



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. Critically assess the extent to which the amendment to Art. 263 TFEU effected by the Lisbon Treaty has resolved the issues relating to the use of the Article by non-privileged applicants.

(25 marks)

2. Critically assess the significance, in the context of Art. 101 TFEU, of:

(a) concerted practices;

(7 marks)

(b) market share;

(13 marks)

(c) immunity from, and reduction of, fines.

(5 marks)

(Total: 25 marks)

3. Critically assess the extent to which the principles of direct effect, indirect effect and member state liability permit natural and legal persons to enforce the rights intended to be conferred on them by EU law.

(25 marks)

4. Art. 13 TEU provides that the 'Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the member states, and ensure the consistency, effectiveness and continuity of its policies and actions'.

In light of the above statement, critically assess the extent to which the institutions of the EU achieve these objectives.

(25 marks)

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

Question 1

The [fictitious] EU Ice Consumption Regulation 10/2016 ('the Regulation') provides, *inter alia*, that all ice cubes supplied commercially for human consumption within the EU must be made entirely from spring water from licensed springs.

In 2019, Classic Catering Ltd (CCL) organised a reception in Dublin on behalf of MicroGael, an Irish software company. CCL used a portable ice-making machine to produce a quantity of ice cubes from tap water. These were intended purely to cool bottles of wine and beer, but CCL was aware that guests also sometimes put them in their drinks.

The tap water supply was contaminated by toxic chemicals, and a number of guests became ill. MicroGael received much adverse publicity, and refused to pay CCL's invoice, on the ground that CCL was in breach of a contractual term that all goods and services supplied would comply with all relevant regulatory requirements. MicroGael argued that the supply of ice breached the Regulation. CCL argued that the Regulation was not breached, because the ice cubes were not 'supplied for human consumption'. CCL commenced proceedings to recover the amount of the invoice.

Under Irish law, such disputes must be adjudicated on by the Arbitration Section of the Dublin Chamber of Business (AS). The AS adopts an adversarial procedure, and its decisions are enforceable as judgments of the Irish High Court. It has a body of permanent members, who must be legally qualified.

The AS accepted the submissions of CCL and found that there was no breach. MicroGael appealed to the Irish Court of Appeal. Two of the judges observed that they took the same view as the AS, but the third stated that he was 'strongly attracted' to an alternative interpretation that the Regulation should apply to all manufactured ice that could enter the human food and drink chain.

MicroGael invited the Court of Appeal to make a reference under Art. 267 TFEU. The Court of Appeal did not make a reference and, by a majority, dismissed the appeal. MicroGael applied for leave to appeal to the Irish Supreme Court.

Counsel for MicroGael has now established that the equivalent of 'supplied for human consumption' in the German version of the Regulation translates as 'supplied commercially and consumed by humans'.

Explain whether:

(a) the Arbitration Section could have made a reference under Art. 267 TFEU;

(7 marks)

(b) the Court of Appeal should have made a reference under Art. 267 TFEU;

(11 marks)

(c) the Irish Supreme Court is obliged to make a reference under Art. 267 TFEU, and any consequences there may be if it fails to do so.

(7 marks)

(Total: 25 marks)

Question 2

GoodEarth Ltd (GE) is an Irish company, which produces fruit and nut bars. GE uses organic ingredients with no added sugars. GE's products are proving very popular in the Irish and French markets, and GE is looking to expand further into the rest of the European market.

However, GE is faced with the following issues, which it believes may hinder its expansion plans:

- i) Spanish legislation on packaged confectionery bars (including fruit and nut bars) prohibits the use of xanthamine, a natural gum which GE uses as a binding agent. The Spanish authorities assert that xanthamine has not been conclusively established to be safe. No other EU state prevents the use of xanthamine.
- ii) In Croatia, advertising of confectionery on television is prohibited, in order to protect the health of children. GE markets its products primarily to adults but relies on advertising to secure market share in new markets.
- iii) Following concerns about the effect of fruit sugars on dental hygiene and obesity rates, German legislation imposes a consumer tax of 15% on all confectionery bars containing in excess of 30g of sugar per 100g. GE bars contain 35g of natural sugars per 100g. Other confectionery bars containing sugar below this 30g limit are taxed at a rate of only 3%. German confectionery bars, including fruit and nut bars, have traditionally contained 25g or less of sugar per 100g, but the EU average sugar content is 32g per 100g. GE has scientific evidence that it is only added 'free' sugar, not natural sugars, which is harmful.

