

3.2 Module 19 Law of the European Union

3.2.1 Headline information about the module

Module title	Law of the European Union
Module NFQ level (only if an NFQ level can be demonstrated)	8
Module number/reference	Module 19
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	3
Semester (semester1/semester2 if applicable)	Semester 1 and 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	15
List the teaching and learning modes	Full time, Part time
Entry requirements (statement of knowledge, skill and competence)	Successful completion of Stages 1 and 2 of the programme
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	Two Semesters, 24 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	4 hours
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort (much of the remainder of this table must also be presented in the programme schedule—take care to ensure consistency)										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (Assignment)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
72	1:60	24	1:20				279			375
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored examination practical	Proctored examination written	Total		
Percentage contribution				30			70	100%		

3.2.2 Module aims and objectives

This module aims to provide learners with a historical and political perspective on the development of the European Union and its impact with the domestic legal system. The module familiarises learners with the EU legal system and the operation of the Court of Justice of the European Union, as well as the language and concepts peculiar to it.

Learners also develop an understanding of the law making process, the sources of European Union law and the operation of the EU institutions. The module enables learners to understand and apply the remedies available under EU Law. Learners critically analyse the scope of the four freedoms and how they operate substantively within this sphere. The module also examines the concept of EU citizenship and the benefits arising thereunder as well as gender equality and competition law. This module enhances key research and written communication skills as well as enabling learners to apply EU Law to hypothetical, factual scenarios.

3.2.3 Minimum intended module learning outcomes

On successful completion of this module, learners will be able to:

- (i) Discuss the historical and political development of the European Union;
- (ii) Critically analyse the sources of European Union law and their relationship to national law;
- (iii) Identify the role and functions of the political and judicial institutions of the European Union and identify and appraise judicial remedies in EU law
- (iv) Describe the law-making process and demonstrate understanding as to how European Union legislation impacts on social, political and economic issues within the Member States
- (v) Engage in detailed research on distinct issues in European Union law and present analysis of this research in a clear manner
- (vi) Critically evaluate the applicability of general principles of European Union law across a range of different legal areas
- (vii) Critically analyse and discuss European Union legislation and case law on the free movement of workers, capital, services and goods and in the area of competition law.
- (viii) Critically analyse factual scenarios and apply their understanding of European Union law to them.

3.2.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

EU law traditionally is one of the core subjects for a Level 8 Degree Award in Law in Ireland. It has a significant impact on the domestic law of member states as well as some states that have bilateral Treaties with the EU, such as Norway, which are bound to follow large chunks of EU law.

Any understanding of domestic Irish law is incomplete without a good grounding in the principles and content of EU law, which is the rationale behind EU law forming an integral part of the programme. This module serves to directly underpin programme learning outcomes 1, 3, 4, 5, 6, 8, 9, 10.

3.2.5 Information provided to learners about the module

Learners receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Additionally, this material is available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

3.2.6 Module content, organisation and structure

Law of the European Union is a 15 ECTS credit module taught and assessed over two academic semesters. The first semester focuses on the historical, political and economic background to European integration, whilst the second semester explores the Four Freedoms of the European Union. The Learning Outcomes are articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014) and for Generic Higher Education and Training (July 2014)*.

Historical, Political and Economic Background to European Integration

- Institutions: Legal Base, Powers Structure and Function
 - The Commission
 - The Council and the European Council
 - The European Parliament
 - The Court of Justice of the European Union and the General Court
 - Other institutions
 - Legislative Process

- Sources of EU Law
 - Primary Sources
 - Secondary legislation
 - General principles of Community law
 - Jurisprudence of the Court of Justice
 - Public International Law
 - Charter of Fundamental Rights of the European Union

- Relationship between European Union and domestic law
 - Development of European Union law as an autonomous legal system
 - The effect of the European Union law in the Domestic legal framework
 - Conflict and Supremacy
 - Direct Applicability and Direct Effect
 - Implementation and effect of European Union law in Ireland

- Judicial Processes & Remedies
 - Commission Enforcement Actions against Member States
 - Actions against EU Institutions
 - Preliminary Reference Procedure
 - Remedies for breach in National Courts
 - Contractual and Non-Contractual Liability of the Union

Introduction to European Economic Integration and the Single Market.

