



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: Blackstone's EU Treaties and Legislation 2012-2013, 23rd edition, N Foster, Oxford University Press, 2012.**
- 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**

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

1. (a) Critically assess the effectiveness of the treatment of exclusive and selective distribution agreements under Art 101 TFEU.

(13 marks)

- (b) Critically assess how the concept of abuse has been interpreted and applied by the Commission and the EU courts in relation to undertakings which have been found to be dominant under Art 102 TFEU.

(12 marks)

(Total: 25 marks)

2. The objective of Art 267 TFEU is said by the Court itself to be 'the uniformity and consistency of [EU] law and to contribute towards the harmonious development of the law within the Union'.

The Future of the Judicial System of the European Union (1999).

Critically assess the extent to which this objective has been attained.

(25 marks)

3. Art 17 TEU provides, in part:

"The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. ... Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise."

Critically evaluate the effectiveness of the Commission in fulfilling its functions, as set out above, in particular in relation to its interaction with the other EU institutions, Member States, other organisations and individuals.

(25 marks)

4. "The possibility of obtaining redress from the Member State is particularly indispensable where, as in this case, the full effectiveness of Community rules is subject to prior action on the part of the State and where, consequently, in the absence of such action, individuals cannot enforce before the national courts the rights conferred upon them by Community law." *Francovich and Others v Italian State* (1991).

Explain and critically assess the legal principles and criteria governing "obtaining redress from the Member State".

(25 marks)

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

Question 1

- (a) Armitage Feeds Ltd ("AFL") manufactures synthine, an additive used in the production of animal feeds. Synthine is popular, despite being more expensive than similar additives, as it extends the shelf-life of animal feed.

John is the sales director of AFL. He informs you that he has regularly discussed target and minimum prices for synthine with executives at Deuka GmbH (a German company) and Hoek BV (a Dutch company). The companies also exchange information on sales volumes and market shares. Most contact is by telephone but they meet in person at trade conferences or on business trips.

John's contacts at Deuka and Hoek have told him not to worry about this activity as they all have comparatively low market shares in relation to synthine and so they can "agree what they like" without breaking the law.

AFL has a 40% share of the UK market in synthine and Deuka and Hoek have similar market shares of the product in their countries. All three companies export to some extent within the whole of the EU. However, numerous other EU animal feed manufacturers also produce synthine and similar products and export them widely throughout the EU.

Advise John whether AFL has committed any breach of Art 101 TFEU.

(12 marks)

- (b) Flugkraft is the largest airline in Germany, Scandinavia (including Denmark, Finland and Sweden) and the Baltic States (Estonia, Latvia and Lithuania). It operates a wide range of domestic and international scheduled services, covering 15 destinations within Germany, 25 in Scandinavia and the Baltic States combined and 140 international destinations in 60 other countries world-wide.

In 2012 Flugkraft ranked third in the world in terms of international scheduled passenger-kilometres flown and ninth for combined international and domestic passenger-kilometres flown. Approximately 60% of all scheduled passenger flights in Germany and 45% in Scandinavia and the Baltic States are with Flugkraft.

Many other airlines operate in these areas. Flugkraft has long-term contractual rights to a substantial proportion of the take-off and landing 'slots' at most major airports in Germany and Sweden.

A complaint has been made to the Commission that Flugkraft is abusing a dominant position.

Advise the Commission whether it is possible to conclude from the information set out above whether Flugkraft is dominant within the meaning of Art 102 TFEU and, if not, what additional material you would need to reach a conclusion.

(13 marks)
(Total 25 marks)

Question 2

Deborah manufactures sausages and other meat products in England. She obtains meat only from farms which practice the highest standards of husbandry and agriculture and are certified as such by the UK government. Deborah has recently decided to export her sausages to Italy. However, when she started to market them she encountered three problems.

Deborah seeks your advice as to whether the measures below are compatible with EU law:

- (a) All processed meat products sold in Italy are subject to a levy of one per cent of the retail price. This goes to 'Mangiare Lentamente' (ML) a body established by the Italian Ministry of Agriculture to promote traditional methods of food production. In theory, support can be given to traditional producers anywhere in the world, but, over the ten years that ML has been in operation, it has actually supported only Italian producers. Deborah is unwilling to subsidise her competitors.

