

UNIVERSITY OF BOLTON**SCHOOL OF LAW****LAW PATHWAYS****SEMESTER 1 EXAMINATION 2022/2023****EUROPEAN LAW****MODULE NO: LAW5002 / LAW5102**DATE: Monday 9th January 2023

TIME: 2.00pm – 4.00pm

INSTRUCTIONS TO CANDIDATES:

In **Section A** there are 30 questions in total. Answer **ALL** questions. All questions carry equal marks.

To each question there is only **ONE** correct answer. If you give more than one answer for any multiple-choice question you will receive **NO** marks for that question.

Answers must be completed in the student answer book provided. For example, for question 1, write 1 in the left margin followed by the appropriate letter which indicates your answer (a. to d.) on the lined page. Answers not entered in the answer book will be marked as incorrect.

The multiple-choice test amounts to one third of your mark in this module.

There are **FOUR** questions in **Section B**. Answer **TWO** questions from this section. All questions in this section carry equal marks. This is an open book exam.

Candidates are permitted to take into the examination an unannotated EU statute book or printed version of the current EU Treaties.

ANY ANSWERS NOT WRITTEN IN THE ANSWER BOOK WILL NOT BE MARKED.

Both question paper and answer book must be handed in at the end of the examination.

Please turn over when instructed to begin

Section A

- 1) Directive 2008/94/EC was challenged in a leading case because ...
 - a. Gas meter readings need to be reported to a governing administrative body
 - b. Intercity Express Trains do not need to submit to border controls when crossing internal EU borders
 - c. Employees are able to make claims for payment against insolvent employers
 - d. Governments are required to finance insurance for private pension funds in case of non-payment

- 2) According to 'vertical direct effect'...
 - a. An individual can rely on EU law in any action in relation to the state, but cannot use it against other individuals
 - b. An individual can use an EU provision in an action against other individuals, but not against the state
 - c. An individual cannot rely on an EU provision at all
 - d. The state can rely on EU law in any action against individuals

- 3) In which case did the ECJ (now CJEU) clarify that any conflicting national law must be set aside whether prior or subsequent to the EU rule?
 - a. Amministrazione delle Finanze dello Stato v Simmenthal (Case 106/77)
 - b. R v HM Treasury, ex parte British Telecommunications (Case 392/93)
 - c. Defrenne v Sabena (Case 43/75)
 - d. Bismarck von Otto v Herzog zu Lauenburg (Case 18/71)

- 4) In which year did the EU establish the principle of equal pay for equal work?
 - a. 1952
 - b. 1957
 - c. 1965
 - d. 1989

- 5) Which were the six founding members of the European Union
 - a. Germany, France, Italy, Austria, Belgium and the Netherlands
 - b. France, Belgium, Greece, Italy, Germany and the Netherlands
 - c. Belgium, Germany, France, Italy, Luxembourg and the Netherlands
 - d. Austria, Belgium, France, Germany, Italy and the Netherlands

- 6) When was the General Court of the European Union established?
- 1 January 1989
 - 1 January 1965
 - 1 January 1957
 - 1 January 1952
- 7) What year was the Court of Justice of the European Union created?
- 1 January 1950
 - 1 January 1952
 - 1 January 1957
 - 1 January 1965
- 8) Which of the following determine if an EU citizen is able to access a welfare state of another member state as well as their right to equal treatment when residing there?
- Whether they are economically active or not
 - The extent of integration in the host country
 - The type of the benefit claimed
 - All of the above
- 9) Which of the following is NOT a purpose of the European Council and its members?
- To provide a general political impetus
 - To ensure the external representation of the Union on issues concerning its Common Foreign and Security Policy
 - To define the general political directions and priorities
 - To exercise legislative functions
- 10) According to which directive is it now mandatory for large companies to publish information about their boards in relation to their diversity policies?
- Directive 2017/828/EU amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement
 - Directive 2014/95/EU on disclosure of non-financial and diversity information
 - Directive 2017/1132 relating to certain aspects of company law
 - Directive 2009/102/EC in the area of company law on single-member private limited liability companies