- Free Movement of Goods
 - Articles 28 – 30 TFEU: Duties, Charges and CEE's
 - Articles 110 - 113 TFEU: Discriminatory Internal Taxation
 - Articles 34 - 36 TFEU: Quantitative Restrictions and MEQR's

- Free Movement of Persons
 - Definition of a worker
 - Position of part-time workers
 - Workers families

- Union Citizenship
 - Citizenship as a fundamental status
 - Benefits accruing from Union citizenship
 - Citizenship Directive 2004/38

- Freedom of Establishment and to Provide Services
 - Non-discriminatory restrictions on establishment
 - Establishment of companies
 - Article 56 TFEU and Member State social services
 - Position of illegal activities
 - Non-discriminatory restrictions on establishment

- Free Movement of Capital
 - Free movement of capital
 - EMU and the common European currency

- Equal Treatment of Men and Women
 - Principles of equal pay and equal treatment
 - Protection for maternity
 - Positive discrimination
 - Social security

- Competition Law
 - Article 101 TFEU
 - Article 102 TFEU Enforcement procedures
 - Article 107 TFEU
 - Interface between European Union and domestic competition law

3.2.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to EU Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical EU law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking

criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

3.2.8 Work-based learning and practice-placement

There is no work based learning or practical placement involved in this module.

3.2.9 E-learning

Moodle is used to disseminate notes, advice, and online resources to support the learners. Through Moodle, video lectures are posted online for the benefit of the Blended Learners (BL). The Blended Learners are also facilitated with a one hour webinar twice per semester.

3.2.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

Moodle the College Virtual Learning Environment, can be accessed in the learner's home, various open labs on campus and in the library.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online). All learners have access to an extensive range of "physical" and "remote access" library resources. The library monitors and updates its resources on an on-going basis, in line with the College's Library Acquisition Policy. Lecturers collaborate with the library in updating reading lists for this course on an annual basis as is the norm with all programmes run by Griffith College.

3.2.11 Reading lists and other information resources

Primary Reading:

Foster, N. (2017) Foster on EU Law. Oxford: OUP

Barnard, C. (2016) The Substantive Law of the EU: The Four Freedoms. Oxford: OUP

Chalmers, D. Davies, G. & Monti, G. (2014) European Union Law. Cambridge: CUP

Craig, P. & De Búrca, G. (2015) European Union law: Text, Cases and Materials. Oxford: OUP

Foster, N. (2017) Blackstone's EU Treaties and Legislation. Oxford: OUP

Hartley, T. (2014) The Foundations of European Union Law. Oxford: OUP

Bellamy & Child (2018) European Union Law of Competition. Oxford: OUP

Secondary Reading:

Alter, K.J. (2003) Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe. Oxford: OUP

Arnulf, A. & Wincott, D. (2005) Accountability and Legitimacy in the European Union. Oxford: OUP

Horspool, M. & Humphreys, M. (2012) European Union Law. Oxford: OUP

Kapteyn, P.J.G. (2008) The Law of the European Union and the European Communities. London: Kluwer

McNab, A. (2013) Bellamy and Child: Materials on European Union Law of Competition.

Weatherhill, S. (2016) Cases and Materials on EU Law. Oxford: OUP

Whish, R. (2015) Competition Law. Oxford: OUP

White, R.C.A. (2004) Workers, Establishment and Services in the European Union. Oxford: OUP

Von Bogdandy, A. & Bast, J. (2011) Principles of European Constitutional Law. Oxford: Hart

Williams, A. (2005) EU Human Rights Policies: A Study in Irony. Oxford: OUP

3.2.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

3.2.13 Module summative assessment strategy

Theoretical knowledge will be assessed by both continuous assessment (30%) and a summative end of year examination (70%). The continuous assessment shall consist of a written assignment (30%). The examination will consist of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to EU Law. Problem Style questions will enable learners to apply the principles of EU Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii, iii, iv, vi, vii, viii	70%
2	Assignment	v, vi	30%

