

2022 UNIT SPECIFICATION

Title:	(Unit 6) European Union Law
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1. Understand the constitutional and political history of the EU	1.1 Describe the key stages in the history and development of the EU	1.1 The Schumann plan; <ul style="list-style-type: none"> • expansion from the Coal and Steel Community 1951; • Treaty of Rome (referred to as EC throughout)1956; • Merger Treaty 1965; • Single European Act 1986; • (Maastricht) Treaty of European Union (TEU) 1992; • Amsterdam (1997) and Nice (2000) Treaties; European Convention and the abortive constitutional treaty; • Lisbon Treaty. Current treaties: Treaty of European Union (TEU) and Treaty on the Functioning of the European Union (TFEU); • Brexit, the Withdrawal Agreement and the Trade and Co-operation Agreement.

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	<p>1.2 Explain the relationship between supranational and intergovernmental dimensions of the EU</p>	<p>1.2 Defusing of potential for war between participant states; the ‘United States of Europe’;</p> <ul style="list-style-type: none"> • pragmatic economic approach against idealistic political approach; • forms of economic integration, namely: nature of the Common Market – customs union, free trade area and free movement of all factors of production; • primacy of the member states through the Council. Role of national parliaments-oversight of subsidiarity. Protocols 1 and 2 attached to the Treaties by the Lisbon Treaty.
<p>2. Understand the constitutional structure and institutions of the EU</p>	<p>2.1 Describe the structure and functions of the institutions</p>	<p>2.1 Role and function of the European Parliament (EP); originally merely a ‘select committee’ with a limited role and no legislative initiative or veto; now having clear functions:</p> <ul style="list-style-type: none"> • legislation; • budgetary; • nomination of Commission; ‘Spitzenkandidaten’; • general accountability of Commission; • Role and function of the European Council and Council; • representation of the member states; • approving legislation; • qualified majority voting; • Role and function of the Commission: guardian of the treaties (Art 258 TFEU); • initiation of legislation; • administration of EU policies;

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	<p>2.2 Explain the relationship between the institutions</p>	<ul style="list-style-type: none"> • Function, jurisdiction and composition of the European Court of Justice (ECJ) and General Court; • Outline of the other institutions: Court of Auditors, Economic and Social Committee (ECOSOC), Committee of the Regions, Committees of Permanent Representatives (COREPER), Office for Harmonisation in the Internal Market (OHIM), Ombudsman. <p>2.2 Original model, like the control of a ministry at national level, ie: minister(s) in political control;</p> <ul style="list-style-type: none"> • civil servants (commission) executing policy; • Parliamentary select committee maintaining oversight; • legal supervision by the courts; • an examination of the extent to which this has changed and developed; the current model: EP fully democratically accountable, but still remote; • Commission provides expertise and political impetus from Council; • strategic planning – direction of Commission by Council; the Troika. Role of the President of the European Council and the High Representative for Foreign Affairs.
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<p>3. Understand the legislative competences and processes of the EU</p>	<p>3.1 Explain the procedures associated with the co-decision process</p> <p>3.2 Outline those procedures associated with relevant legislative processes</p> <p>3.3 Analyse the principles of subsidiarity, shared and exclusive competence</p>	<p>3.1 An explanation of the ordinary legislative procedure (Art 289 and 294 TFEU), ie: initial proposal;</p> <ul style="list-style-type: none"> • first reading; • handling of disagreements; • qualified majority; • role of Commission; conciliation; • trialogues; • EP veto. <p>3.2 An outline of Consultation: single reading; must be real: Case 138/79 <i>Roquette Frères</i>; no veto; an outline of Co-operation (Art 115 TFEU):</p> <ul style="list-style-type: none"> • greater involvement; • two readings and special procedure to override EP, but no veto; • an outline of Assent procedure: veto, but no formal negotiation process; • the pervasive nature of dialogue, discussion, lobbying and desire for consensus. Role of Member State Parliaments. <p>3.3 The concepts of exclusive and shared competence;</p> <ul style="list-style-type: none"> • the concept of subsidiarity (Art 5 TEU) and how effect is given to this as a guiding principle, including the role of national parliaments. Protocols 1 and 2 attached to the Treaties by the Lisbon Treaty.
