



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 2016-2017, 27th edition, N Foster, Oxford University Press, 2016.**
- 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**

BLANK PAGE

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

1. (a) Critically analyse the concept of 'court or tribunal' in the context of Art. 267 TFEU.

(8 marks)

- (b) Critically assess how effectively the preliminary reference procedure under Art. 267 TFEU has contributed to the development of the EU.

(17 marks)

(Total: 25 marks)

2. Critically evaluate the effectiveness of the annulment procedure under Art. 263 TFEU, with particular reference to its use by non-privileged applicants.

(25 marks)

3. (a) Critically assess the approach of the Commission and the Court of Justice to the criteria for establishing whether or not a dominant position exists for the purposes of Art. 102 TFEU.

(14 marks)

- (b) Critically analyse the concept of 'abuse' in the context of Art. 102 TFEU.

(11 marks)

(Total: 25 marks)

4. Critically evaluate the extent to which the principal institutions (European Council, Council of Ministers, Commission and European Parliament) and the Member States have secured effective governance of the EU.

(25 marks)

Turn over

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

Question 1

O’Pork Ltd (‘O’Pork’) is a producer of sausages, established in the Republic of Ireland. The directors seek your advice concerning two competition law issues.

The first concerns possible collaboration over the development of a new process for producing ‘natural’ sausage casings by using nanotechnology (engineering at the molecular level) to produce the casings from meat trimmings, rather than using animal intestines or synthetic casings. The costs of development are too high for O’Pork to cover, and it wishes to collaborate with two other companies. One, Vorsti OU, is a producer of sausages, established in Estonia; the other, McSheep Ltd, is a producer of haggis, established in the UK.

There is clear evidence that sausages and haggis do not form part of the same product market. The relevant product market for sausages comprises those sausages which are intended to be grilled or fried. O’Pork has 18% and Vorsti 4% of this market.

- (a) Advise the directors of O’Pork whether they can lawfully enter into an agreement for research and development of the new process with Vorsti and/or McSheep.

(10 marks)

O’Pork has previously concentrated on marketing its products in Ireland and the UK, but is now looking to expand into the northern European market. It already sells sausages to one Belgian supermarket chain and two Swedish supermarket chains. O’Pork has identified potential distributors in Sweden, Denmark, Germany, Poland, the Netherlands and Belgium. It wishes to give each the exclusive right to market O’Pork products in their respective states, but does not wish them to operate outside those territories. It also wishes to continue to supply the existing supermarket customers itself. It wants to ensure that the distributors do not handle products that are directly competitive with O’Pork products. It also wishes to ensure that the perceived value of O’Pork products is not affected by them being sold at discounted prices, and therefore wants the distributors to adhere to O’Pork’s price guidelines.

- (b) Advise the directors of O’Pork on the extent to which they can lawfully achieve these objectives.

(15 marks)

(Total: 25 marks)

Question 2

The [fictitious] Packaging and Waste Regulations 2016 (UK secondary legislation) (the 'Regulations') make provision for the recycling of certain waste materials. The Regulations were made in response to the [fictitious] Third Packaging Waste Directive (the 'Directive'), the implementation date of which was 1 January 2017.

The Directive contains the following provisions:

- "(i) All producers and distributors of products shall ensure that where packaging comprises both plastic and paper-based elements, these are, so far as practicable, readily separable.
- (ii) The relevant authority shall provide recycling facilities such that in urban areas no household is further than 400 metres from a recycling point providing facilities for the recycling of paper and plastics as separate commodities."

Following representations from industry that tamper-proof packaging made from paper and plastic would not be secure if the elements could be readily separated, the Regulations are worded as follows:

'Packaging comprising plastic and paper elements shall, except where necessary tamper-proofing otherwise requires, be readily separable for the purposes of recycling'.

Recycling facilities are already provided under other [fictitious] UK legislation, which requires that recycling points be provided in urban areas but does not prescribe whether they should allow paper and plastics to be recycled separately, or as a mixed collection for later separation.

Green Action Now (GAN), an environmental campaigning group, has complained to the Commission that the United Kingdom has not effectively transposed the provisions of the Directive.

GAN has commenced proceedings in the English courts against Casterford City Council, alleging that it is not providing waste recycling facilities in accordance with the Directive, and against Wellington plc, a UK pharmaceutical company, alleging that it is not producing its tamper-proof medication packaging so as to allow the plastic and paper elements to be separable for the purposes of recycling.

- (a) Advise the Commission what approach it should take to the complaint of defective transposition.

(8 marks)

- (b) Advise Green Action Now as to its prospects of success in the proceedings that it has commenced.

(17 marks)

(Total: 25 marks)

Turn over

Question 3

Hans is a manufacturer of confectionery established in Germany. He has developed a new range of products aimed at children. The product consists of a large jelly sweet in the shape of a character from a cartoon film. The packaging is so designed that it can be transformed into a vehicle or building associated with the film, allowing children to recreate the locations for scenes from the film.

Hans markets his products in various Member States, including Sweden, Denmark and Belgium. He has invested a considerable amount of money in developing television advertising for the new product, which he considers essential to enable him to increase his market share.

In Sweden, he has been told that products which are designed for children cannot be advertised on television.

In Denmark, the Ministry for Consumer Protection has carried out an analysis of the product. Hans has been informed that one ingredient is not approved for use in products intended for children under the age of five, as it is believed to contribute to childhood obesity. This ingredient is not subject to restrictions in any other Member State.

In Belgium, his product is classified as a 'novelty item' and is subject to a special sales tax. Belgian chocolates in the shape of cartoon characters are classified as confectionery and are not subject to this tax.

Advise Hans whether the national measures of Sweden, Denmark and Belgium are compatible with EU law.

(25 marks)

Question 4

James is a video game designer. He is an Irish citizen and currently lives and works in Dublin, Ireland. He is married to Kate, who is a US citizen. James lives with Kate and her two children from a previous marriage, Larry, aged 19, and Martha, aged seven. Larry and Martha are both US citizens. Kate has recently completed training at an Irish college and now has a diploma in aromatherapy, which involved two years' academic study at degree level and a six-month work placement.

Over the past four years, Larry has been involved in a number of incidents of arson. While these have been dealt with through the criminal justice system and he has been convicted of four such offences, Larry has been diagnosed with severe psychotic illness and has been dealt with by hospital orders. He is currently out of hospital on licence with conditions requiring him to take medication and report regularly to his supervising psychiatrist.

James has recently been offered the opportunity to relocate to Berlin, Germany. The opportunity involves working on a part-time basis for a video game development company for the equivalent of two days per week and also working on a self-employed basis on a number of specific projects. James will receive an advance payment in respect of this self-employed work. This will be adequate, together with his part-time earnings, to cover the family's living expenses for the first 18 months.

Kate has been advised that her diploma will not be recognised in Germany, as she has not covered two modules on pharmacology and psychology, which form part of the equivalent German qualification.

Advise James and his family as to how EU law will apply, if James takes up this opportunity and relocates the family to Berlin.

(25 marks)

End of Examination Paper

BLANK PAGE