



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 6 – European Union Law

Question paper

January 2024

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- A basic calculator is provided should you require the use of one.
- You can use your own unmarked copy of the following designated statute book – ***Blackstone’s EU Treaties and Legislation, 34th edition, Nigel Foster, Oxford University Press, 2023.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A

Answer at least one question from this section.

1. Initially the Commission and the Court of Justice regarded vertical and horizontal agreements as equally incompatible with Art 101 TFEU. More recently they have been regarded very differently.

Critically assess the appropriateness of the treatment of vertical agreements under current circumstances.

(25 marks)

2. Critically assess how effectively the Commission has fulfilled its functions, firstly as 'guardian of the Treaties' and secondly in relation to the legislative process.

(25 marks)

3. Critically assess how the following provisions of TFEU contribute to an effective single internal market:

(a) Arts 34 – 6;

(17 marks)

(b) Art 110.

(8 marks)

(Total: 25 marks)

4. Critically assess the contribution to the development of the EU legal order of the:

(a) action for annulment by non-privileged applicants under Art 263 TFEU;

(17 marks)

(b) non-contractual liability of the EU under Art 340 TFEU.

(8 marks)

(Total: 25 marks)

SECTION B

Answer at least one question from this section

Question 1

Kallax AB (Kallax) is an Estonian manufacturer of semiconductor chips. It produces two ranges of chips. One, Kalchips, which benefits from patent protection, is used in payment touchscreens in public transport. As a result, Kallax has for the last four years enjoyed a market share of 65% in this market. However, the patent will expire in the next three months. It is possible that Kallax will face further competition after this.

The second of the two chips has a range of applications and is in competition with a wide variety of chips produced by a number of manufacturers. Kallax only has a 5% share of the market in relation to these chips, which is far larger than that for Kalchips.

In order to protect its position, Kallax intends to offer substantial discounts to customers for Kalchips. These include 5% discounts for regular quarterly order volumes, 10% discounts for exclusively ordering Kalchips, rising to 15% if the customer exclusively orders Kalchips for two years.

Kallax is also proposing to give discounts to those customers for Kalchips who also commit to purchasing substantial quantities of the other range of chips.

Advise Kallax:

- (a) whether it holds a dominant position within the internal market pursuant to Art 102 TFEU.
(13 marks)

- (b) on the assumption that it does hold a dominant position, whether it is guilty of abuse of that position.
(12 marks)

(Total: 25 marks)

Turn over

Question 2

James is a UK citizen. He is married to Marja, a Latvian citizen. At present they live in England with George and Toby, aged 19 and 18, who are James' children from a previous marriage. George and Toby have dual UK and Spanish citizenship. Esme, who is James' aunt, and who is a UK citizen, also lives with James and Marja. Esme has suffered a stroke and needs substantial care and support.

James has inherited in excess of £100,000 from another aunt. The whole family is planning to relocate to Italy. Marja is a graphic designer, and plans to work in Italy. She has made contact with a design studio that is prepared to offer her a part-time contract. James has taken early retirement and is drawing a private pension of £2,000 per month. Esme wishes to move to Italy to live with and be cared for by James and Marja.

George is a climate activist who has been convicted on several occasions in England and Spain of public order offences involving significant violence to the property of energy companies.

Toby wants to study at an Italian university, and has applied, without success, for a student loan and fee waiver. The refusal was on the basis that he has not been resident in Italy for three years.

Advise James, Marja, George, Toby and Esme as to the impact of EU law on their respective positions.

(25 marks)

Question 3

Kat and her wife Sam live in Dublin. Kat is a radiographer employed in a public hospital and Sam is a materials analyst employed by a private sector engineering company.

The [fictitious] Carcinogens and Ionising Radiation Directive was enacted in 2016. The Directive provides, inter alia, that:

- Employers shall take all practicable steps to eliminate or reduce the workplace exposure of workers to any of a scheduled list of carcinogens and sources of ionising radiation;
- Employers shall provide safe means of storage of such carcinogens and sources of ionising radiation.
- Workers exposed in the course of their work to such carcinogens or ionising radiation shall be provided with personal protective equipment (PPE) designed to minimise any exposure.
- Workers who sustain personal injury as a result of exposure to such carcinogens or ionising radiation shall be entitled to full compensation.

The Irish [fictitious] Workplace Safety Act 1987 was amended in 2017. It now provides, inter alia, that:

- Personal protective equipment (PPE), and the means of storage of carcinogens and sources of ionising radiation shall, so far as reasonably practicable, protect workers directly exposed to the same from the consequences of such exposure.
- Reasonably practicable is defined as the best available protection not involving unreasonable expense or unreasonable interference with operational activities.

Kat works with ionising radiation sources and has requested items of PPE as recommended by the International Radiographical Association. The hospital has refused to supply this on the grounds that it costs three times as much as the PPE currently in use, but only provides limited additional protection.

Sam has developed skin cancer as a result of exposure to a scheduled carcinogen at work. She was not working directly with it and was not supplied with PPE, although colleagues working directly with it were issued PPE. Her employer is refusing to compensate her on the ground that it was not negligent as required by Irish tort law.

Advise Kat and Sam whether they can rely on EU law in these circumstances.

(25 marks)

Turn over

Question 4

Lunnon plc (Lunnon) is a UK manufacturer of video game consoles.

The Italian authorities prohibited the sale of Lunnon's Molnart console on the grounds that it was not compliant with the [fictitious] Personal Electronic Equipment Regulation (PEER).

Reg 5 of PEER provides 'The supplier of personal electronic equipment must permit the user to upload software, irrespective of origin.' The literal translation of the Italian version of Reg 5 is 'Personal electronic equipment must allow the uploading of software of any origin.'

The Molnart is supplied with a lock preventing the uploading of software from sources not approved by Lunnon, but users can request online a free code which will release this lock.

Lunnon challenged the decision before the [fictitious] Italian Committee for Resolution of Trade Issues ('the Committee'). This comprises technical experts, with a legally qualified chair, all appointed by the Minister for Commerce in consultation with a number of trade associations. The members are appointed for five-year terms. By a majority the Committee rejected Lunnon's challenge, holding that the Regulation required that uploading of software must be possible at all times. The dissenting members agreed with Lunnon's submissions that it only required that uploading could be made available upon request.

The decision of the Committee can be challenged in the Italian Commercial Court, from which an appeal lies, with leave, to the Corte di Cassazione (Supreme Court), from which no further appeal is possible.

Advise Lunnon as to:

- (a) whether the Committee could have made a preliminary reference to the Court of Justice of the EU.

(7 marks)

- (b) whether the Italian Commercial Court should make a preliminary reference.

(13 marks)

- (c) what consequences might follow if the Corte di Cassazione refused to make a reference.

(5 marks)

(Total: 25 marks)

End of the examination

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