- 11) Alongside the EU's signature, which of the following member states have signed the Council of Europe convention on preventing and combating violence against women and domestic violence individually as well?
- France
 - Poland
 - Hungary
 - All of the above
- 12) Which proposal is considered to have resulted in the beginning of what is now the European Union?
- Wilson's Fourteen Points
 - The Schuman Declaration
 - The Churchill's Declaration of Policy to the Electors
 - The Fouchet Plan
- 13) When is abuse generally anti-competitive?
- When it targets consumers
 - When it targets competitors
 - When it restricts free movement of goods
 - When there is a potential that it may have an effect on trade between member states
- 14) In the hierarchy of European legal sources, which of the following is the highest form of legislation that is directly applicable to all Member States?
- A communication
 - A directive
 - A recommendation
 - A regulation
- 15) Where can one find the provision stating that EU action cannot exceed what is necessary to achieve an objective?
- Article 2 TFEU
 - Article 5.4 TEU
 - Article 26 TFEU
 - Article 8.3 TEU
- 16) Which of the following does NOT fall within the exclusive competence of the European Union?
- The common commercial policy
 - The monetary policy for the Member States whose currency is the euro
 - The conservation of marine biological resources under the common fisheries policy
 - Economic, social and territorial cohesion

- 17) How can the European Investment Bank best be described?
- An EU Institution
 - An Advisory Body
 - An Autonomous Body
 - A Regional Sub-Institution of the EU
- 18) The European Parliament carries out...
- legislative, budgetary and fiduciary functions
 - legislative and budgetary functions
 - legislative and fiduciary functions
 - budgetary and fiduciary functions
- 19) What was the determining factor that led to the conclusion that the inspections in Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer Bonn [1975] ECR 843 were an MEQR?
- They were distinctly applicable
 - They were indistinctly applicable
 - They were distinctly inapplicable
 - They were indistinctly inapplicable
- 20) The Citizenship Directive allows all Union citizens, and their family members irrespective of nationality, to leave their home state and move to and reside in another member state for up to how long?
- 4 weeks
 - 3 months
 - 6 months
 - 5 years
- 21) What is Frontex?
- The European Union agency dealing with border management
 - The European Parliament intergroup on migration
 - The European Council working group on external trade
 - The European Union agency dealing with asylum and refugee requests

- 22) How has the ordinary legislative procedure (formerly the co-decision procedure) affected the role of Parliament on the formulation of legislation?
- It has reduced the powers of the Parliament to ensure more inclusivity in proposing new laws to ensure more equality amongst member states, most notably states with smaller population sizes
 - It has given Parliament a much greater role and influence in the formulation of EU legislation in the field of employment and industrial relations
 - Although the powers of the Parliament have not been affected per se, they have added additional powers to other institutions thereby inflating the power of Parliament
 - It has restricted the involvement of the Parliament to a veto power to ensure the Commission is held accountable when required
- 23) Which is NOT a responsibility of the President of the Commission?
- To lay down guidelines within which the Commission is to work
 - To decide on the internal organisation of the Commission
 - To appoint Vice-Presidents
 - To preside over the Foreign Affairs Council
- 24) Which of these is NOT an EU institution?
- European Court of Auditors
 - European Central Bank
 - Council of Europe
 - European Commission
- 25) Which of the following relatives of a migrant worker does NOT have a right of residence for more than three months under Art 7 of Directive 2004/38?
- The dependent father-in-law of the migrant worker
 - The brother of the migrant worker
 - The sixteen year old daughter of the migrant worker
 - The dependent mother of the migrant worker who is a third country national
- 26) Which of these cities is NOT home to an EU institution or agency?
- Geneva
 - The Hague
 - Luxembourg
 - Alicante