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	<p>3.4 Apply knowledge of the legislative competences and processes of the EU to a specific legal problem</p> <p>3.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>3.4 Application of understanding to a complex scenario.</p> <p>3.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>4. Understand the essential principles of the EU legal order</p>	<p>4.1 Describe the sources of Community law</p> <p>4.2 Analyse the nature of the supremacy of EU law</p> <p>4.3 Explain the application of the principle of direct effect to regulations and directives</p>	<p>4.1 Treaties, Regulations, Directives, Decisions, binding and non-binding Acts.</p> <p>4.2 The 'new legal order': Case 26/62 <u>van Gend & Loos</u>; supremacy over national law: Case 6/64 <u>Costa v ENEL</u>, Case 9/70 <u>Grad v Finanzamt Traunstein</u>; Case 106/77 <u>Amministrazione delle Finanze dello Stato v Simmenthal</u>;</p> <ul style="list-style-type: none"> • national responses: eg: the '<u>Solange</u>' cases (<u>Internationale Handelsgesellschaft</u> (1974) 2 CMLR 540 and <u>Wünsche Handelsgesellschaft</u> (1987) 3 CMLR 225); • <u>Brunner v EU</u> (1994) 1 CMLR 57, the '<u>Lisbon Case</u>' (2009). <u>Factortame I</u> [1990] 2 AC 85; • an explanation of the obligations under Art 4 TEU; proper procedures to give effect to rights under EU law. <p>4.3 Direct applicability and effect of regulations; vertical direct effect of directives and its limits: eg: Case 41/74 <u>van Duyn v Home Office</u>, Case 148/78 <u>Pubblico Ministero v Tullio Ratti</u>, Case 152/84 <u>Marshall v Southampton</u> etc AHA, Case 103/88 <u>Fratelli Constanzo v Comune di Milano</u>, Case C-188/89 <u>Foster v British Gas</u>, Case C-413/15 <u>Farrell v Whitty</u>;</p>

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	<p>4.4 Analyse the role played by fundamental principles of law in the jurisprudence of the European Court of Justice (ECJ)</p> <p>4.5 Apply knowledge of these essential principles of the EU legal order to a specific legal problem</p> <p>4.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<ul style="list-style-type: none"> • Case C-397/01 <u>Pfeiffer</u>; • no horizontal direct effect: Case C-91/92 <u>Faccini-Dori v Recreb</u>; • horizontal indirect effect: Case 14/83 <u>von Colson</u> and <u>Kamann v Land Nordrhein-Westfalen</u> and the interpretative obligation: Case C-106/89 <u>Marleasing v La Comercial Internacional de Alimentacion</u>; application in national courts: eg: <u>Pickstone v Freemans</u> [1989] AC 66, <u>Litster v Forth Dry Dock</u> [1990] 1 AC 546. <p>4.4 Non-discrimination;</p> <ul style="list-style-type: none"> • human rights; general considerations: case law, eg: Case 29/69 <u>Stauder v Stadt Ulm</u>, Case 4/73 <u>Nold v Commission</u>; • European Convention on Human Rights: case law, eg: Case 36/75 <u>Rutili v Minister of the Interior</u>, Case 222/84 <u>Johnston v CC RUC</u>; • other international instruments: eg: Case 149/77 <u>Defrenne v SABENA III</u>; • EU Charter of Fundamental Rights. <p>4.5 Application of understanding to a complex scenario.</p> <p>4.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>5. Understand the rules relating to venue for litigation and enforcement of claims in the EU</p>	<p>5.1 Explain the policy and principles underlying the Brussels Regulation and the European Small Claims Procedure</p> <p>5.2 Apply knowledge of the EU rules for litigation and enforcement of claims to a specific legal problem</p> <p>5.3 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>5.1 An explanation of the Brussels Regulation (Reg 1215/2012) on venue for proceedings and procedures for recognition and enforcement of judgments, and the provisions of and the rules relating to the European Small Claims Procedure (ESCP) (Reg 861/2007);</p> <ul style="list-style-type: none"> • most specifically, factors affecting jurisdiction to entertain proceedings; • location of the cause of action, location of the parties, differential treatment of consumers and businesses; • criteria for recognition and enforcement; • rationale for and elements of the ESCP, relevant caselaw, eg: Case C-281/02 <u>Owusu v Jackson</u>, Case C-159/02 <u>Turner v Grovit</u>, Case C-185/07 <u>Allianz v West Tankers (The 'Front Comor')</u>. <p>5.2 Application of understanding to a complex scenario.