



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 the question paper fully.** However, you may make notes on the 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. The 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 2013-2014, 24th edition, N Foster, Oxford University Press, 2013.**
- 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 ball point 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, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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

1. Free movement of persons was initially firmly rooted in the four freedoms of the Common Market but the development of citizenship of the EU has introduced a significant additional element.

In the light of this statement, critically evaluate the development and present fitness for purpose of EU law on the free movement of persons.

(25 marks)

2. Critically assess the contribution of the European Parliament to the functioning of the EU, with particular reference to its interaction with the EU's other principal institutions.

(25 marks)

3. (a) Critically assess how effectively the procedure under Art 258 TFEU (power for the Commission to bring enforcement proceedings against member states) has operated.

(12 marks)

- (b) Critically assess how effective the changes made to Art 263 TFEU (action for annulment of an act) in the Lisbon Treaty have been in resolving the problems identified in Union de Pequeños Agricultores (2002) and Jégo-Quéré (2002).

(13 marks)

(Total 25 marks)

4. Critically evaluate how Art 101 (3) TFEU (regulating collaborative anti-competitive arrangements) has been interpreted and applied by the Commission and the Courts.

(25 marks)

Turn over

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

Question 1

Time2 is a major producer of the silicon chips used in tablet computers using the Dendroid operating system. Time2 has nearly 50% of this market world-wide, including the EU. In turn, tablet computers using Dendroid have about half of the total tablet computer market. There is evidence that users have a strong loyalty to their chosen operating system.

The Commission has received complaints that Time2 has been offering EU tablet computer manufacturers inducements to use their chips. These inducements include discounts if the manufacturer agrees to buy chips only from Time2; and alternatively cumulative discounts based on purchases over a two-year rolling reference period (i.e. the level of discount will be based on total purchases over the preceding two-year period).

Advise the Commission whether there are grounds for suspecting an infringement of Art 102 TFEU and what matters should be investigated to establish whether a breach has occurred.

(25 marks)

Question 2

For some time, Sophia has been manufacturing and selling in Italy a drink "Shlurp", made up of blackcurrant juice and a splash of vodka and prosecco sparkling wine. Shlurp is sometimes referred to as an alcopop. She has recently started to market it in the UK but has received a letter from the UK authorities (enforcing English laws) stating that:

- (i) The product attracts tax at a higher rate due to its alcohol content including spirits; and
- (ii) The label on the front of the bottle must be changed, both to emphasize the significant alcohol content (6%) and to replace the picture on it, which currently shows a group of teenagers drinking Shlurp. The view of the authorities is that this label may mislead inexperienced young people into purchasing the drink believing it to be an alcohol-free drink similar to blackcurrant juice. Furthermore, UK advertising regulations prohibit any advertising of alcohol which 'appeals significantly to those under legal drinking age'.

Sophia complains that the higher rate of tax discriminates against her product as it is levied at the same rate as the UK tax on pure vodka and similar spirits; these have an alcohol content of 40% and above, whereas her product has a much lower alcohol content; similar strength UK alcopops are taxed at a lower rate.

She also points out that she is using the same label in Italy and has had no problems there, that the labelling of the bottle is her own concern and, in any event, the current label shows the alcohol content in small print amongst the list of ingredients at the end of the label.

Advise Sophia as to the legality in EU law of

- (a) The taxation position.

(8 marks)

- (b) The labelling and advertising requirements.

(17 marks)

(Total: 25 marks)

Turn over

Question 3

This question concerns preliminary references under Art 267.

The [fictitious] Transport Undertakings Directive 12/1998 provides, *inter alia*, that member states shall establish a registration system for road transport undertakings. These are defined as 'haulage operators, passenger transport operators and undertakings which provide either drivers or vehicles for commercial road transport purposes'.

In the United Kingdom the [fictitious] Transport Operators Act 2001 provides for the registration of 'goods vehicle operators, passenger vehicle operators and transport contractors'. The last phrase is further defined as 'undertakings which, for reward hire out vehicles or supply drivers to goods or passenger vehicle operators'.

Hirekwik Ltd acts as a facilitator in the transport industry. It provides operators with a vehicle and driver when they need temporary additional capacity to be provided. It does not own any vehicles or employ any drivers. When approached by an operator seeking additional capacity it arranges for a driver to be supplied by Drivekwik Ltd and a vehicle by Trukkwik Ltd. All are subsidiaries of Kwikkwik plc.

Hirekwik is not registered under the Act. It has been told by the road transport regulator that it should be registered and also that, under the [fictitious] EU Regulation 2004/888, it is deemed to be the operator of the vehicles in question and therefore responsible for supervising the compliance of the drivers with the driving hours rules. Hirekwik commences proceedings in the High Court for a declaration that it is not liable to be registered and is not an operator for the purposes of the Regulation.

It is clear from the pleadings that there is a dispute over the interpretation of the Act, the Directive and the Regulation. In particular whether there is a discrepancy between "provide either drivers or vehicles" and "for reward hire out vehicles or supply drivers" and what is the definition of "operator of the vehicles in question".

Explain at what stage in the proceedings, and subject to what criteria, a reference under Art 267 TFEU may or must be made.

(25 marks)

Question 4

[Fictitious] Directive 25/2011 requires that all plastic packaging be made of chemicals which have been tested by approved testing establishments to ensure that they are not carcinogenic [do not cause cancer]. The objective of the Directive is to protect workers handling the packaging.

The Directive further provides that, 'all workers handling or exposed to plastic packaging materials as part of their duties' shall be tested annually to ensure their bodies do not contain excessive levels of chemical residues if they are engaged in the manufacture of plastic packaging and in all other cases tested every three years.

In the United Kingdom the [fictitious] Health and Safety (Packaging) Regulations 2013 provide that 'workers in the plastic packaging industry working directly with chemicals' shall be tested annually and all other workers shall be offered a test every three years.

You are consulted by representatives of workers at Qitenic plc, which is responsible for the provision of all food and clothing supplies to the British armed forces. It manufactures plastic packaging for use in its business and many workers are involved in this process. Qitenic was formerly an agency of the Ministry of Defence; it is now partly owned by a private investor and managed by civilian managers. It has the power to commandeer transport facilities in the case of an emergency.

The workers complain that:

- (i) Only the actual production workers are given annual tests. Supervisors, cleaners and engineers, who also work in the areas where the packaging is manufactured, have asked to be tested annually, but management has refused.
- (ii) Workers in the transport department, who were told, 'you can be tested every three years, but it is voluntary, and in your own time', were not tested and have developed illnesses relating to exposure to chemicals.

Advise the workers whether they have any redress in the UK courts under EU law in relation to these matters.

(25 marks)

End of Examination Paper

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