- 27) Why was Case 145/88 Torfaen Borough Council v B & P plc exempted from an Article 28 TFEU breach?
- It only involved internal distinctly applicable charges
 - There was no direct horizontal applicability
 - It could be potentially saved by the mandatory requirement of national, regional or socio-cultural characteristics
 - As there was a requirement to respect fundamental rights, the protection of those rights was deemed a legitimate interest which could justify a restriction of the free movement of goods
- 28) According to C-188/89 Foster v British Gas, which of the following is NOT part of the criteria for being counted as part of 'the State'?
- It is owned by the State
 - It has special powers given to it by the State
 - It is subject to the control of the State
 - It has delegated powers
- 29) In which case was it clarified that state liability can arise in respect of administrative acts?
- Case C-434/15: Asociación Profesional Elite Taxi v Uber Systems Spain SL
 - Case C-362/14: Maximilian Schrems v Data Protection Commissioner
 - Case C-264/16: P Deutsche Bahn and others v Commission
 - Case 5/94: R v Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas (Ireland) Ltd.
- 30) Which of the following was established in Brasserie du Pecheur v Germany and R v Secretary of State for Transport ex parte Factortame Ltd and Others (Joined Cases C-46 and 48/93)?
- State liability to individuals following a breach of EU law
 - Supremacy of EU law
 - The principle of vicarious liability
 - The joined fishery principle

END OF SECTION A

PLEASE TURN THE PAGE FOR SECTION B

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Section B

1. Silly Celly Networking Telly (SCNT) was granted planning permission for its plan to build several cell towers from the Council of Susceptible Canton (CSC), a local authority in Hypothetonia, an EU Member State. CSC laid out three material conditions within the permission that restricts the planned development to a maximum of 5 towers, of which all have to be at least 1km away from the closest dwelling and a maximum of 30 metres in height.

LAW5002 Association (LA), a group of local residents, had appealed the granting of this planning permission to the Planning Board of Hypothetonia (the Board). The grounds upon which this has been based is a failure by CSC to carry out an environmental impact assessment (EIA) as mandated in the Directive No. 2017/56/EU of the European Parliament and of the Council of 5 December 2017 on the assessment of the effects of certain public and private projects on the environment (O.J. No. L 26, 28. 1.2012, p. 1, "the EIA Directive"). The Board had taken the view that, aside from the mandates in the EIA Directive, it was merely bound by Hypothetonia's planning regulations. LA had hereafter begun a judicial review of this decision however, as they were unable to be granted a protection from costs order from the Hypothetonian High Court. Such an order would see its members protected from any adverse costs ordered in the event that the judicial review application was not successful. In the absence of the order, LA decided not to pursue this application further.

The cell towers have now been built. 7 towers have been erected, many of which are more than 40 metres high and situated approximately 600 meters away from the closest dwelling. SCNT applied for a retention of their planning permission on the grounds that 7 towers were needed to make the project economically feasible and that none of the towers had been erected within 500 metres of a dwelling, which is the minimum distance laid out within the national planning guidelines of which Hypothetonian planning law allows SCS to take account of. Following this, SCS granted the retention permission sought by SCNT.

LA understands from one of its members, who is a law student, that the EIA Directive provides for access to justice at a reasonable cost and that this provision has not been transposed into Hypothetonian law, and that the Hypothetonian practice of granting retention or regularisation permissions for projects falling within the scope of mandatory EIA under the EU Environmental Impact Assessment Directive was found to be incompatible with the EIA Directive by the Court of Justice of the European Union in the Case C-215/06 Commission v Hypothetonia [2018] ECR I-846. Nevertheless, it seems that no steps have been taken by Hypothetonia to amend its planning laws to limit the grant of retention permissions following this judgment.

You are a lawyer who specialised in EU law and, thus, have been sought out by LA. They would like to challenge the retention permission given to SCNT and to recommence their challenge to the decision of the Hypothetonian Planning Board to uphold their original permission in the case. Moreover, some of the LA members would like to bring claims for damages for the reduction in property values of their dwellings due to the construction of the cell towers contrary to EU law, as the proximity to their properties and the potential exposure to RF radiation.

Please advise of all relevant matters.

