

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

Laws C49: European Union Law

COURSE CODE : LAWSC049

UNIT VALUE : 1.00

DATE : 03–MAY–06

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

EUROPEAN UNION LAW

Answer **FOUR** questions. Answer **THREE** questions from **PART A**, and **ONE** question from **PART B**. Please write your answer to **PART B** in the separate answer book provided.

PART A

1. How effectively has the European Court of Justice ensured that the Community institutions do not exceed the limits of their competence in adopting legislation? Is Article 5 EC sufficiently robust to allay the fears of Member States over the increasing powers of the EC?

2. "The only satisfactory solution is therefore to recognise that an applicant is individually concerned by a Community measure where the measure has, or is liable to have, a substantial adverse effect on his interests." (ADVOCATE GENERAL JACOBS, Case C-50/00 P, *Unión de Pequeños Agricultores (UPA) v. Council*)

Do you agree with the Advocate General's proposal for reform of Article 230(4) EC?

3. "In principle, it is a matter for national courts to determine the remedies available to individuals seeking to enforce their rights under European Community law. However, the European Court of Justice has increasingly intervened to prescribe the nature of those remedies."

Discuss.

4. Given the concern of the European Court of Justice to ensure the effectiveness of European Community law, how can you explain its continued refusal to allow horizontal direct effect of directives?

TURN OVER

5. Infolab SA is a software company based in Paris, France and specialising in the development of computer games. It has developed a new strategy computer game called "Ultimate Attack" which has realistic-looking environmental scenery. The player commands "Task Force Talon", an elite group that possesses extremely powerful weapons and technology. The objective of this game is to collect information on the "enemy". According to the description of the game this would happen by finding "renewable human resource in the form of prisoners of war and wounded enemy soldiers, who, when captured, will be forced to give you the information you need and earn you regular ransom payments in cold, hard cash". The game has been a great success in France and Infolab wishes to export it to other Member States by conducting a European-wide marketing campaign (mainly advertising in specialised computer magazines and on TV).

Infolab seeks your advice as to the compatibility of the following (fictitious) measures with Community law.

- (a) Germany prohibits TV advertising of computer games in the interest of protecting children's welfare. The German government considers that such games have adverse effects on the intellectual development and health of children. The German law is systematically enforced by an independent administrative agency overseeing the media which can impose fines. A breach of the marketing prohibition also carries a prison sentence of at least 3 years.
- (b) The Italian authorities have decided to prohibit the sale of "Ultimate Attack". They argue that it contains violent scenes and conveys a rather reductionist idea of the treatment of prisoners of war, which may offend public opinion.

CONTINUED

6. Gabriel, a French national, has studied law in Italy and has recently completed his Ph.D. dissertation in European Union law. He has now returned to France after almost seven years, and is looking for work. He is interested in teaching at a French university. The hiring process in French academia is highly centralised. The candidate should first qualify with the National Academic Council in Paris. This is a public body composed of peer-elected academics representing different disciplines. The National Academic Council takes into account the previous teaching experience of the applicant and two of his (or her) best publications. If the applicant is qualified, then he will be able to participate in the round of interviews organised by the different French Universities. Gabriel already has important publications and some teaching experience in an Italian University.

The National Academic Council has, however, rejected his application for the reason that he has no publications in French, has never taught in a French law school and does not have an in-depth knowledge of the French legal system. Gabriel's partner, Sophia, has also been disqualified by the French National Academic Council. Sophia is an Italian national and completed her studies in Italy. The National Academic Council rejected her application for the reason that permanent positions in academia are open only to French nationals. Indeed, according to the French government, academics are considered to be civil servants and higher education is only provided by public universities.

Advise Gabriel and Sophia as to their rights under EC law.

7. In a number of its judgments, the European Court of Justice has held that "citizenship of the Union is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to receive the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for."

What does this mean in practice?

TURN OVER

PART B

Please write your answer for this section (PART B) in the separate answer book provided.

