to conclusions as this will make your answer look less thorough and less analytical



- Write clearly and avoid ambiguous statements open for different meanings. Important to give reasons for your statements and pay attention to (important) details
- Logical and transparent structure. No need to make a sub-heading for each new thought you write down
- Make a clear and logical conclusion (answer to the question you have been asked)



- In a 'case' study: make sure you use the facts in the assignment in a correct way:
 - Distinguish between relevant and irrelevant facts
 - Create a proper factual framework for your legal discussions: connection between legal provisions and their interpretation and the facts of the case
 - Avoid supplementing the factual background provided in the assignment with your own assumptions/fill in gaps in the facts.



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Good Luck on your exam!!