3.2.14 Sample assessment materials

Sample Assignment Question

“Indeed, the European Union is a union based on the rule of law in which individuals have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act...In accordance with Article 19 TEU, which

gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, it is for the national courts and tribunals and the Court of Justice to ensure the full application of EU law in all Member States and judicial protection of the rights of individuals under that law...The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law..."¹

Critically analyse, by reference to relevant Treaty provisions, pertinent case-law and academic commentary, the general principles of EU law and, discuss how, by reference to ongoing political debates, they are used by the Court of Justice to protect individuals and to ensure that the European Union institutions, and the Member States when implementing EU law, act in accordance with the rule of law.

Submission Information and Presentation Guidelines

The submitted assignment should be 3,000-3,500 words in length. This does not include reasonable footnotes.

Referencing must be in accordance with the OSCOLA referencing system.

Assignments should be typed in Size 12, Times New Roman Font, 1.5 spacing and justified. Please submit via the link on the Media Law (LLBH-M) Moodle page.

Completed assignments must be uploaded as one document with the first page being the Assignment Cover Page (will be available on Moodle prior to submission date).

Marking Criteria - See Appendix

Sample Examination

Answer any three of the following questions.

All questions carry equal marks.

Question 1

Article 17 (1) TEU provides: - "The Commission shall promote the general interest of the Union and take appropriate initiatives to that end..." With reference to its composition, key functions and powers, critically assess how the European Commission fulfils its role as Guardian of the Treaties.

Sample Answer 1

It is important to note the important role of the Commission as "Guardian of the Treaty" and EU's executive body, responsible for proposing and implementing EU laws, monitoring the treaties and the day-to-day running of the EU. Key Commission functions include proposing legislation, enforcing European law, setting objectives and priorities for action, managing and implementing EU policies and the budget and representing the Union outside Europe. Functions set out at Article 17(1) TEU.

Within the realm of legislative and quasi – legislative powers, the Commission is empowered to enact legislation acting alone in respect of State aids and conditions under which EU nationals may reside. The Commission also has a key role in enacting delegated legislation per Article 290 TFEU, one of the key quasi-legislative powers to

¹ Case C-216/18 PPU *LM v Minister for Justice* [2018] ECLI 586 Para 49 – 52

the Commission. Important to note that the Commission has the power to enact EU wide implementing measures per Article 291(2) TFEU. New comitology rules adopted in March, 2011, keep a check on Commission exercise of such powers.

The Commission also facilitates the other EU legislators, namely, Council and Parliament, in enacting legislation – defined under Article 288 TFEU - under the ordinary and special legislative procedures set out at Article 289 TFEU, by initiating legislation per Article 17(2) TEU and setting the legislative programme; first engaging with the public and stakeholders and stimulating policy debate via Green Papers, White Papers, etc before coming up with the first draft of legislation.

There are now some well-established exceptions to the Commission's role of legislative initiative –e.g. both Council and Parliament can request Commission to make a legislative proposal and Citizens' initiative under Article 11(4) TEU, while Article 241 TFEU provides that the Council has the power to request the Commission to undertake studies or submit proposals. Article 76 TFEU also allows for legislation on judicial co-operation of criminal matters and police cooperation to be adopted either proposal of the Commission or on the initiative of one quarter of the Member States.

Question 2

Article 7 of (the fictional) Directive 2015/1234/EU consolidating EU legislation on air pollution provides that:

"motor vehicles and mechanically propelled vehicles purchased for consumer use shall, from the date of transposition of this Directive, monitor and transmit to the relevant national authorities, data as regards emissions of CO₂ and other noxious gases. Such emissions shall not exceed 155g/km."

Various methods are set out in the directive for monitoring said emissions, and noxious gases are clearly defined. The designation of responsible national authorities, however, was a matter for each Member States in the transposition of the Directive. Article 10 of the Directive sets down a deadline of 31st December, 2017 for Member States to bring laws into force to comply with the Directive.

Before Directive 2015/1234/EU was enacted, maximum emissions levels in Ireland were set out in the (fictional) Motor Vehicles Emissions Act 2005, which provided that such emissions were not to exceed 170g/km.