EC Competition Law

8. Describe the goals of EU competition policy. Which of the following objectives do you think should be preferred in the event of conflict: consumer welfare, market integration, economic efficiency, market access or the protection of the economic freedom of small and medium enterprises? Explain your conclusion.
9. Hoventa SpA manufactures and distributes audio equipment in Italy and other member States of the EU. Hoventa SpA has a 43% share of the Italian market in DVD players and a 26% share of the Italian market in all audio equipment (DVD and CD players included). Its closest competitors in Italy are Verdi SpA (8% share of the Italian market in DVD players and 6% in all audio equipment) and Puccini SpA (6% share of the Italian market in DVD players and 5% in all audio equipment).

Hoventa SpA wishes to expand its market share and overall profits and has adopted the following practices. First, it intends to adopt a new strategy for the distribution of its products. It plans to sign distribution agreements only with a specific number of selected distributors in Italy and has divided the Italian territory in population zones so that there is one distributor per 15,000 potential consumers. Hoventa SpA explains its policy by the need to assure an important level of profits to the distributors, members of its network, so that they could have the incentive to invest in the marketing and sale of its products. Secondly, Hoventa SpA's managing Director participated in a meeting in a hotel in Rome with the managing directors of Verdi SpA and Puccini SpA. They decided to join efforts in order to block the entry into the Italian market of the leading German manufacturer of audio equipment Ehret GmbH. However, no specific action has been taken so far.

The managing Director of Hoventa SpA seeks your advice as to whether these proposed actions are compatible with EC competition law.

EC Consumer Policy

10. "The incoherence of EC consumer policy owes much to its growth as a by-product of the internal market."
Discuss.
11. How have the Member States' diverse consumer traditions been accommodated within an EC legal framework devoted to free trade? Do current practices need to be re-evaluated?

CONTINUED

Environmental Protection in the EU

12. Would you describe the EU as pursuing a 'light green' or 'dark green' approach to environmental protection? Justify your answer with references to case law and/or examples of legislation.
13. Answer **EITHER (a) or (b)**
- (a) Evaluate the extent to which the EU's environmental protection policy has been accommodated within its policy of free trade between *Member States*.

OR

- (b) Critically examine the extent to which the EU has been capable of maintaining an environmental protection policy in its trade relations with *the rest of the world*.

EU Migration Law

14. "A new EU asylum paradigm is emerging which is founded on the Common European Asylum System and an increasingly aggressive external asylum strategy. In its current form this paradigm is a quick-fix solution incapable of delivering fair long-term results."

Discuss.

15. "A Common European Immigration Policy should balance measures to combat illegal immigration with an efficient management of legal migration."

Is this statement a true reflection of the current EU Immigration Policy? Do you think that this balance is achievable or even desirable?

TURN OVER

EU Social Law

16. “The legislation has failed to deliver on its promise.”

Assess the effectiveness of EC equal pay law in narrowing the pay gap between men and women.

17. “The emergence and spread of the OMC has met with very different responses. For some, it represents a weak and insufficient form of action for achieving the broad strategic goal articulated by the Lisbon summit ... For others, it represents a troubling retreat from harder and firmer legal commitments to a more social Europe ... Others, however, have welcomed the appearance and spread of this new form of governance ... it represents a second-best way forward where the first-best solution of adopting binding legislative measures cannot be found.” (GRÁINNE DE BÚRCA, 2003).

Critically assess the effectiveness of the ‘open method of coordination’ and other forms of soft law adopted to implement European social policy.

The Relationship between the ECJ and National Courts

18. Article 1-6 of the Treaty Establishing a Constitution for Europe declares:

“The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States.”

Tensions with national constitutional law have threatened the supremacy of Community law on several occasions. How have the European Court of Justice and the highest national courts in Germany, France, and the UK dealt with conflicts in the past? Would a ‘supremacy clause’ – as found in the Treaty Establishing a Constitution for Europe – prevent similar conflicts in the future?

19. “The increasing number of legal systems joining the European Union and the resulting diversity of legal cultures seriously threatens one of the main reasons for having the Union in the first place – the harmonisation of law.”

Discuss.

END OF PAPER