



THE CHARTERED 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: Blackstones EU Treaties and Legislation 2012–2013 by Nigel Foster, Oxford University Press.**
- Candidates must comply with the CILEX 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 CILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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

1. Critically assess the manner in which the concept of non-contractual liability has developed in relation to both the EU institutions and the EU member states.

(25 marks)

2. Ever since van Gend en Loos (1962) there has been a tendency to give the maximum effect to EU law. This has, however, created significant tensions.

Critically assess the manner in which direct and indirect effect has been given to EU law.

(25 marks)

3. Critically evaluate the following three topics:

(a) The manner in which the Commission has exercised its functions as 'guardian of the Treaties' under Art 258 TFEU.

(9 marks)

(b) The operation of the Brussels Regulation (Reg 44/2001 EC) harmonising rules on jurisdiction.

(8 marks)

(c) The development of anti-discrimination legislation by the EU.

(8 marks)

(Total: 25 marks)

4. "Traditional economic theory indicates that goods and services will be produced most efficiently where there is perfect competition or, more realistically, workable competition." Craig and de Búrca, *EU Law* (2011).

Critically evaluate the contribution of Art 101 TFEU to the achievement of 'workable competition' in the EU.

(25 marks)

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

Question 1

Archil, a Georgian citizen, seeks your advice.

Archil came to England as a student in December 2008. In January 2009 Archil met Reet and they married in June 2009. In December 2010 Reet gave birth to their daughter, Stella. Reet is an Estonian citizen, who moved to England in 2006. For the first year she was studying for a master's degree in public health. After that she started to work part-time for a hospital while studying part-time for a PhD degree.

Unfortunately Archil has developed a drug dependency. Over the last two years he has been convicted on three occasions of possession of controlled drugs and on one occasion of supplying a moderate quantity of Class A drugs. The agreed basis of his guilty plea to the supplying charge was that he was an addict who acted as a low level supplier in order to fund his addiction. At present, Archil is working as a waiter.

Reet and Archil are now separated, although Archil still sees Stella regularly.

Advise Archil on any EU rights of residence he may have in the United Kingdom in the current situation. How, if at all, would this advice change in the event of a divorce between him and Reet.

(25 marks)

Turn over

Question 2

Alltek sro is a Czech company which is the sole EU producer of bifacial diodes. These allow smartphones to be operated with much greater battery life. Bifacial diodes are currently in great demand from manufacturers of smartphones. Alltek has learned that several other EU-based companies are exploring the possibility of producing bifacial diodes. This requires a considerable investment in equipment and raw material.

In the meantime, Alltek is seeking to make the most of its present position by inviting smartphone manufacturers to enter into contracts to obtain all their bifacial diode requirements from Alltek for a period of 24 or 36 months. Alltek is offering a 5% discount on current prices for a 24 month contract and 7.5% for a 36 month contract. Alltek currently makes a profit of approximately 20% on each bifacial diode it sells.

(a) Advise Alltek as to whether it is in breach of Art 102 TFEU.

(15 marks)

(b) How will the Commission pursue any investigation of Alltek?

(5 marks)

(c) If Alltek is found to be infringing Art 102, how can it challenge this decision?

(5 marks)

(Total: 25 marks)

Question 3

George is a member of the United Kingdom Parliament. He recently succeeded in persuading Parliament to pass legislation providing for all United Kingdom pensioners to receive 'Winter Food Allowances' (WFA) which are vouchers that can be redeemed at shops for a range of nutritious food items.

George has now learned that the Commission has plans to introduce legislation using the ordinary legislative procedure requiring the Member States to provide seasonal winter assistance for the 'socially deprived'. George is concerned that the draft EU legislation may conflict with the UK's WFA legislation, since he understands that it requires Member States to provide assistance only to those 'in receipt of social assistance or otherwise in particular need of assistance'. George believes that such matters should be dealt with at Member State level, as social and climatic conditions vary so much across the EU.

- (a) Advise George on the procedure by which the draft EU legislation will be considered and adopted and on any opportunity he has, alone or with others, to influence this process.

(8 marks)

- (b) Assume that the proposed EU legislation has now been passed. George is of the opinion that some of its provisions do not have any proper legal basis in the Treaties.

Explain by what procedure and on what grounds, the legislation can be challenged.

(8 marks)

- (c) Assume that the English courts are now considering the compatibility of the UK's WFA legislation with the EU legislation, in particular, whether pensioner status is equivalent to 'in particular need of assistance'.

Explain whether, and, if so, at what stage in the proceedings and on what grounds, the issue of interpretation can be referred to the European Court of Justice.

(9 marks)

(Total: 25 marks)

Turn over

Question 4

Pricedive AG operates discount supermarkets in several Member States in Luxembourg, Italy and Ireland. It has sought your advice on a number of issues that have arisen recently:

- (i) It has regularly run successful 'national food weeks' during which food and drink from a particular state have been promoted. Pricedive negotiates special discounts with suppliers, so the promoted products can be sold very cheaply. The Luxembourg authorities have now informed Pricedive that this type of promotion constitutes 'unethical discount marketing practice' which is illegal in Luxembourg.
- (ii) The Italian authorities have objected to Pricedive selling Bulgarian wine on two grounds, namely that the alcohol content is below the Italian industry standard of 11% and also that it contains a preservative which, while permitted in Bulgaria, is not used in any other Member State.
- (iii) The Irish authorities are charging excise duty on Hungarian whisky, which Pricedive wishes to sell in Ireland, at a rate 50% higher than the rate charged on most Irish whiskey and 100% higher than that charged on Irish whiskey produced by 'traditional artisan distillers.'

Advise Pricedive on its legal situation under EU law in relation to these matters.

(25 marks)

End of Examination Paper

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