



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. Explain and critically assess the significance of the following concepts in relation to the free movement of goods:
 - (a) the presumption of mutual recognition;
(7 marks)
 - (b) the rule of reason;
(8 marks)
 - (c) product characteristics and selling arrangements.
(10 marks)

(Total: 25 marks)

2. Critically analyse the circumstances in which agreements between undertakings that may impact on the conditions of competition will not be caught by the prohibition in Art. 101 TFEU.
(25 marks)

3. Critically assess how each of the following has contributed to the achievement of the objectives of the EU:
 - (a) the Brussels Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
(8 marks)
 - (b) action by the Commission under Art. 258 TFEU;
(9 marks)
 - (c) the use of general principles of law.
(8 marks)

(Total: 25 marks)

4. Critically assess how effectively Art. 263 TFEU (the action for annulment) has assisted non-privileged applicants to achieve a just resolution of their legal issues.
(25 marks)

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

Question 1

Fictitious EU Directive 2014/10 makes provision for public transport providers to pay compensation to ticket holders, when services are delayed or cancelled. The Directive provides that ticket holders are entitled to:

- (i) a partial refund of 20% of the fare paid for each full hour for which their service is delayed; and
- (ii) a full refund plus compensation to the value of 50% of the ticket price for cancelled services.

Amanda sought a partial refund from East West Trains, when the Cardiff to Norwich service for which she had purchased a ticket was delayed for 2 hours and 10 minutes. East West Trains refused to refund Amanda, claiming that it was not obliged to do so by UK legislation, which requires only that 'reasonable compensation' be paid and even then only after a 'substantial delay'.

East West Trains is owned and operated by the UK government, after the previous private operator went out of business and no other commercial undertaking was willing to operate its routes.

Bertie wrote to HyperBus, requesting that his fare be refunded and compensation paid to him after his coach from Nottingham to Glasgow was cancelled. HyperBus refunded the fare, but refused to pay compensation, stating that UK legislation requires compensation only in the event of a delay and makes no mention of cancellation.

HyperBus is a privately owned and operated company.

Advise Amanda and Bertie as to their rights and remedies under European Union law.

(25 marks)

Question 2

Mark and Jeremy (who are both Irish citizens) are friends, who currently share a flat in Dublin.

Fearing that his career is going nowhere, Mark has decided to give up his job and he intends to move to France. However, Mark has found it more difficult than expected to find employment in France. He was rejected for one post, because the company concerned already had its 'requisite number of foreign nationals on the payroll'. Furthermore, his application for a post working as a kitchen assistant in the catering department of the French National Assembly (Parliament) was rejected, because it was deemed to be a public service post.

Mark has, in any event, decided that he will enter France with a view to looking for work. He is not concerned by French restrictions on residence, which state that if a job is not found within six months he must leave France, as he is confident of finding work quickly.

Jeremy has also decided to move to France. Jeremy has been offered a part-time position in a French music studio, but was told that the 16 hours available each week would not classify him as a worker under French law. It was therefore explained to him that he would not be entitled to the same level of pay as French nationals.

Jeremy's wife, Nancy, a United States citizen, plans to join Jeremy in France. Although they separated some time ago, Jeremy remains hopeful that the relationship is not beyond repair. Nancy would like to take up employment in France and has experience in the health and fitness industry.

One week before they were due to leave the UK, Jeremy was arrested on suspicion of having mutilated and killed several horses a number of years ago. Mark is alarmed by this news, as he fears that it will affect both of their chances of moving to France. Mark is aware that this is not the first time Jeremy has been involved with the police. Nancy has decided that, whatever happens, she still plans to go.

Advise Mark, Jeremy and Nancy as to their rights under EU law on the free movement of persons.

(25 marks)

Turn over

Question 3

Lyndon plc is a UK company which specialises in the manufacture of commercial cooking ranges and stoves, which it sells wholesale through distributors throughout the EU and North America. For the last five years, Lyndon has held approximately 50% of the EU market for commercial-use ranges and stoves. The other four EU producers of these products each have market shares of between 11% and 15%.

More recently, Lyndon has entered the market for cooking ranges and stoves for domestic use. The distributors who have been selling the commercial cooking ranges are increasingly also dealing in the domestic ones. However, the competition in the market for domestic ranges and stoves is strong. There are a number of producers of these items, with no single producer, including Lyndon, having more than a 10% market share.

Lyndon has reviewed its sales and marketing arrangements, and it proposes to adopt the following measures:

- (i) a stipulation whereby distributors in France, Italy and Germany must purchase all their requirements for domestic ranges and stoves from Lyndon, if they want Lyndon to supply them with commercial ranges and stoves;
- (ii) a rebate system, whereby all distributors receive discounts for bulk purchases;
- (iii) a further rebate off its price list to distributors, if they purchase ranges and stoves only from Lyndon for a three-year period.

Explain whether Lyndon's measures breach Art. 102 TFEU.

(25 marks)

Question 4

Homewood Ltd, established in England, is a provider of water features in gardens. It contracted with Sven to build a swimming pool and a pond in his garden in London. When Homewood invoiced Sven for the cost of the works, he refused to pay, on the grounds that the pool and the pond were defective within the meaning of the (fictitious) EU Liquid Features in Outdoor Domestic Spaces Regulation 2014/145 ('the Regulation').

The Regulation states that water features such as pools and ponds in outdoor domestic spaces such as gardens 'must not constitute a threat to wildlife' where the spaces are located in 'suburban areas'. Neither of these expressions is further defined in the Regulation. Sven alleges that the pool and pond built by Homewood constitute a threat to wildlife, because a number of wildlife-friendly features are missing.

Homewood sued Sven in the County Court for the cost of the works. The County Court held that the requirement 'must not constitute a threat to wildlife' was unclear, but that a reference on this issue need not be made to the Court of Justice since, in any event, Sven's garden was clearly not in a 'suburban area' for the purposes of the Regulation, and therefore the Regulation did not apply.

- (a) Explain whether and why the refusal of the County Court to refer is consistent with Article 267 TFEU as it has been interpreted by the Court of Justice and domestic courts.

(17 marks)

Assume that there is an appeal and that the Court of Appeal rules as follows: that Sven's garden is in a 'suburban area'; that the phrase 'must not constitute a threat to wildlife' is quite clear; and that the pool and pond installed by Homewood failed to meet this requirement. Homewood has applied for leave to appeal to the Supreme Court.

- (b) Explain how the Supreme Court should deal with the question of whether to make a reference to the Court of Justice.

(8 marks)

(Total: 25 marks)

End of Examination Paper

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