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2. The majority of orthodontists in Fictopia, a (fictitious) EU Member State, work for themselves as sole traders or for private healthcare organisations. The "Fictopian Orthodontist Commission" (FOC) was created by law in 2014, and the majority of its members were chosen by the trade group "Orthodontal Society." In Fictopia, the majority of independent orthodontists as well as many employed orthodontists are FOC members. The Fictopian Minister for Health appoints the FOC's remaining members. Although the Minister for Health requested the FOC to create suggestions for a unified charge scale for orthodontist services, the FOC's primary statutory duty is to create quality standards for orthodontists. This request came in response to a broad increase in the cost of orthodontic treatments in 2020. The orthodontists were not required to use the fee schedules, although the Minister and the FOC both highly suggested doing so.

A private facility, Smile-Fix, complained to the European Commission after declining to take part in the FOC. The role of the Fictopian Authorities, the FOC, and the FOC orthodontists was the subject of an investigation by the Commission. In a press release, the Commission stated that it believed the Fictopian Authorities had violated Articles 4(3) TEU and 101 TFEU, and that the orthodontists had violated Article 101 TFEU.

The orthodontists argue that because the FOC was formed in response to price increases, they were not undertakings as defined by Article 101 TFEU, that their participation in the FOC had no impact on trade between Member States, that the price discussions were not anti-competitive, and that they had, in any case, been forced to do so by the Fictopian authorities.

The Fictopian Attorney General has hired you as a specialist in EU competition law to draw up, among other things, a legal opinion analysing whether:

- a. The Fictopian authorities' actions constituted a violation of EU law, particularly Article 101 TFEU read in conjunction with Article 4(3) TEU, and, if so, what the potential consequences of such a violation would be;
- b. The orthodontists had violated Article 101 TFEU.

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3. Hermann, Erna and Günter are all Austrian nationals who have been resident in Denmark since 2014.

Hermann came to Denmark at the age of 16 with his family, as his mother was sent there to work by her employer. In 2019, Hermann moved out of his parental home and into a rented flat on his own. Currently, he is in the process of completing his final year at university in Copenhagen. Over the years he has become estranged from his parents, who have moved back to Austria. He also has very little income. Thus, he has applied for assistance from a special fund, set up by the Danish government, to provide financial support for students who are completing their final year at university, however, his application has been rejected because he is not a Danish citizen. Hermann desperately requires financial assistance to ensure he can complete his law degree.

A few months ago, Hermann also fell in love with Erna, a Belarusian air hostess, and wants to marry her. Hermann's long-term plan is to relocate to Belgium with Erna, but he would like to save some money before the wedding to be able to afford a nice ceremony. Hence, he would like to know if it would make any difference to Erna's right to reside with him in Belgium if she does not marry him before she moves to Belgium.

Advise Hermann on any applicable EU law which may impact his objectives.

4. The Portuguese government, in line with its international environmental obligations, has introduced a carbon charge of 0.6 cent per kwh of electricity supplied for consumption, except in relation to any units of electricity that have come from renewable energy providers within the provinces of Douro Litoral, Beira Litoral, Ribatejo, Estremadura, Alto Alentejo, Baixo Alentejo and Algarve. These three states supply to the national grid in respect of which a sustainable energy enhancing tariff of 0.3 cent is applied. The percentage of units subject to the reduced tariff on each individual customer's electricity bill is calculated solely by reference to the percentage of the total units supplied for consumption in each specific Portuguese province in the previous year which had originated from renewable energy generating sources within the designated provinces.

The proceeds from the sustainable energy enhancing tariff collected from consumers by the suppliers of electricity are remitted to the Portuguese National Department for Sustainable Energy, which in turn uses the funds to build new wind farms along the Portuguese coastal line. Neves is the manager of an electricity plant in Minho, who thinks this distribution system is unfair, yet has struggled to get any attention from the Portuguese government when trying to challenge the current practices.

Advise Neves if there may be a way to challenge this situation through the European Union.

END OF SECTION B

END OF QUESTIONS