Fred commenced work at the Road Safety Authority in January 2015 as a junior mechanic. His role was to carry out checks on the exhausts of cars seeking to pass the National Car Test ("NCT"). In late 2017 John developed a chronic lung condition that worsened as the months went on, and in January 2018, he had to hand in his notice as he had become very unwell. He has since learned that exposure to noxious gases in the range of 160-170g/km on a daily basis is likely to have had an adverse impact on his health.

Directive 2015/1234/EU has not yet been transposed into Irish Law and Fred seeks your advice as to whether he can bring a claim for compensation against either (i) the Road Safety Authority or (ii) the State for the non-transposition of the 2015 Directive.

Critically discuss the doctrines that apply in respect of Fred suing the (i) RSA and (ii) the State for non-transposition of this Directive before the national court, and any remedies available to him.

Sample Answer 2

Students should answer using the ILAC formula, how it applies to Fred. This problem question pertains to direct effect and state liability. Students must examine the direct effect test and the norms capable of being directly effective before the national court. Van Gend en Loos, AG Mayras test for direct effect in Reyners v. Belgium, Van Duyn as regards the direct effect of Directives. The measure must be 'unconditional and sufficiently precise' – Pubblico Ministero v. Ratti. The Reyners test states that the norm be clear and unambiguous, unconditional and not dependent upon further action from the Community or MS i.e. implementing measures. Direct effect of Directives is also limited to vertical relationships per Marshall, and one must sue the State or an emanation of the State per Foster v. British Gas; Farrell v. Whitty. While the RSA is likely to constitute an emanation of the state, given that no national authority has been vested with the power to monitor and transmit emissions data, the direct effect test is unlikely to have been met in any event as it is unlikely it will be sufficiently clear and precise. The indirect effect doctrine may therefore apply in those circumstances per Von Colson and Harz, which is factually similar to Fred's situation. Other relevant cases on the duty to harmoniously interpret might include Pfeiffer, Marleasing but this duty only applies where a harmonious interpretation is possible and doesn't result in a contra legem interpretation. Given the conflicting emissions levels here, harmonious interpretation may not be possible. Incidental horizontal effect may apply given this Directive is largely regulatory. As regards suing the State, Francovich applies to damages in state liability for transposition-related breaches once the relevant test can be made out namely, conferral of a right, which is clearly identifiable and resulting in damage to the applicant. It is likely that said test will be applicable and that Fred will be likely to recover damages from the State even if direct or indirect effect do not apply.

Question 3

"The obligation to refer to the Court of Justice questions concerning the interpretation of the...treaty and of measures adopted by the Community Institutions which the third paragraph of [Article 267 TFEU] imposes on national courts and tribunals against whose decisions there is no judicial remedy under national law is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of Community law in all the Member States, between national courts, in their capacity as courts responsible for the application of community law, and the Court of Justice."

C-283/81, CILFIT and Lanificio di Gavardo SpA v Ministry of Health.

Critically assess how a court is determined to be one "against whose decisions there is no judicial remedy under national law" and whether there are any exceptions to the obligation for such bodies to refer questions to the CJEU.

Sample Answer 3

A typical answer should refer to:

- Cases on the definition of a court against whose decision there is no remedy.
- The fact that in practice the ECJ determines whether individual decisions may be appealed rather than that the tribunal makes any decisions that can be appealed.
- The fact that a lack of appeal can override other considerations that might indicate that the body in question is not a court or tribunal: *Broekmeulen v. Huisarts Registratie Commissie*.
- The fact that the ECJ normally will expect that discretion whether to hear an appeal will be made in good faith and thus that where such discretion exists, decisions will not be considered final in the lower court and therefore are not mandatory: *Kenny Roland Lyckeskog*.
- Exceptions to the obligation to refer to the court:
- *Acte Claire* where the wording of EU law is clear, though courts should consider the different language texts, and particular characteristics of EU law in making this finding: *CILFIT*.
- Matters already decided by the CJEU in previous cases: *Da Costa* and/or *International Chemical Corporation*.
- The effect of this provision in ensuring that where issues arise in the courts there is always an opportunity to refer the issue to the CJEU thus ensuring consistent interpretation, and ensuring the relevance of EU law and the CJEU to legal disputes at every level.
- Reference may also be made to certain doctrines developed through preliminary rulings, e.g. supremacy, direct effect, etc.

