

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, N 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**

BLANK PAGE

StudentBounty.com

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

1. (a) Critically assess the effectiveness of the Commission and the European Court of Justice respectively in ensuring that Member States comply with their obligations under EU law.

(13 marks)

- (b) Critically assess how effectively the institutions of the EU interact in relation to the ordinary legislative procedure.

(12 marks)

(Total: 25 marks)

2. While the Art 267 TFEU preliminary reference procedure has made enormous contributions to the development of the EU, it nevertheless has clear flaws which create the possibility of miscarriages of justice.

Critically assess this statement.

(25 marks)

3. (a) Explain and critically evaluate the concepts of 'dominant position' and 'abuse' in the context of Art 102 TFEU.

(14 marks)

- (b) Art 101 TFEU is directed against co-operation between companies which act in an anti-competitive way, but treats horizontal and vertical co-operation very differently, for no good reason.

Critically assess this statement.

(11 marks)

(Total: 25 marks)

4. Art 263 TFEU was designed to allow non-privileged applicants only to challenge decisions made in their favour or against them, but was so badly drafted that it encouraged them to treat it as a general judicial review procedure.

Critically assess this statement, having particular regard to the changes effected by the Treaty of Lisbon.

(25 marks)

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

Question 1

Natalia, a citizen of the United Kingdom of Russian origin, is a fully trained beautician. She has a Higher National Diploma in Cosmetology. This is a degree level qualification awarded after two years full-time study. Natalia has 'topped this up' to a BSc in Health Studies by a further one year of study.

Natalia intends to relocate to Greece. She has been offered a full-time job in a beauty salon in the Greek holiday resort of Hersonnissos, but is considering establishing her own business to cater for the large number of Russian tourists who visit Crete.

Next month Natalia plans to travel to Moscow to marry her boyfriend Oleg, a Russian citizen. She plans that Oleg will join her in Crete. Oleg has criminal convictions dating back to a time ten years ago when he became involved with a criminal gang. He served three years in prison for robbery and extortion, but has not been in trouble with the police since. The Greek authorities have recently announced that they are concerned that Russian criminal gangs have started to operate in Crete, and that they will therefore be refusing residence permits to those Russian applicants they regard as likely to be involved with such gangs.

Natalia has also heard from friends in Crete that if she takes the job in the beauty salon, she will be paid less than male hairdressers. This is because the Greek hairdressing qualification is regarded as of a higher standard than the Greek qualification for beauticians, which involves only two years study, at lower than degree level. They also say that Greek employers do not usually accept foreign qualifications, as they do not understand them. Natalia has also found out that if she wishes to establish her own business, she will have to pay a registration fee. This is only charged to non-Greek citizens and is said to be in respect of conclusively establishing her identity, place of business and suitability to run the business.

Advise Natalia as to:

- (a) Whether under EU law Oleg will be able to join her in Greece, any problems there may be and, if he does join her, what rights he will have. **(12 marks)**
- (b) What principles and provisions of EU law she can rely on to challenge the pay disparity with male hairdressers, the recognition of her qualifications and the imposition of the registration fee. **(13 marks)**

(Total: 25 marks)

Question 2

Audrey works as a technician at an agricultural research laboratory operated by the Ministry of Farming. Bertie works as a labourer at a slaughterhouse operated by Megafood Industries plc. Each has suffered severe dermatitis as a result of exposure in 2009 to Lysamine, a chemical used to clean and sterilise animal pens.

Audrey and Bertie have each been advised that on the facts of their cases there is no evidence of negligence or breach of statutory duty under English national law. There are, however, two [fictional] EU Directives which are potentially relevant.

The first is the Agricultural Biohazards Directive 2005, which was due to be transposed in 2008. This required each member state to establish a body, or nominate a suitable existing body, to test the safety of new biological products introduced for agricultural use and to ensure that the manufacturer or importer of such products submits them for testing and approval. The UK government merely issued a statement that existing arrangements for the voluntary submission of samples for testing by the Biochemical Standards Council (BSC), a body financed and managed by the agricultural chemical industry, adequately covered the requirements of the Directive. Lysamine has never been submitted to the BSC.

The second is the Agricultural Workers Protection Directive 2007 due to be transposed in 2010. The Directive provides that 'no agricultural worker is to be exposed to any chemical of the following classes ... an organic ester or salt containing the Lysol molecule ... unless the same has been certified as safe pursuant to the arrangements made under the Agricultural Biohazards Directive'.

Lysamine is an organic ester and contains Lysol. An agricultural worker is defined as 'any worker in an agricultural undertaking or any enterprise or establishment where activities relating to agriculture are carried on, other than a food processing plant.' The [fictional] UK Agricultural Protection Regulations 2008 provide, 'No employer shall cause any agricultural worker to be exposed to ... a compound containing the Lysol molecule ... unless the same has been certified as fit for use by the BSC.' Agricultural worker is defined as 'any person employed wholly or mainly in animal husbandry, arable farming or cultivation of fruit and vegetables, or in activities ancillary thereto.'

Advise Audrey and Bertie whether they can rely on the provisions of either of these Directives in an action against their respective employers.

You are NOT required to consider any liability of the UK.

(25 marks)

Question 3

Gervase is a wine merchant. He sources wine from all over the world and sells it over the internet. He then arranges to deliver it using an international courier service. Gervase has recently added a Latvian language version to his website and undertaken significant online advertising on Latvian websites. As a result he has attracted a number of orders.

In the case of other countries, Gervase has arranged for his courier to declare that the goods are alcohol and pay the local alcohol taxes, which are included in the total cost to the customer.

The Latvian authorities have, however, advised Gervase that they are not prepared to allow him to import wine into Latvia. They have given two reasons.

The first is that alcohol may only be sold in Latvia in licensed alcohol shops. These are privately owned, but the state closely controls them, and prescribes the permitted hours of opening, and alcohol may only be purchased by those aged over 21. The second is that all alcoholic and non-alcoholic beverages sold in Latvia must be sold in containers, whether bottles, cans or cartons, on which a prescribed deposit has been charged. This deposit is refunded when the container is presented at a recycling point. The container must bear the name and address, in Latvia, of the supplier or his authorised representative, who must account for the deposits received. Gervase is not charging a deposit and has not named a representative in Latvia. No part of the deposit is at any time paid to the Latvian state.

Advise Gervase on the legality of these measures under EU law.

(25 marks)

Question 4

A ship owned by A-Lines Ltd has collided with the quay at a harbour in Denmark, causing damage. The quay is owned by Hansaport AG, a German company. The ship was using the quay under a contract between A-Lines and Hansaport which is expressed to be governed by English law and provides for disputes to be litigated in the High Court in London.

Hansaport commences proceedings in Hamburg, Germany, claiming damages for breach of contract and tort. A-Lines considers these proceedings were improperly commenced, and wishes to bring an action in the High Court in London preventing Hansaport from continuing the German proceedings.

(a) Advise A-Lines on the law and procedure applicable.

(10 marks)

(b) Assume that A-Lines has unsuccessfully contested the jurisdiction of the German courts up to the *Bundesgerichtshof* [the German Supreme Court], but shortly afterwards the European Court of Justice gives a judgment which clearly demonstrates that the judgment of the *Bundesgerichtshof* was legally wrong on points of EU law.

Advise A-Lines whether it can obtain any redress from Germany in respect of the incorrect judgment.

(15 marks)

(Total: 25 marks)

End of Examination Paper

BLANK PAGE

StudentBounty.com