



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 2019-2020, 30th edition, N Foster, Oxford University Press, 2019.**
- 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. (a) Critically assess the extent to which the Court of Justice of the European Union has relied on the concept of citizenship of the European Union as a basis for equal treatment in the context of cross border movement.

(10 marks)

- (b) Critically assess the impact of the concept of "work seeker" in the context of the legislation and jurisprudence on free movement of people.

(7 marks)

- (c) Critically assess the significance of reflexive rights in the context of free movement of people. (These rights are exercised by those who have already exercised the right to freedom of movement and are returning to their home state.)

(8 marks)

(Total: 25 marks)

2. Critically assess how effectively the three principal institutions of the EU (the European Parliament, the European Council and the Commission) cooperate, in order to secure the effective operation of the policies of the EU.

(25 marks)

3. Critically evaluate the jurisprudence of the Court of Justice of the European Union under Art. 263 TFEU.

(25 marks)

4. (a) Explain, by reference to decided cases, the significance of market share when assessing whether an undertaking occupies a dominant position.

(10 marks)

- (b) Explain, by reference to decided cases, the significance of factors other than market share when assessing whether an undertaking occupies a dominant position.

(8 marks)

- (c) Explain why certain forms of discounting are regarded as abusive behaviour under Art. 102 TFEU, while others are not.

(7 marks)

(Total: 25 marks)

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

Question 1

Five companies are active in the production and distribution within the EU of Emulsamix, an ingredient used in the manufacture of non-drip gloss paint. Solvent Solutions Ltd (SSL), an undertaking based in the UK, is one of these. SSL has a market share in the EU ranging from 20% in France and the Netherlands to 5% in Poland and Romania.

SSL has received a complaint from a customer based in the Netherlands. The essence of the complaint is that this customer has noticed that the prices quoted for Emulsamix over the past 18 months by SSL, and other producers, appear to be extremely similar. Further, on two occasions, the prices were increased at approximately the same time and by approximately the same amount.

The sales director of SSL, Sarah, also tells you that, over the last few years or so, she has regularly discussed target prices for Emulsamix with the managing directors of the other producers throughout the EU. She has also exchanged information on sales volumes and market shares. This usually takes place during telephone conversations, but sometimes the relevant personnel from the different undertakings meet at trade fairs across Europe.

Sarah further states that, while she does have regard to the production costs and overheads incurred by SSL, she, and the sales directors of the other undertakings do seek to avoid competition on price. There is also an understanding that each undertaking will focus on its own existing core client base.

(a) Advise SSL whether the arrangements described above constitute a breach of Art. 101 TFEU.

(18 marks)

(b) Advise SSL what steps it can take to protect its position in the circumstances.

(7 marks)

(Total: 25 marks)

Turn over

Question 2

As a result of lobbying by the European Association for the Promotion of Free-Range Farming, the EU introduced a [fictitious] Directive on the use of free-range poultry farming methods (2018/107) (the Directive) in January 2018.

The Directive contained a number of provisions requiring Member States to ensure that poultry farming was conducted on free range principles. "Free range" was defined in the Directive as "a system of farming such that birds have at all times free access to the open air and to areas of grass and/or woodland." The only exceptions are to allow for measures to be taken to protect birds against predators such as foxes.

The Directive further required Member States to ensure that adequate measures existed to prevent injury or harm to birds caused by domestic animals, in particular dogs.

Last month, in response to increasing concerns about a possible bird flu pandemic and also extensive research carried out by scientific experts, the French Government passed the [fictitious] Poultry Farming (Restrictions) Law 2020 (the Law).

The Law states that:

"Poultry farmers and other keepers of poultry must keep poultry in enclosed environments at all times and must not keep poultry outdoors."

Nick Smith moved to France from England in 2015. He is a very successful free-range poultry farmer who sells his free-range chickens to a number of supermarkets across France. During the day, he allows his chickens to roam around outside, in very large specially constructed pens. The pens are open to the elements, but the chickens are surrounded by wire mesh, so they can't escape. At night, the chickens are kept indoors in large purpose-built wooden huts, to protect them from foxes.

Nick is being prosecuted by the French authorities for allowing his chickens to spend time outside, in their pens. The prosecution case is that the chickens should be kept in the wooden huts at all times.

