



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 6 – EUROPEAN 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 this question paper fully.** However, you may make notes on this 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. This 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 2020-2021, 31st edition, N Foster, Oxford University Press, 2020.**
- 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 ballpoint 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 and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

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

1. In the context of Art. 102 TFEU, critically analyse the significance of:
- (a) the relevant product market; **(9 marks)**
 - (b) factors other than market share in establishing dominance; **(9 marks)**
 - (c) price discounting as abusive behaviour. **(7 marks)**
- (Total: 25 marks)**

2. Critically evaluate the effectiveness of the mechanisms by which a non-privileged applicant may challenge the validity of an act of the EU institutions.
- (25 marks)**

3. Critically evaluate the significance of the preliminary reference procedure under Art. 267 TFEU in the evolution of the jurisprudence of the EU.
- (25 marks)**

4. 'How can the EU be democratic, when it is run by unelected bureaucrats in the Commission?'

Critically evaluate the governance mechanisms of the EU in light of the above statement.

(25 marks)

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

Question 1

Gannet Plc (Gannet) is a manufacturer of specialist bookbinding machinery for use by printers. It is established in Dublin. It has identified new markets for its products in the Baltic states Estonia, Latvia and Lithuania, and also in Czechia and Slovakia. Gannet has identified distributors for the two areas: Raamat OU for the Baltic states; and Knihe sprl for Czechia and Slovakia.

Currently, Gannet distributes its products in the EU through a wholly owned subsidiary, Gannet GmbH, incorporated in Germany. This subsidiary company applies the pricing structure that Gannet uses worldwide and is restricted to dealing with the distribution of Gannet products only. It has a market share of approximately 28%.

In their respective areas, Raamat has a market share of 35%, and Knihe has a market share of 20%.

Gannet is anxious to ensure that Raamat and Knihe, respectively, commit themselves exclusively to distributing Gannet's products and operating only within their assigned exclusive areas. Its managing director has prepared some draft clauses to be included in the contracts with the distributors, as follows:

- (i) Gannet undertakes not to supply any other distributor in, respectively: Estonia, Latvia or Lithuania; or Czechia and Slovakia.
- (ii) The only bookbinding machinery that Raamat and Knihe may purchase and resell is that manufactured by Gannet.
- (iii) Raamat and Knihe shall follow Gannet's suggested retail price structure and price increases.
- (iv) Raamat and Knihe shall not attempt to sell outside their respective sales territories and shall pass on sales enquiries from outside their territory to Gannet GmbH.

Advise Gannet Plc whether the arrangements outlined above, including the proposed contract terms, are compatible with Art. 101 TFEU.

(25 marks)

Question 2

Balkan Wines (BW) is a company established in Bulgaria. BW purchases wine in bulk from Bulgarian wineries, bottles it and exports it to a range of countries. One specific range that BW is promoting heavily is 'Low Notes'. This is wine that is produced and blended to have an alcohol content of 5.5%, compared to the typical average for table wine of 11%–13%. The machinery that BW uses to put its wines in cases can only produce cases containing 10 bottles.

BW has recently encountered two issues on which it seeks your advice.

(a) The Portuguese authorities have recently refused to allow a consignment of BW's wine into Portugal. BW has been notified that Portuguese law requires all wine to be packed in cases of 12 bottles. This is the normal international case size, although a limited number of distributors utilise 10-bottle cases.

The authorities explained that many Portuguese consumers purchase their wine by the case. Historically, all wine produced or marketed in Portugal came in cases of 12 bottles. Problems arose when consumers purchased imported wine in 10-bottle cases, believing that its lower price represented a bargain, rather than merely the smaller number of bottles. In response to complaints from Portuguese consumer associations and wine retailers, legislation was introduced mandating the use of 12-bottle cases.

Advise BW whether this legislation is compatible with EU law.

(15 marks)

(b) In France, the excise duty on wine is graduated as follows:

- wine containing less than 5% alcohol is charged duty at €0.25 per litre;
- wine containing 5%–10% alcohol is charged duty at €1.50 per litre;
- wine containing more than 10% alcohol is charged duty at €1.75 per litre.

BW has observed that nearly all French-produced, low-alcohol wine contains 4.75% alcohol.

BW has made enquiries and has been informed that the French authorities are actively seeking to promote low-alcohol wine on health grounds, and that similar graduation of alcohol duty is also charged in relation to stronger beers.

Advise BW whether this legislation is compatible with EU law.

(10 marks)

(Total: 25 marks)

Question 3

Vera is an Irish citizen, currently resident in London with her Zimbabwean partner, Isaac, and his 19-year-old daughter, Mercy. Vera is a personal trainer and has a diploma issued by an Irish college following two years of study at higher education level.

Five years ago, when he was living in Zimbabwe, Isaac was involved in violent protests against the Zimbabwean government. He was convicted of an offence of violent disorder and sentenced to three years' imprisonment. Since moving to London, Isaac has continued his involvement with political opposition to the Zimbabwean government through membership of various social media groups.

Vera has been offered a job as a personal trainer at the health and wellness centre of a large hotel in Barcelona. The recognised Spanish qualification for this post is a three-year diploma. This covers the same modules as those contained in Vera's two-year diploma, together with basic and advanced first-aid modules. Vera also has an advanced first-aid certificate issued by the Irish Red Cross, which covers the same topics. The initial response of the Spanish authorities when Vera submitted transcripts of her qualifications was that these did not meet their requirements.

Vera is somewhat concerned that her contract of employment specifies a salary of €3,000 per month, but she understands that male sports coaches employed at the same hotel, and whose qualification is at the same level, are being paid €3,500 per month.

Advise Vera, Isaac and Mercy as to:

- (a) their rights under EU law to relocate to Barcelona and any problems that might arise;
(11 marks)
- (b) whether Vera can rely on EU law in relation to recognition of her qualifications;
(7 marks)
- (c) whether Vera can rely on EU law in relation to her rate of pay.
(7 marks)

(Total: 25 marks)

Question 4

[Fictitious] Directive 2016/99 provides that all employees required to work with certain chemicals specified in Annexe A to the Directive must be provided with clothing and safety goggles. These must meet the criteria, including compliance with specific technical specifications, set out in Annexe B to the Directive. The deadline for implementation of the Directive was 31 December 2018, but the Irish Republic has not introduced legislation specifically to address this.

The [fictitious] Irish Chemical Safety Regulations 2009 provide for workers working with certain chemicals specified in a Schedule to the Regulations to be provided with appropriate personal protective equipment. The Regulations do not go into further detail on this. The chemicals specified in the Schedule overlap in part with those specified in Annexe A.

Over the last year, Ernie, who is employed as a pharmacist by a hospital operated by the Irish Ministry of Health, has regularly come into contact with a number of chemicals specified in Annexe A but not in the Schedule. He has been provided with no special clothing or goggles. As a result of the exposure to one of the chemicals, he has suffered migraines and problems with his eyesight.

Fatima, a laboratory technician employed by Moloch Plc, an Irish civil engineering company, has regularly come into contact with chemicals that are specified both in the Schedule and in Annexe A. She was provided with safety goggles, but these did not comply with the technical specifications in Annexe B. She has now developed an inflammatory eye condition as a result of exposure to these chemicals.

Advise Ernie and Fatima respectively as to the extent to which they may rely on EU law to protect their position.

(25 marks)

[NOTE TO CANDIDATES: You are not required to consider any issues of tortious liability under Irish law.]

End of Examination Paper

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