(9 marks)

- (b) The packaging and marketing of Deborah's sausages relies heavily on the slogan 'Healthy Meals from Happy Pigs'. Deborah has learned that an Italian regulation prohibits the use in relation to meat products of any indication that they promote health unless it is approved by ML. The rationale for this requirement is that Italian customers must be able to have confidence in the validity of such claims. In the case of Italian products, ML merely requires a certificate from a regional veterinary inspector, but, importers must provide both certified copies of approval by their national authorities and the certificate from the Italian inspector.

(9 marks)

- (c) Following concerns over increasing childhood obesity, Italy has prohibited television advertising of a range of 'unhealthy' food products, including sausages, between 06.00 and 21.00 hours daily. Deborah had planned a substantial advertising campaign on daytime television to bring her sausages to the attention of Italian housewives.

(7 marks)

Advise Deborah accordingly.

(Total 25 marks)

Turn over

Question 3

Ben, a UK citizen, and his wife Alannah have been living in Italy for 12 months. They moved there from England when Alannah's mother, who lives in Florence, had a stroke. Alannah is a Spanish citizen but she had been working as a nurse in England, which is where she met Ben.

Alannah's 22 year old son from a previous relationship, Jamie, who is an Israeli citizen, also moved to Italy with the couple. He had been living in England with them since the death of his father in a car crash three years ago.

Upon moving to Italy, Ben obtained a job as a part-time lecturer in English language at a state university in Florence but Alannah has been helping to care for her mother and so has not been able to work. Alannah's mother is happy to provide the family with accommodation and food in return for this care.

Ben is happy with this arrangement. He has been appointed on only a six-month contract by the university. He hopes to apply for a permanent post although he understands that these are in short supply. He has also heard from a colleague that he will have to pass a stringent Italian language test before being considered for a permanent post and although his Italian is fairly good he is not totally fluent.

Jamie became very troubled after the death of his father. He has suffered recurring bouts of severe depression and is unable to work or study. Alannah was concerned that he had begun to associate with a bad crowd when living in England and suspected that they were involved in drug taking. Since the family have been in Florence Jamie has started to misbehave again and has been arrested for possession of heroin and dealing in crack cocaine.

None of the family has registered with the Italian police, as required by Italian law, and they have now been informed that their right of residence is under investigation by the authorities.

Advise Ben, Alannah and Jamie as to what rights they have under EU law in relation to residence and employment in Italy.

(25 marks)

Question 4

CANDIDATES SHOULD NOTE: This question does not invite cover of Member State Liability.

Article 5 of [fictitious] Directive 2009/54 on Allocation of Assessment and Preparation Time (Academic & Teaching Staff) provides:

".... Member States shall provide that all academic and teaching staff are allocated a reasonable and proportionate period of time, such period to be measured by real hours, forming part of the contractual weekly timetable, to undertake duties relating to class planning, production of teaching materials and marking."

Article 8 of the Directive provides:

"In accordance with the principle of subsidiarity Member States are hereby given discretion with respect to determining an actual period of time that shall be held to be a reasonable period of time to be allocated to the academic and teaching staff falling within Article 5 of this Directive.

However, for a full-time employee a time allocation of at least six hours in each complete teaching week of which at least three hours shall be allocated in a consecutive block shall be regarded as reasonable."

Regulation 4 of the [fictitious] Entitlement to Specific Non-Teaching Hours Regulations 2011 made under the Education Act 1944 (of the United Kingdom Parliament) provides:

"All full-time academic staff shall, where reasonable, be allocated a period of six specific non-teaching hours as part of their contractual timetable."

Matt is a part-time special needs teacher at a state secondary school in England. He teaches five out of ten sessions each week and has been allocated two separate single non-teaching hours.

Emily is a dance teacher at a private primary school in England. Each hour of her contractual timetable consists of teaching duties. She is not allocated any specific non-teaching hours for the purpose of lesson planning, choreography, marking etc and she has to spend at least two hours each evening undertaking these tasks. She has asked the School Principal that some of her contractual timetable be allocated as non-teaching hours so that she does not have to undertake preparation etc. in her own time. The School Principal has refused her request on the basis that the entitlement in UK legislation only extends to academic staff and Emily is classified as a physical training instructor.

Advise Matt and Emily whether they can rely on the provisions of the Directive and, if so, how.

(25 marks)

End of Examination Paper

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