</p> <p>5.3 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>6. Understand the rules relating to the application of EU legal principles in national legal systems</p>	<p>6.1 Explain the nature and scope of preliminary references under Art 267 TFEU (with particular reference to Art 267.3)</p>	<p>6.1 Rationale for the procedure, ie: the need for an authoritative and consistent approach; bases of jurisdiction:</p> <ul style="list-style-type: none"> • interpretation of the treaties, validity and interpretation of other instruments; • nature of instruments within scope; • concept of a ‘tribunal’: eg: Case 246/80 <u>Broekmeulen v Huisarts Registratie Commissie</u>; • Case 102/81 <u>Nordsee</u>; • Case C-54/96 <u>Dorsch Consult</u>; Case C-53/03 <u>Syfait</u>; • Case C-222/13, <u>TDC A/S</u>; Case C-555/13 <u>Merck Canada</u>. scope and operation of Art 267.3: • Case C-99/00 <u>Lyckeskog</u>, ie: proper practice for supreme courts where appeal is discretionary; • nature of the reference as a ‘step in the main proceedings’ and the ruling is purely on matters of EU law; • distinction between reference and appeal; • reference in matters of ‘pure’ EU law possible as soon as the facts are established; • reference in matters of mixed national and EU law (eg: transposition of directives) only when national law has been ascertained; the plea of illegality under Art 277 TFEU. • Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C380/01).
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	<p>6.2 Analyse the concepts of <i>acte clair</i> and <i>acte éclairé</i></p> <p>6.3 Explain the criteria and procedures for the grant of interim relief</p> <p>6.4 Analyse the criteria for the imposition of state liability for non-contractual damages for non-compliance with EU legal obligations</p> <p>6.5 Apply knowledge of the rules relating to the application of EU legal principles in national legal systems to a specific legal problem</p> <p>6.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>6.2 Rationale of <i>acte clair</i>:</p> <ul style="list-style-type: none"> • CILFIT criteria (Case 283/81 <u>CILFIT and Lanificio di Gavardo v Ministry of Health</u>); • rationale of <i>acte éclairé</i>; • Cases 28030/62 <u>Da Costa en Schaake et al. v Nederlandse Belastingadministratie</u> ie: permissible if there is any doubt. <p>6.3 Respective roles of ECJ and national courts;</p> <ul style="list-style-type: none"> • limitations on national courts powers: eg: Case 314/85 <u>Foto Frost v Hauptzollamt Lübeck-Ost</u>. <p>6.4 The nature of and rationale for the <u>Francovich</u> principle (Case C-6 & 9/90 <u>Francovich and Bonifaci v Italy</u>);</p> <ul style="list-style-type: none"> • criteria for application: cases C-46 and 48/93 <u>Factortame III/Brasserie du Pêcheur</u>; • applicability to judicial decisions: Case C-224/01 <u>Köbler v Republik Österreich</u>, Case C-173/03 <u>Traghetti del Mediterraneo v Italy</u>. <p>6.5 Application of understanding to a complex scenario.</p> <p>6.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>7. Understand the rules relating to direct actions before the ECJ and Court of First Instance (CFI)</p>	<p>7.1 Explain the legal basis of the jurisdiction of the court under Art 263-265 TFEU.NB this is the correction of a textual error, not a substantive change</p> <p>7.2 Analyse the concepts of direct and individual concern</p> <p>7.3 Analyse the criteria for the imposition of liability for non-contractual damages for non-compliance with EU legal obligations under Art 268/340 TFEU</p> <p>7.4 Explain the different criteria and motivations for initiating action under Art 258 TFEU</p>	<p>7.1 Identify and explain the significance of the distinction between privileged and non-privileged applicants;</p> <ul style="list-style-type: none"> • reviewable acts; nature of the review, ie: constitutional (eg: Case 138/79 <u>Roquette Frères</u>, Case 302/87 <u>Parliament v Council (Comitology)</u>), orthodox judicial review and appeal (eg: competition decisions); grounds for review. <p>7.2 Nature of direct and individual concern: Case 25/62 <u>Plaumann v Commission</u>;</p> <ul style="list-style-type: none"> • issues of the adequacy of legal protection of non-privileged applicants, eg: Case C-50/00 <u>Union de Pequeños Agricultores v Council</u>, Case C-263/02P <u>Jégo-Quéré v Commission</u>. • Position following amendment in relation to regulatory acts eg: Case C-583/11 P <u>Inuit Tapiriit Kanatami</u>, Case T-262/10 <u>Microban International and Microban (Europe) v Commission</u>. <p>7.3 Direct liability and vicarious liability, ie: <i>faute de service</i> and <i>faute de personne</i>;</p> <ul style="list-style-type: none"> • the <u>Schöppenstedt</u> formula (Case 5/71 <u>Aktiengesellschaft Zuckerfabrik Schöppenstedt v Council</u>); • nature of ‘higher order legal norms’. <p>7.4 Complaints, non-notification and ‘own account investigation’;</p> <ul style="list-style-type: none"> • enforcing Art 4 TEU obligation of states; • applicability of the Code of Practice.
