

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 2011-2012, 22nd 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**

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

1. Art 102 TFEU prohibits "any abuse by one or more undertakings of a dominant position within the internal market."

Critically examine the way in which the Court of Justice has interpreted and applied these provisions.

(25 marks)

2. Art 263 TFEU, at least in relation to non-privileged applicants, was only intended to allow those aggrieved by a decision to challenge it. It should never have been seen as an alternative to the plea of illegality under Art 277 TFEU.

Critically discuss this statement.

(25 marks)

3. (a) In Case C-167/05 *Commission v Sweden* the Court of Justice held that differential taxation on imported wine and locally produced strong beer did not offend against Art 110(2) TFEU where, even if the taxation were equalised, wine would still cost twice as much per litre.

Critically assess the extent to which this judgment may be said to have deprived Art 110 of its effectiveness.

(12 marks)

- (b) Art 30 TFEU is now largely of historical interest.

Critically assess the validity of this statement.

(13 marks)

(Total: 25 marks)

4. (a) When the Court of Justice effectively determined that Art 340(2) TFEU on liability of the institutions, and Member State liability under the *Francovich/Brasserie du Pêcheur* principle, were one and the same, it fell into serious error.

Critically assess the validity of this statement.

(13 marks)

- (b) The Member States remain the masters of the Treaties (i.e. the TEU and TFEU), although the European Parliament now has significant independent powers. The Commission effectively serves the Council and Parliament.

Critically assess the extent to which this is an accurate analysis of the current structure and operation of the EU.

(12 marks)

(Total: 25 marks)

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

Question 1

Aalbeck AB in Sweden, Biagio SpA in Italy and Corallo Ltdo in Spain are the three European producers of Facetic Acid, which is used in the manufacture of barometers. One important ingredient of Facetic Acid is Facetium Chlorate, a rare mineral, the only source of which is a single mine in China. The European Commission has noted that over the past four years Aalbeck, Biagio and Corallo have all increased their prices by similar amounts and at the same time of the year. In addition, barometer manufacturers in the Czech Republic and Slovakia have complained that only Biagio is prepared to sell them Facetic Acid, while manufacturers in Poland, Finland and Latvia have made similar complaints that only Aalbeck is prepared to sell to them.

Aalbeck, Biagio and Corallo have informed the Commission that their price rises followed an increase in the price at which Facetium Chlorate is sold by the Chinese producer and that, as the cost of transporting Facetic Acid is high, because it has to be stored in special secure containers, it is uneconomic to supply small orders in areas of the EU remote from their respective factories.

- (a) Advise the Commission whether there appears to be a breach of Art 101 TFEU.

(15 marks)

- (b) Explain the powers of the Commission to investigate, the procedures to be adopted in the investigation, the penalties available and the nature of any appeal from an adverse decision of the Commission.

(10 marks)

(Total: 25 marks)

Question 2

A group of English local authorities has jointly established an insurance company to handle their insurance needs. They claim that this is a 'collaborative arrangement for the provision of services' under the [fictitious] Local Authorities Act 2011.

OsoSAFE Insurance plc claims that the establishment of the insurance company is an 'outsourcing of procurement functions' under the Act. If this is the case, it will be necessary to consider whether this section of the Act is compatible with the [fictitious] Public Procurement Directive (the implementation date for which was 1 April 2009).

OsoSAFE Insurance plc has commenced proceedings in the English High Court.

The issue is one of great concern to the insurance industry and local government; it is therefore almost certain to be appealed to the Court of Appeal and Supreme Court.

At what stage in the proceedings may, or must, a reference to the Court of Justice under Art 267 TFEU be considered?

(25 marks)

Turn over

Question 3

As a result of research reports and the related media coverage relating to health and environmental risks posed by toys painted with 'high intensity brightness' paint (HIB), Belgium implemented measures requiring:

- (i) That all toys painted with HIB be marketed in orange plastic packaging to "ensure a high level of consumer awareness of the HIB content of the product".
- (ii) A prohibition on television advertising of products painted with HIB during the daytime and early evening.

There is very limited use of HIB in the Belgian toy industry, which generally makes use of organic-based paints. No other member state has introduced similar measures, and there is no EU wide measure specifically dealing with HIB.

- (a) Consider the compatibility of these measures with EU free movement of goods provisions.

(15 marks)

- (b) Marek, a Czech toy-maker, has developed a range of toys painted with HIB which he wishes to market in Belgium. However, he is deterred by the extra cost of complying with the HIB measures. By what procedures can he seek, directly or indirectly, to challenge the measures taken by Belgium?

(10 marks)

(Total: 25 marks)

Question 4

Hans, Irma and Jörg are all German citizens, who have been resident in Sweden since 2003.

Hans came to Sweden at the age of 16 with his parents, as his father was posted to work there by his employer. In 2008, Hans left home and moved into a flat. He is currently a final year student at university in Stockholm. He is now estranged from his parents, who have returned to Germany, and has very little income. He has applied for assistance from a Swedish government fund which provides support for final year students, but has been turned down, as he is not a Swedish national. Hans urgently needs funding to allow him to complete his degree.

Irma has been working full-time as a beautician. She has recently met, and wishes to marry, Khalifa, a Somali sailor, who has been working on a ship sailing between Stockholm and Africa. Irma's plan is to move to England with Khalifa, but she needs to know whether her Swedish diploma, which was awarded after three years study at degree level, will be recognised in England.

Jörg is an anaesthetist. He was convicted in 2009 of manslaughter and sentenced to three years' imprisonment. The offence occurred when he left the operating theatre during an operation to make a phone call, and failed to notice that the oxygen supply had become blocked. Jörg has recently been released from prison and wishes to move to Denmark to become the commercial director of a private health clinic.

Advise Hans, Irma, Jörg and Khalifa as to the extent to which EU law will allow them to achieve their objectives.

(25 marks)

End of Examination Paper

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