



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 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 2017-2018, 28th edition, N. Foster, Oxford University Press, 2017.**
- 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**

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

1. Compare and critically evaluate the concepts of Member State Liability and the non-contractual liability of the EU under Art. 340 TFEU.

(25 marks)

2. Critically evaluate the circumstances in which agreements that contain anti-competitive elements will not be held to be void under Art. 101 TFEU.

(25 marks)

3. Critically assess the contribution made by the Court of Justice of the EU in the following areas:
 - (a) the supremacy of EU law;

(7 marks)
 - (b) the principle of direct effect;

(10 marks)
 - (c) the principle of indirect effect.

(8 marks)

(Total: 25 marks)

4. Critically assess how effectively Art. 263 TFEU (the action for annulment) operates in relation to actions by non-privileged applicants.

(25 marks)

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

Question 1

Truly Enterprises plc (TE) is a manufacturer of dairy products established in the Irish Republic. TE has developed a product called Camphail, a commercial version of a traditional Irish fermented milk drink, which is reputed to have considerable health benefits. Camphail contains a number of probiotic ingredients. Over the past five years, TE has progressively marketed Camphail throughout the EU. There is a Polish product, Kefir, which has similar properties. There is also a very large range of probiotic yoghurt products, produced by a large number of other manufacturers.

Over the past two years, TE has acquired a market share of 60% across the EU in the market for Camphail and Kefir taken together. TE only has a market share of 10% across the EU in the market for all probiotic dairy products. In the last 12 months, the price of Camphail has increased by 10% compared with the average price of probiotic yoghurt products, but this does not appear to have affected sales of Camphail.

Recently, TE has increased the wholesale price of Camphail by 25% in the United Kingdom, where sales of Camphail are ten times higher than sales of Kefir. In Germany, where sales of Camphail are half those of Kefir, TE is offering free refrigerated display units to small retailers who undertake to sell Camphail to the exclusion of Kefir. TE is also offering discounts to major supermarket chains in Germany. These discounts reduce the cost of Camphail to the supermarkets to below TE's average total costs of production and, in some cases, to below its average variable costs of production.

The European Commission has recently commenced an investigation of the activities of TE in relation to Camphail under Art. 102 TFEU.

Advise TE whether its activities as described above fall within the scope of Art. 102 and, if so, whether TE is in breach of the Article.

(25 marks)

Question 2

Louise decides to set up a business in Germany, importing a variety of goods from Denmark.

In October 2017, she tries to import the following into Germany, with a view to selling the items at the popular Christmas markets:

- a container-load of Ninja rat toys (the latest craze of Danish children);
- a consignment of individual cardboard cartons of 'SuperJuce', a fruit-based alcoholic drink.

Louise has discovered that German law prohibits the advertising of any children's toys on German TV from 1 December to 31 December inclusive. She is very concerned that this will result in much lower sales of the Ninja rat toys than she had anticipated, as she was proposing an intensive TV advertising campaign for them.

In addition, Louise is advised by the German authorities that alcoholic beverages cannot be sold in individual cardboard cartons, as these are exclusively associated with soft drinks in the German market. This is enforced by German trading regulations.

Furthermore, she is advised that SuperJuce, even if marketed in appropriate packaging, will be assessed to alcohol duty at 25% as an 'alcopop'. Wine and beer, which are of similar strength, are assessed to alcohol duty at 5%.

Advise Louise as to whether she can rely on EU law to challenge these measures.

(25 marks)

Turn over

Question 3

Giovanni is an Italian manufacturer of alarm systems. He has recently experienced difficulties in Croatia. He has established a subsidiary company there to market his alarm systems. The specification of the systems is in accordance with the provisions of [fictitious] Directive 2009/18, which has been implemented in Croatia by the [fictitious] Alarm Systems Decree 2015.

Giovanni is concerned that the Decree provides that alarm systems may not be marketed unless 10% of all production has been tested by the Croatian Standards Authority. The Directive provides that alarm systems must be tested in accordance with the requirements of the International Alarm Standards Association. These are that the systems must be tested in their country of manufacture (namely Italy in this case), and may only be subjected to further testing if the conditions of installation and use are substantially different.

Giovanni is refused approval in Croatia on the basis of his Italian test certification. He initially challenges this before the Croatian Standards Tribunal. This consists of members appointed by the Croatian Industry Minister for a renewable term of 12 months. It determines challenges on the basis of written submissions and applying 'Croatian regulatory norms'. Giovanni is concerned that the Tribunal may not correctly interpret the Directive.

- (a) Advise Giovanni whether the Tribunal can make a preliminary reference under Art. 267 TFEU in relation to the interpretation of the Directive.

(8 marks)

Now assume that Giovanni decides to allow the Tribunal to make a decision and then challenges that decision in the Croatian High Court, from which there is an appeal as of right to the Croatian Supreme Court.

- (b) Advise Giovanni as to the factors that will determine whether or not the Croatian High Court should make a preliminary reference in relation to the interpretation of the Directive.

(11 marks)

Assume that the High Court does not make a preliminary reference. Giovanni considers that the decision of the Court is wrong in law and he lodges an appeal to the Croatian Supreme Court, from which there is no further appeal in the Croatian legal system. The Supreme Court decides the case on a basis that is clearly inconsistent with existing case law of the Court of Justice of the EU, and refuses to make a preliminary reference.

- (c) Advise Giovanni on any further action he may take.

(6 marks)

(Total: 25 marks)

Question 4

James is an Irish citizen, who moved to Sweden in December 2016 to take up employment as a graphic designer. In October 2017, he was made redundant, and has been unable to find further employment. He is registered, in Sweden, as a jobseeker.

In June 2016, James had entered into a civil partnership with Ivan, a Canadian citizen. Until now, Ivan has been living in Canada, but he now wishes to join James in Sweden.

Some years ago, Ivan was involved with an organised crime gang and served a sentence of seven years' imprisonment in Canada for offences of extortion and money laundering. In 2013, Ivan was convicted of conspiracy to export cocaine from Canada to Sweden and was sentenced to four years' imprisonment. He was released on licence in December 2015.

Advise Ivan whether he is entitled under EU law to join James in Sweden.

(25 marks)

End of Examination Paper

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