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	<p>7.5 Explain the procedures adopted by the Commission under Arts 258 and 260 TFEU</p> <p>7.6 Analyse the effectiveness of action by the Commission under Art 258/260</p> <p>7.7 Apply knowledge of the rules relating to direct action before the ECJ and ECI to a specific legal problem</p> <p>7.8 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>7.5 Initial informal investigation and exchanges with the state with a view to informal resolution, use of eg: Europilot;</p> <ul style="list-style-type: none"> • formal investigation; • reasoned opinion; • judicial stage: criteria for action and constraints on the Commission's formulation of its case; • criteria for the application of Art 260 TFEU; nature of the penalties. <p>7.6 Level of activity;</p> <ul style="list-style-type: none"> • nature of activity; • criteria for and level of use of Art 258. <p>7.7 Application of understanding to a complex scenario.</p> <p>7.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>8. Understand the substantive law relating to the single internal market</p>	<p>8.1 Explain the concepts of free movement of goods</p>	<p>8.1 Provisions of Part Three Title I TFEU, ie: essentials of the single market:</p> <ul style="list-style-type: none"> • in relation to customs duties and charges having equivalent effect: nature of customs duties; • imposed because crossing a frontier; • reason for imposition immaterial: eg: Cases 2 and 3/69 <u>Sociaal Fonds voor de Diamantarbeiders v Brachfeld</u>; • in relation to discriminatory internal taxation: scope of Art 110 TFEU, eg: Case 21/79 <u>Commission v Italy</u>; • differential taxation of the same product eg: Case 168/78 <u>Commission v France</u>; • indirect protection to competing products eg: Case 170/78 <u>Commission v UK</u>; • manipulation of categories, eg: Case 112/84 <u>Humblot v Directeur des Services Fiscaux</u>; • objective justification, eg: Case 140/79 <u>Chemical Farmaceutici v DAF</u>; in relation to non-tariff barriers and measures having equivalent effect: • nature of non-tariff barriers; <u>Dassonville</u> formula (Case 8/74 <u>Procureur du Roi v Dassonville</u>); • distinctly and non-distinctly applicable; • scope and effect of Art 36 TFEU derogations; • trade rules: case law including Cases C-267-8/91 <u>Keck & Mithouard</u>. Horizontal effect: eg: Case C-171/11 <u>Fra.bo SpA</u>. <p>The <i>Cassis de Dijon</i> (Case 120/78 <u>Rewe-Zentrale v</u></p>
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	<p>8.2 Explain the concepts of free movement of people</p>	<p><u>Bundesmonopolverwaltung für Branntwein</u>) rule of reason: nature of mandatory requirements and the role of proportionality;</p> <ul style="list-style-type: none"> • recipe and labelling requirements; presumption of marketability. <p>8.2 The concept of a ‘worker’ under Art 45 TFEU; autonomous concept: Case 75/63 <u>Hoekstra v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten</u>;</p> <ul style="list-style-type: none"> • working for another; economically viable: case law including, eg: Case 53/81 <u>Levin v Staatsecretaris van Justitie</u>, Case 139/85 <u>Kempf v Staatsecretaris van Justitie</u>, Case 66/85 <u>Lawrie-Blum v Land Baden-Württemberg</u>, Case 196/87 <u>Steymann v Staatsecretaris van Justitie</u>; • the rights of family members: relevant provisions of Directive 2004/38 and Regulation 492/2011; e.g. Case C-423/12 <u>Reyes</u>, Case C-218/14 <u>Kuldip Singh</u> restrictions permitted on grounds of public policy, security and health: • arts 27-33 Directive 2004/38; • rights based on citizenship: • Arts 20 and 21 TFEU and relevant case law, eg: Case C-85/96 <u>Martinez Sala v Freistaat Bayern</u>, Case C-224/98 <u>D’Hoop</u>; Case C-184/99 <u>Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve</u>, Case C-578/08 <u>Chakroun</u>; • Case C-140/12 <u>Breyer</u>;
