

The Institute Legal Executives

LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW

EUROPEAN UNION LAW

Time allowed: 3 hours

Each question carries a total of 25 marks

Answer FOUR only of the following EIGHT questions. This paper is divided into two sections. You MUST attempt at least ONE question from Section A and at least ONE question from Section B.

Full reasoning must be shown in answers – a yes or no answer will earn no marks.

Authorities and decided cases should be cited where appropriate.

**Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on EC Legislation 2006-2007 (17th edition) by Nigel Foster, Oxford University Press.
Invigilators may carry out spot checks.**

SECTION A

1. Clive operates the only trawler fishing for sandeels in the English Channel. These are small fish, mainly used as bait by fishermen fishing for larger fish. Under the Common Fisheries Policy an EC Regulation [fictitious] has been introduced requiring all trawlers operating in the English Channel to have a minimum mesh size, to prevent them catching immature specimens of a number of species of larger fish whose stocks are dangerously low. This mesh size is so large that it is impossible to catch sandeels with such nets. Clive was aware of the proposals for this Regulation and was allowed to make specific representations to the Commission in support of his claim for an exemption from the Regulation, since he fishes only in areas where there is no likelihood of him catching fish of the species intended to be protected. However, no exemption is incorporated.

The UK Fishing Industry Act 1990 [also fictitious] creates an offence of contravening EC Regulations made as part of the Common Fisheries Policy.

Advise Clive on how he can challenge the EC Regulation.

(25 marks)

P.T.O.

2. Antrios plc is a manufacturer of high quality speakers for sound reproduction systems. Its research and development department has discovered that certain polymers are, in principle, capable of producing significantly better sound quality in speakers than any technology currently in production. However, the cost of moving from the current theoretical understanding to actual production is very high, and potentially crippling for Antrios.

Antrios, which has a 10 per cent share of the EU market for high quality speakers, is considering collaboration with one or more of Basso SA, which has 30 per cent of the same market, Clef AG, which has 5 per cent of the same market and Dorma srl, which does not manufacture speakers, but takes 70 per cent of Antrios' output to incorporate into its complete sound systems.

The collaboration would result in Antrios and the collaborator having the exclusive right to develop and market speakers incorporating these polymers.

Advise Antrios as to whether, and how, they could collaborate with any or all of the other companies without breaching EU competition law.

(25 marks)

3. Ladislav is a Czech producer of chilled pre-cooked meals; he also trades in wine. He consults you over two problems he is currently experiencing: -

- (i) The Hungarian Consumer Affairs Ministry has informed him that he cannot import into Hungary his chilled goulash, which is produced to Czech food industry standards, and is sold all over the EU. Two reasons are given for this. The first is that goulash is regarded as the national dish of Hungary and can be made and sold commercially only in accordance with the official Esterhazy Magyar goulash recipe, as Hungarians expect this. Ladislav's goulash contains two ingredients not included in the 'official' recipe. The second is that one of the additional ingredients is garlic, and this is not permitted in foods sold commercially in Hungary as a large number of inhabitants of the Transylvanian provinces have a hereditary allergy to garlic.
- (ii) The Greek authorities impose the same excise duties on all imported wine and wine from the Greek mainland, but Retsina (resinated wine) is subject to a lower duty as a 'traditional Greek beverage' and wine from the Greek islands is also subject to a lower duty 'to offset the disadvantages of production in remote areas and to improve the economic position of disadvantaged producers.'

Advise Ladislav as to:-

- (a) The grounds on which he can seek to eliminate these problems;

(20 marks)

AND

- (b) Outline the procedures to be followed.

(5 marks)

(Total: 25 marks)

P.T.O.

4. Florence is a United Kingdom citizen and has been working as a nurse in Sweden for ten years, and in that time met and married Vassily, a Bulgarian citizen also working in Sweden. Before he met Florence, Vassily was convicted on two occasions of supplying heroin, and once of armed robbery, but has not been in trouble with the police for seven years.

Florence's daughter from a previous relationship, Zena, met a Russian student, Ilya, in Sweden and went to live with him in Russia. They had a son, Kyrill, who has only Russian nationality. Zena and Ilya have been killed in a road accident, and Florence has since been bringing up Kyrill as though he were her own son.

Florence now wishes to return to England with Vassily and Kyrill. Vassily wants to work as a laboratory technician here.

Advise Florence and Vassily on the extent they can rely on rights under EC law in this respect and any problems they may face.

(25 marks)

SECTION B

5. Explain, by reference to decided cases, the circumstances in which a national court must make a preliminary reference, those where it should properly do so and those in which it need not do so.

(25 marks)

6. Explain the operation of the co-decision procedure of legislation, with particular reference to the roles of the Community institutions involved and its perceived advantages and disadvantages in relation to other procedures.

(25 marks)

7. In the light of cases such as *Martinez Sala* (1998) and *Grzelczyk* (2001), critically consider the extent to which EU citizenship is now an independent source of legal rights.

(25 marks)

8. Explain, by reference to decided cases, the principles on which institutions of the EU may be liable for non-contractual fault.

(25 marks)