

UNIVERSITY OF BOLTON
BOLTON LAW SCHOOL
LAW PATHWAYS
SEMESTER 1 EXAMINATION 2018/19
EUROPEAN LAW
LAW5002/LAW5102

DATE: Wednesday 16 January 2019

TIME: 2.00 – 4.00

INSTRUCTIONS TO CANDIDATES: There are 4 questions on this paper.

Answer 2 questions.

All questions carry equal marks.

Candidates are permitted to take into the examination a clean non-annotated EU statute book or a printed version of the current EU Treaties.

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1. The British government enacted the Merchant Shipping Act 1988, which stated that a vessel could only be registered as British if it had 'a genuine and substantial connection' to the UK. This included the condition that the management and 75% of the shareholders of the shipping companies were British citizens resident and domiciled in the UK (elusively described in the legislation as 'a qualified person'). The consequence was a range of court cases that shaped a number of key principles of EU law. – **Evaluate and discuss**

2. OrangeCo Plc is a manufacturer of copper pipes based in the UK. It supplies its pipes to plumbers in the UK, Germany, and Italy. Due to the transport costs involved in distributing copper pipes, OrangeCo has not expanded its sales operations beyond these three Member States.

OrangeCo supplies more than 80% of copper pipes sold within the UK, Germany, and Italy, however the company has only a 6% share of the total EU market for copper pipes ('the copper pipes market'). OrangeCo's share of the wider market for general plumbing materials in the UK, Germany, and Italy, which comprises the market for copper pipes and other metal pipes as well as plastic pipes used for plumbing ('the plumbing materials market'), stands at around 10%.

Using its vast financial resources, which it has generated from healthy profits over the past five years, OrangeCo has developed a particularly efficient distribution system. The company's strong market position has also enabled it to offer discounts to some of its UK customers, negotiated separately with individual plumbers, and based on the size of the orders placed.

Recently, one of OrangeCo's competitors, BlueCo plc, discovered that OrangeCo is offering significant discounts to BlueCo's existing customers if they agree to switch their custom to OrangeCo over the next year.

BlueCo now questions the compatibility of all OrangeCo's discounting arrangements with Article 102 TFEU.

Advise BlueCo.

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3. Willie is a UK manufacturer of cake-topping die-cutting machines ('CDMs'), which he has supplied to patisseries in the UK and Denmark for the past ten years. Willie now plans to import his machines into the Netherlands.

Willie has learned that under Dutch legislation a licence is required for the import of CDMs. Licence applications are considered by the Dutch authorities in January and July each year. Willie has been told that the Netherlands places an annual limit on the number of CDMs that may be imported and has regulations stipulating that baking machinery, including CDMs, can only be sold through government sales outlets.

The Netherlands also has health and safety legislation requiring all CDMs to be fitted with an external 'dust filtration' unit to collect particles emitted by the die-cutting process. This legislation has recently been introduced following the publication of a research study conducted in the Dutch baking industry. The study suggests that, over the past six months, the number of new cases of flour aspiration related lung disease has been significantly lower amongst die-cutting pastry chefs working with Dutch manufactured machines (most of which already comply with the new legislation) than amongst pastry chefs working on imported machines (none of which currently complies). Willie's machines do not comply with the Dutch legislation. Instead, his CDMs are fitted with internal 'dust filtration' units, which, in Willie's view, operate much more efficiently than the externally fitted filtration units required by the Dutch legislation.

Advise Willie as to the application, if any, of EU law on the free movement of goods to all aspects of this situation.

4. Isabelle is a chemist employed by the Home Office in London. She has encountered problems at work and is considering bringing proceedings against her employer.

The (imaginary) Directive 2002/666 ('the Directive') provides that all overtime worked by chemists must be paid at no less than double the normal hourly rate. The Directive also provides that chemists must receive health and safety training. An annex to the Directive sets out the details of the required training, which must include sessions covering all new handling techniques relating to toxic substances. The deadline for implementation of the Directive was 31st December 2004.

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Question 4 continued

The (imaginary) Chemists Act 1960 ('the Act') provides that all overtime worked by chemists must be paid at no less than 1.5 times the normal hourly rate. The Act also provides that all laboratory technicians must receive health and safety training but does not specify the content of the training.

Isabelle occasionally works overtime and, under her contract of employment, receives 1.5 times her normal hourly rate of pay. She is dissatisfied with this, however, when she complained, her employer explained that this overtime rate complies with the Act.

Two months ago, Isabelle came into contact with a toxic substance at work and, as a result, suffered respiratory problems. Whilst Isabelle has received health and safety training, she has not received training in recently developed handling techniques for toxic substances. She thinks that, had she received such training, she would not have been exposed to the associated health risk.

Advise Isabelle as to whether she has any cause of action against her employer under EU law.

END OF QUESTIONS