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	<p>8.3 Explain the extent and nature of the rights deriving from EU social policy</p> <p>8.4 Apply knowledge of substantive law relating to a single market to a specific legal problem</p>	<ul style="list-style-type: none"> • Case C-275/12 <u>Elrick</u>; • relevant provisions of Directive 2004/38; rights available only on basis of the Directive: • Case C-333/13 <u>Dano</u>, Case C-67/14 <u>Alimanovic</u>, Case C-299/14 <u>Garcia-Nieto, Mirga and Samin</u> [2016] UKSC 1. • recognition of qualifications: directives 77/249, 98/5 and 2005/36; • Case C-313/01 <u>Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova</u>; • Case C-58/13 <u>Torresi</u>; • free movement of services and establishment: Arts 49 and 56 TFEU; • Directive 2006/123; receipt and provision of services; • Distinction between provision of services and establishment; exceptions to free movement: derogations based on personal conduct and health. • Free movement and rights under the Withdrawal Agreement. <p>8.3 Principles of equal pay and equal treatment: Art 19 TFEU, Art 157 TFEU, Directives, 86/613, 2000/78, 2004/113, 2006/54;</p> <ul style="list-style-type: none"> • Case 43/75 <u>Defrenne v SABENA</u>. <p>8.4 Application of understanding to a complex scenario.</p>
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	8.5 Critically evaluate a given issue or situation to predict probable legal implications	8.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
9. Understand the substantive law relating to competition	9.1 Explain the nature of anti-competitive behaviour and the policy reasons for its prohibition	9.1 Art 101 TFEU and the qualified prohibition on anti-competitive practices; <ul style="list-style-type: none"> • definitions of competition and anti-competitive behaviour; • nature of cartels and distribution agreements; • agreements and concerted practices; • vertical and horizontal arrangements (Regulation 330/2010); • basic economic concepts: cross-elasticity, entry barriers, inter- and intra-brand competition; • compartmentalisation of the market; • exhaustion of intellectual property rights; permissible collaboration, eg: research and development (Regulation 1217/2010), technology transfer (Regulation 316/2014), joint ventures, ‘minor agreements’ (Commission Notice 2014); • block exemptions, including prohibited terms; use of ‘soft law’ eg: Guidelines on Vertical Restraints (2010), Guidelines on Horizontal Co-operation Agreements (2011); • Notice on the Definition of the Relevant Market (1997); • investigative and adjudication procedures: Regulations 1/2003 and 773/2004. Relationship with national competition authorities, e.g. Case T-201/11 <u>Si.mobil</u>.

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	<p>9.2 Explain the concepts of dominant position and the economic arguments for prohibition of abuse</p> <p>9.3 Apply knowledge of the substantive law relating to competition to a specific legal problem</p> <p>9.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>Compensation for victims: Directive 2014/104.</p> <p>9.2 Art 102 TFEU and the absolute prohibition on abuse of a dominant position;</p> <ul style="list-style-type: none"> • definitions of dominance and abuse; • economic concepts: product market, geographic market, substitutability, entry barriers; • categories of abuse: monopoly rent, predatory pricing, tying in, abusive rebates and discounts, refusal to supply; • must fit and must match issues; • margin squeezing; • Notice on the Definition of the Relevant Market (1997); Guidance on Enforcement Priorities under Art 102 (2009). <p>9.3 Application of understanding to a complex scenario.</p> <p>9.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of European Union Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2011

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