Nick is also having problems with a neighbour who often allows his Rottweiler dog to run around freely. The dog frequently comes onto the farm and sometimes runs up to the pens barking loudly and chewing at the wire mesh. This terrifies the chickens and Nick believes that this behaviour is detrimental to their well-being.

The only French legislation relating to dogs worrying livestock is restricted to cases involving cattle, sheep and horses.

Advise Nick as to whether he can rely on EU law to protect his position in the above circumstances.

(25 marks)

Question 3

Jack has set up KidWorld Ltd (KidWorld) in Ireland. The company imports a variety of goods from across the EU (ranging from sweets to toys and books), which it then sells on through its network of stores, throughout Ireland.

Jack has recently imported, into Ireland from the Netherlands, a consignment of jellybean sweets, fortified with vitamins, and known as Veryjelly. Jack has also imported, from Sweden, a new range of teenage fiction books, which he thinks will be popular with customers in the 13–15 years' age group.

Last week, Jack was informed that the Irish customs authorities, acting in accordance with national laws, had seized the consignments of Veryjelly sweets and teenage fiction books upon their arrival in Ireland.

The Irish customs authorities were concerned that the Veryjelly sweets might contain vitamins which, pursuant to Irish law, may only be sold in pharmacies. The teenage fiction books were seized on the grounds that they were offensive to public decency (the authorities were concerned that some chapters dealt with sexual issues and that inappropriate and offensive language was used in places). To date, these books have been released only in Sweden.

In addition, Jack has just received an invoice for €500 from the Irish customs authorities. The letter accompanying the invoice states that this is to cover the cost of testing the Veryjelly sweets, to ascertain whether the declared list of contents is accurate. Jack is furious, as he purchased another (less popular) brand of jelly sweets from a local Irish manufacturer, for sale in KidWorld's Irish stores, only last month and did not encounter any problems then.

Advise Jack as to whether the actions of the Irish customs authorities are consistent with EU law.

(25 marks)

Turn over

Question 4

[Fictitious] EU Regulation 142/2017 (the Regulation) provides, among other things, that schemes established by employers for childcare and other employee benefits relating to childcare, provided by an employer, must be equally available to all workers. The Irish Actuaries Association ("the IAA"), a professional body to which 90% of Irish actuaries belong, has, with the approval of the Irish government, constituted its own professional arbitration tribunal to settle disputes relating to pay, benefits and conditions of work. It has compulsory jurisdiction and decisions of this tribunal are legally binding.

Michael, an Irish trainee actuary, claimed to have received unfair treatment as he had not been afforded the same childcare benefits for his children as his fellow female trainees. He brought a case before the tribunal of the IAA against his employer, H. Roberts Actuaries Limited (HRAL) but his claim for protection by the Regulation was dismissed on the grounds that he was not a "worker" but a trainee and the term "worker" in the Regulation did not include trainees. Michael invited the tribunal to make a reference to the Court of Justice of the European Union (ECJ), but the tribunal declined to do so.

On appeal, the High Court judge overturned the tribunal's decision and concluded that the tribunal had not considered all the circumstances of the case. The judge ruled that Michael, as a trainee, did exactly the same work and hours as a qualified actuary, albeit on a supervised basis. Therefore, it was decided that Michael clearly fell within the ambit of "worker" for the purposes of the Regulation. The High Court decided, as had the tribunal, that it was not necessary to make a reference to the ECJ.

HRAL appealed to the Court of Appeal as the High Court's ruling would have a significant financial impact on it. The Court of Appeal overruled the High Court's decision and found that Michael was not a "worker" for the purposes of the Regulation. The Court of Appeal refused to make a reference to the ECJ.

Michael has now been granted leave to appeal to the Irish Supreme Court.

Advise Michael as to the following issues:

- (a) Whether the IAA tribunal could have made a reference to the ECJ;
(7 marks)
- (b) Whether the Irish High Court and Court of Appeal were justified in declining to make a reference;
(11 marks)
- (c) Whether the Irish Supreme Court should make a reference to the ECJ, and the consequences if it were not to do so.
(7 marks)

(Total: 25 marks)

End of Examination Paper

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