

INSTITUTE OF LEGAL EXECUTIVES

UNIT 6 – EUROPEAN UNION LAW*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's EU Treaties and Legislation 2010-2011, 21st edition, Nigel Foster, Oxford University Press.**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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SECTION A
(Answer at least one question from this section)

1. Critically assess the importance and effectiveness of the procedure under Art 267 TFEU (ex Art 234 TEC).

(25 marks)

2. Critically assess the effectiveness of the Commission and Parliament in carrying out their functions in relation to the legislative and budgetary processes of the EU and in relation to the implementation of policy.

(25 marks)

3. Examine and critically evaluate the significance of ALL of the following:
 - (a) the *Francovich/Brasserie du Pêcheur* principle;

(10 marks)

 - (b) the Equal Treatment Directives (Dir 2000/43 and 2000/78/EC and 2006/54/EC);

(8 marks)

 - (c) the provisions of the Brussels I Regulation (Reg 44/2001) on jurisdiction in civil and commercial matters.

(7 marks)

(Total: 25 marks)

4. In relation to Art 101 TFEU (ex Art 81 TEC), critically consider the following issues:
 - (a) How the application and enforcement of competition issues has changed following the entry into force of Regulation 1/2003?

(13 marks)

 - (b) How smaller enterprises are given particular protection?

(5 marks)

 - (c) The concept of 'concerted practice'.

(7 marks)

(Total: 25 marks)

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SECTION B
(Answer at least one question from this section)

Question 1

Cappit is a major manufacturer of crown corks, which are one of the most commonly used closures for glass bottles, specifically those used for beer and soft drinks. Cappit has about 60% of the market for crown corks in the EU, mainly in the UK, France, Germany, Belgium and Sweden, but with significant sales in all other countries with a bottling industry.

Foil caps and screw tops can also be used to close glass bottles, and many beer and soft drink products are also sold in cardboard tetrapaks, aluminium cans and plastic bottles.

A Polish company, Z-kork, has recently entered the crown cork market. It is vigorously seeking to attract business by offering loyalty discounts, very generous volume discounts and introductory price offers at what Cappit regards as uneconomic prices.

Cappit wishes to pursue a similar policy of discounts and price cutting.

Advise Cappit whether this is permissible under EU law.

(25 marks)

Question 2

Mifsud operates a boat in Malta which provides the only commercial dolphin watching trips for tourists. He has been in receipt of assistance from the Maltese government to assist with the provision of a specially designed diesel engine for his boat, which has additional sound insulation in order not to interfere with the dolphins' hearing.

The European Commission has issued a decision addressed to Malta to the effect that the assistance is an unlawful state aid and must be repaid. Mifsud believes that the assistance is permitted under the [fictitious] EU Ecological Tourism Development Scheme, and the decision was made on the incorrect assumption that Mifsud also uses the boat for commercial fishing operations.

Advise Mifsud as to the basis on which he can, directly or indirectly, seek to challenge the decision.

(25 marks)

Question 3

You are asked to advise the Commission on the following matters:

- (a) The Commission has found that in Sweden the excise duty on wine is higher than the excise duty on strong beer. This results from a reduction in the beer duty to discourage Swedes from importing cheaper beer from Denmark. As Sweden has a state monopoly for alcohol sales, it is possible to show that much more beer is sold than wine, although the proportion has not changed following the reduction in beer duty. Even if the duty were charged in exactly the same way on beer and wine, wine would be twice the price of beer. Beer is largely produced in Sweden and wine is largely imported.

Is there a breach of EU law by Sweden?

(8 marks)

- (b) James has complained to the Commission that he cannot sell his food supplements in Finland. These supplements are classed as food in the United Kingdom, where James produces them, and meet all UK standards. However, the Finnish authorities have said that they should be classed as herbal remedies and meet specific and higher standards in Finland. There have been numerous incidents in Finland of people being poisoned by undeclared ingredients in products sold on the internet and in markets as food supplements. All other EU states class James' products as food supplements.

Is there a breach of EU law by Finland?

(12 marks)

- (c) By what procedure will the Commission investigate and pursue these issues, if it considers that this is justified?

(5 marks)

(Total: 25 marks)

Question 4

Xerxes is a Greek citizen. He moved to Germany and worked for several years as a chef. He then established his own restaurant business there. In 2004, he married Ruksana, an Albanian citizen who had entered Germany as an asylum seeker. At the time of the marriage she was illegally in Germany because her asylum application had been refused.

Xerxes has now been convicted of a number of criminal offences. The police in Germany established that part of his restaurant was being used as a brothel, and some of the prostitutes that had been trafficked from Albania and Moldova, were in Germany illegally and were being held against their will. Xerxes was fined €10,000 for running a brothel. He has been sentenced to 10 years imprisonment for people trafficking, but German law allows this to be suspended if the offender leaves Germany and is prohibited from returning.

Xerxes and Ruksana are now separated and contemplating divorce. Ruksana has the care of their son Tassos, who is a German citizen. It is clear that Ruksana first entered Germany in 2004. It is not clear when Xerxes moved to Germany. There are official records of him being present and registered with the police from 2003, but Xerxes claims to have been living in Germany since 1998, although he has produced no official documents to support this. However several people have signed statements supporting his case, including one café owner who states that he employed Xerxes for three months in 1999.

Advise the German authorities whether, and if so by what means, Xerxes and Ruksana can be expelled from Germany.

(25 marks)

End of Examination Paper

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