



## 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 2018-2019, 29th edition, N. Foster, Oxford University Press, 2018.**
- 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 contribution to the development of an effective competition policy of the following:
  - (a) enforcement action in relation to concerted practices;  
**(8 marks)**
  - (b) the Vertical Agreements Block Exemption Regulation;  
**(10 marks)**
  - (c) the leniency policy in relation to cartels.  
**(7 marks)****(Total: 25 marks)**
  
2. Critically assess the extent to which the amendment to Article 263 TFEU effected by the Lisbon Treaty has resolved the issues relating to the use of the annulment procedure by non-privileged applicants.  
**(25 marks)**
  
3. Critically assess the extent to which the ordinary legislative procedure permits all stakeholders to make an appropriate contribution to the acts adopted under it.  
**(25 marks)**
  
4. Critically assess the contribution to the effective application and enforcement of EU law of the following:
  - (a) the direct effect of Directives;  
**(9 marks)**
  - (b) enforcement action by the Commission where it considers that a Member State has failed to fulfil an obligation under the Treaties;  
**(8 marks)**
  - (c) Member State Liability.  
**(8 marks)****(Total: 25 marks)**

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

**Question 1**

The [fictitious] UK Go Society (UKGS) is a not-for-profit organisation which promotes the Japanese strategy board game Go. UKGS organises an annual 'International Go Challenge', which attracts hundreds of Go players. There is a £50 entry fee.

The UK tax authorities advise UKGS that these fees are taxable at a rate of 20% under UK tax legislation. UKGS considers that this is inconsistent with [fictitious] EU Regulation 290/2010 ('the Regulation'), the relevant part of which reads:

'Organisers of not-for-profit sporting events shall not be taxed in respect of any income incidental to the event. This includes, but is not limited to, any participation fee levied by the organiser.'

UKGS notifies the tax authorities that it does not accept that the fees are taxable, relying on the Regulation. Subsequently, it receives an assessment to tax in the sum of £2,500, representing 20% of the fees collected. The UK tax authorities indicate that, in their opinion, board games such as Go do not fall within the definition of sport and, as a result, the Regulation does not apply.

UKGS disputes the assessment to tax in the Tax Chamber of the First Tier Tribunal. It argues that the definition of sport includes games requiring mental skill and exertion, such as Go. In support of this, it refers to decisions in Estonia and Slovakia that the card game bridge and the board game draughts are respectively to be regarded as sports.

The Tribunal finds in favour of the UK tax authorities. It bases its decision in part on an earlier decision of the Court of Justice of the European Union that online poker tournaments did not qualify as 'sporting events' for the purposes of the Regulation. [**Note:** Poker is a card game generally regarded as based on luck and judgement rather than on skill.]

UKGS appeals against the decision, and ultimately applies for leave to appeal to the UK Supreme Court.

(a) Explain whether the Tribunal could and should have made a reference to the Court of Justice of the European Union under Article 267 TFEU.

**(18 marks)**

(b) Explain how the UK Supreme Court should deal with the issue of a possible reference to the Court of Justice of the European Union under Article 267 TFEU.

**(7 marks)**

**(Total: 25 marks)**

**Turn over**

## **Question 2**

Anna is an Irish citizen, currently living in Dublin. She has become disillusioned with her career as a merchant banker and has decided that she wishes to retrain as a psychotherapist. She has identified a suitable degree-level qualification at a Dutch university and wishes to relocate to the Netherlands to pursue this course and to be near her new boyfriend, Bjorn, who is Swedish and lectures part-time at a Dutch university. Anna has savings that will support her during her studies, although she is concerned that they may run out before she graduates. Anna has been informed that Dutch students can pay their university tuition fees by instalments a year in arrears, but that other students must pay the full fee for the course in advance.

Celine is Anna's aunt. She is a French citizen. Celine was widowed three years ago and is suffering from severe arthritis and other health issues. Since the death of her husband, she has been living with Anna in Dublin, and Anna has been providing substantial personal care for her. Celine is entitled to a French disability pension and has a private pension from her husband's employer. She wishes to join Anna in the Netherlands, so that Anna can continue to care for her.

David is Anna's 17-year-old son. He is an Irish citizen. He wishes to move to the Netherlands with Anna. He has had mental health issues and his behaviour has led to him being convicted of arson following an incident where he set fire to the furnishings in a room at a hospital where he was a patient. He was made the subject of a hospital order, but is currently being treated as an outpatient.

Advise Anna, Celine and David as to their rights under EU law in relation to the situation set out above.

**(25 marks)**

### **Question 3**

LookSmart Cars (LSC) has successfully operated in the UK for the last 10 years and specialises in the sale of luxury second-hand cars. The business has grown significantly and, as a result, LSC decided to start exporting cars to Spain and France.

LSC was recently notified by the Spanish authorities that all second-hand cars that are to be imported and sold in Spain are subject to an inspection. The Spanish authorities require this inspection in order to ensure that imported vehicles have not been subjected to unauthorised modification. Importers are charged a fee of €40 per car to cover the costs of this inspection.

The Spanish authorities have also informed LSC that all second-hand cars with a rating of 300 horse-power (hp) or above sold in Spain are subject to a 25% tax, whilst all cars below 300hp are subject to a 10% tax. Spanish manufacturers do not produce any cars at or above 300hp. The Spanish authorities explain that this taxation policy is designed to protect the environment. However, LSC is aware that there has been considerable debate in Spain over the relative decline of the Spanish car manufacturing industry.

Finally, French legislation requires that all cars sold in France must be fitted with a GPS anti-theft tracking device. France is the only Member State of the EU to impose this requirement.

Advise LSC on the issues raised above in connection with the free movement of goods within the European Union.

**(25 marks)**

**Turn over**

#### **Question 4**

Okia OU (Okia) is a large company based in Estonia whose business is the manufacture of office furniture. Okia produces inexpensive, flat-packed office furniture for general use and specialist workstations for technology companies. Okia has also developed state-of-the-art technology and manufacturing lines for the production of its specialist workstations, which are designed to promote good posture in their users.

Okia sells its product range to selected furniture wholesalers throughout the EU and Canada. Okia has built up a good reputation over the years for both specialised workstations and general flat-packed office furniture. Okia has enjoyed approximately 49% of the EU market for specialist workstations over the last three years. There are four other main producers in this market, each having similar market shares of between 11% and 15%. It also has approximately 20% of the market for general flat-packed office furniture.

Despite its stable position in the market, Okia is concerned about increasing competition from producers in Eastern Europe, who are targeting the market in specialised workstations. Okia has therefore undertaken a review of its existing sales and marketing policy. Okia currently operates a rebate system, whereby customers receive discounts for bulk purchases, but it is proposing to introduce the following new terms:

(i) a purchase requirement, whereby wholesalers in France, Italy and Germany must purchase their requirements for specialist workstations from Okia, if they want Okia to continue to supply them with general flat-packed office furniture;

and

(ii) rebates off its price lists if customers purchase specialist workstations only from Okia over a two-year period.

Advise Okia as to whether the arrangements described above will contravene Article 102 TFEU.

**(25 marks)**

**End of Examination Paper**

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