

## 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, 22<sup>nd</sup> 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. Describe and critically evaluate the present EU legal situation in relation to:
  - (a) Free movement of persons;  
**(15 marks)**
  - (b) Mutual recognition of qualifications.  
**(10 marks)****(Total: 25 marks)**
  
2. Critically evaluate the contribution which preliminary references under Art 267 TFEU have made to the overall jurisprudence of the Court of Justice.  
**(25 marks)**
  
3. Critically evaluate:
  - (a) The way in which the Court of Justice has interpreted and applied Art 340(2) TFEU regarding the non-contractual liability of EU institutions and officials;  
**(12 marks)**
  - (b) The way in which the Court of Justice and General Court have applied Art 263 TFEU in relation to non-privileged applicants.  
**(13 marks)****(Total: 25 marks)**
  
4. Critically evaluate the way in which Art 102 TFEU on abuse of a dominant position has been interpreted and applied by the Commission and the Court of Justice/General Court.  
**(25 marks)**

**Turn over**

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

**Question 1**

Pierre is a poultry farmer in northern France. He decides to diversify into retailing products from his farm at farmers' markets in France, Belgium and Luxembourg. However, he finds that there are some problems.

- (i) Pierre has packaging equipment for his eggs, which packs them in boxes and date-stamps the box with the appropriate sell-by date. The Luxembourg authorities have advised him that all eggs sold in Luxembourg must also have the net weight of the eggs displayed on the box.
  - (ii) The Belgian authorities have informed Pierre that he cannot sell his range of prepared meals, because this class of food can only be sold from a refrigerated display unit. Pierre does not have refrigeration equipment. There is no similar provision in France or Luxembourg.
  - (iii) In France, Pierre has started selling a range of Belgian cheeses. All cheese sold in France is subject to a levy of 1% on the selling price, which is collected together with VAT. This levy is then passed to the French National Cheese Development Council (FNCDC). The FNCDC was established by the French Agriculture Ministry and the main French cheese producers and its objective is to increase the consumption of cheese in France and educate the public about cheese and its benefits. In practice the FNCDC also promotes French cheese by publicity campaigns and provides support for research into and development of new techniques of cheese-making in France. Pierre objects to paying this levy.
- (a) Advise Pierre whether there is any basis on which he can utilise EU law to resolve these problems.

**(18 marks)**

- (b) What procedural means could Pierre utilise, directly or indirectly, to achieve his objectives?

**(7 marks)**

**(Total: 25 marks)**

## Question 2

You act for Happikat Ltd, an Irish company. Happikat produces medicinal cats which are sold in petshops and supermarkets throughout the EU.

There has been concern over the excessive use of some of these medicines. This concern is because they contain ingredients which are also used in some human medicines. There have been calls for them to be available only from veterinary surgeons. Happikat is worried that a measure such as this would affect its business prospects.

There are rumours that the Commission is considering whether to commence the processes leading to a Regulation under Art 168(4)(b) TFEU, which authorises 'measures in the veterinary and [other health related] fields which have as their direct objective the protection of public health', using the ordinary legislative procedure.

Advise Happikat as to the procedures that will take place in order to enact the Regulation and as to any steps the company can take to influence, directly or indirectly, the terms of the Regulation.

**(25 marks)**

**Turn over**

### Question 3

**[NOTE TO CANDIDATES: The issues in this question do not require demonstrate any knowledge of the law of copyright, which is irrelevant.]**

The [fictional] Directive 2008/333 provides that 'all downloads of copyright material shall be effectively secured by digital rights management techniques (DRM) so as to ensure the protection of the interests of the copyright holder'. The aim of DRM is to prevent the material from being made available to third parties, by physically preventing it being transferred or copied. In the UK, in consequence of the Directive, the Copyright, Designs and Patents Act 1988 was amended by the [fictional] Digital Copyright Regulations 2010. These provide that 'all downloads of copyright material made for valuable consideration shall be effectively secured against any adverse impact on the interests of the copyright holder'.

Megabooks plc, a British company, is the copyright holder for a large number of literary works which are available in downloadable form. Megabooks is concerned about its position in relation to downloads by:

- (i) The British Library to its registered subscribers. The British Library is funded by the Department for Culture, Media and Sport and maintains the official collection of material published in the UK, including material for which Megabooks holds the copyright. It provides downloads to subscribers without charge. The downloads are not subjected to DRM, but subscribers must give an undertaking to use downloaded material for private study and research and not to make it available to any third party. Megabooks believes that subscribers are in fact making copyright material obtained from the British Library available to third parties.
- (ii) Getabook, which is a British commercial provider of downloadable digital books. Getabook charges customers for each download. It has a licence, entered into in 2005, with Megabooks which allows it to download digital versions of much material for which Megabooks holds the copyright. Getabook used to subject all downloads to DRM, but has recently ceased to do so, stating that DRM is no longer cost-effective. Instead, it refuses to supply any customer who has made copyright material obtained from Getabook available to others. Megabooks does not regard this as adequate protection of its interests.

Advise Megabooks as to any action it can take utilising EU law to protect its interests.

**(25 marks)**

**Question 4**

Trusoundz Ltd is a manufacturer of professional sound recording and playback equipment. Its annual turnover is €60,000,000 and it holds a 40 per cent share of the market in these products.

Trusoundz seeks your advice as to the applicability of EU law to three new developments it is planning, details of which are set out below:

(a) Recent research has suggested that a new type of semi-conductor may provide much better sound recording than current methods. However, it will take considerable further research, at great expense, to establish whether this can be commercially exploited. Trusoundz is proposing to enter into a joint venture with Akustitechnik Oy of Finland, another leading manufacturer of recording equipment, to undertake this research and, if it is successful, to establish a manufacturing facility, the products from which would be available solely to the two companies.

**(9 marks)**

(b) Trusoundz has always sold professional sound recording and playback equipment directly to the broadcasting and recording companies which use it. These in turn have sold on outdated equipment to amateur recording enthusiasts. Trusoundz believes there is a substantial market for the sale of new equipment to these amateur enthusiasts and is proposing to appoint sole distributors for France and Germany in order to enter these markets for the first time.

**(9 marks)**

(c) In the United Kingdom, Trusoundz wishes to establish a network of distributors of its products, one in each major city. These distributors will have to meet specific standards in relation to the level of expertise of their sales staff and the provision of after-sales service and will also be required to maintain stocks of all Trusoundz products.

**(7 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

© 2012 Institute of Legal Executives

**BLANK PAGE**

StudentBounty.com