Advise GE to what extent it can rely on EU law in relation to these issues.

(25 marks)

Question 3

Cybersil is a synthetic silicon compound, which is used in the production of 90% of all silicon chips used in computer processors, 60% of tablet processors and 20% of smartphone processors. Overall, it is used in approximately 50% of all silicon chips worldwide. The main alternative, borosilicate, is a natural silicon compound, which offers a lighter-weight alternative that is particularly attractive for smartphone processors. However, supplies of borosilicate have been limited, as there has been only one known accessible deposit in China, and borosilicate chips have therefore been significantly more expensive than cybersil chips.

Recently, a major mining company has announced the discovery of extensive borosilicate deposits in Portugal. It plans to commence production within a few months. Industry sources indicate that, as a result, borosilicate chip prices should in future be no more than 8% higher than those for equivalent cybersil chips.

Until six months ago, three major producers of cybersil chips produced virtually all such chips supplied to manufacturers in the EU. Each had similar market shares. Following a merger, the German parent company of one such producer acquired the French parent company of the second and has now combined the two operations as a single subsidiary company, Alfachip GmbH. The third producer recently became insolvent and has ceased production; however, a Spanish company is negotiating to acquire its assets and has indicated that it intends to resume production, if successful.

Alfachip has continued to apply the sales policy of its German predecessor company, which includes offering significant discounts for regular orders and for substantial minimum orders as well as a further loyalty discount for customers who obtain all their silicon chip requirements from Alfachip. This discount increases cumulatively over a rolling 24-month reference period. Following the insolvency of its competitor, Alfachip has substantially increased production, but has increased prices by approximately 10% across the board, citing additional costs associated with a rapid increase in capacity.

The European Commission has taken note of these developments and has asked you to advise on two issues:

- (a) whether Alfachip is to be regarded as a dominant undertaking in the present circumstances;
(15 marks)
- (b) if Alfachip is to be regarded as a dominant undertaking, whether any of its activities constitute abuse.
(10 marks)

(Total: 25 marks)

Question 4

Martina is a Croatian national who, for the last three years, has been studying at a university in the Netherlands. She is now in the final year of her studies. Until now, Martina has been supported by her parents, but her father's business has failed as a result of the Covid-19 pandemic, and they are no longer able to fund her.

Martina has managed to find a limited amount of part-time work as a care assistant but is unable to cover her rent and living expenses. She is aware that her Dutch fellow students in similar circumstances have been able to apply for income support from the Dutch state Youth Solidarity Fund, but when she applied, she was told that it was available to Dutch nationals and their family members only.

Martina is being paid as a basic-grade care assistant. Some of her colleagues are being paid a higher salary as professional care assistants, because they hold a Dutch vocational qualification. Martina had completed a one-year diploma in pre-nursing studies at a higher education college in Croatia, which covered all the topics included in the Dutch vocational qualification, but her employer is refusing to recognise it.

Martina also wishes to invite her boyfriend, Radovan, a Serbian national, to join her in the Netherlands. Radovan has been an active member of a Serbian ultra-nationalist organisation. Members of this organisation have engaged in violent attacks on members of ethnic minorities in Serbia. Radovan was convicted of incitement to hatred in 2017 and was sentenced to three years' imprisonment suspended for five years. Martina believes that Radovan is no longer active in the organisation. However, she is aware that there have been a number of incidents in the city where she is living, in the Netherlands, involving confrontations between various groups from Serbia, Croatia and other Balkan states, including attacks on Albanians. These have been claimed by the group with which Radovan has been associated.

Advise Martina as to the extent to which EU law is applicable in the above circumstances.

(25 marks)

End of Examination Paper