Question 4

You are a lawyer working for the Government of Italy. Give advice on whether the following situations are in keeping with EU law on the free movement of goods:

- (a) A charge imposed on charities when bringing a particular medicine out of the country. The charities do not charge for the distribution of the medicines, either within or outside of Italy, but the government wishes to encourage the keeping of these medicines within the country in case of national emergency.
- (b) A charge imposed by the authorities in Sardinia for all dairy products entering the island from mainland Italy and other Member States because the Sardinian cheese market requires extra support
- (c) A tax exemption for sheep's milk products because they are healthier than those produced by cow's milk and because sheep are reared on mountainous and poorer land, enabling the development of poorer agricultural areas and the use of better land for other purposes (*For the purposes of this question assume that Italy produces far more sheep's cheese than any other EU country*).

Sample Answer 4

These questions should be addressed through the ILAC method as follows:

The issues here are whether such medicines constitute goods and whether there is any justification for imposing a charge. The law can be found in Art. 30 TFEU and Commission v. Italy (aristic products) that establishes that a good is a product “which may be valued in money and which are capable as such of forming the subject matter of commercial transactions”. The medicines are thus goods and no charge can be justified. The charge is therefore illegal: other measures may be taken but no financial penalty is possible to promote such a policy.

The question is whether an internal tariff may constitute a charge of equivalent effect. According to Legros, it can despite the fact that it also discriminates against products from mainland Italy. The charge is therefore a charge of equivalent effect and is therefore illegal. As in (a) there are no possible justifications for such a charge.

The issue is whether this tax exemption is discriminatory and whether it could be justified. The question relates to internal taxation (art. 110 TFEU) as interpreted in Commission v. France (liqueur wines). The tax measure is indirectly discriminatory because it will primarily support domestic products but is not direct discrimination because it is not the fact that the product is foreign that determines the disadvantage. However, indirect discrimination may be justified as long as it abides by the principle of proportionality and pursues a legitimate aim. Assuming the last two points are found in the affirmative, therefore, the measure is legal.

Question 5

Mary Murphy is from Wicklow. She left Ireland in 2014 to pursue an apprenticeship as a hair stylist with a top London salon. Having completed her training in 2017, Mary returned to Ireland and sought to establish her own business, Snip Dogg, in a busy location in Dublin City Centre. To practice as a hairdresser in Ireland, Mary is required to join the Irish Hairdressers Federation ("IHF"), however, when Mary sought to become a registered member of the IHF, her membership request was declined on the basis that she had not undertaken her apprenticeship in Ireland and that the two qualifications were not equivalent.

Mary is distraught as her grand opening is due to take place at the end of the month. As far as she is aware, there is no Directive harmonising the qualifications of hairdressers at EU level and she cannot understand why she is being punished for having sought out the best training in the UK. She is confident that the qualifications at least equivalent, and indeed she feels the training she received in the UK was of a superior standard, teaching her the skills of hairdressing, as well as the preparing her for running her own business through the study of book-keeping and business management which will now equip her to run her own salon.

Having written to the IHF, the Federation relents somewhat, telling her that she can open her salon on time if she pledges to undertake a week-long training course between now and the end of the month to make up for differences in training methods. Mary still feels that this requirement is unnecessary, and she seeks your advice as to whether her rights pursuant to Article 49 TFEU have been violated.

Advise Mary, by reference to relevant Treaty Provisions and case-law of the Court of Justice of the European Union.

Sample Answer 5

*Students should answer using the ILAC formula, how it applies to Mary. The issue here is very clearly whether freedom of establishment applies to purely internal situations i.e. an Irish national establishing herself in Ireland and situations of so-called reverse discrimination. The problem question is loosely based on the case of *Knors* regarding the plight of a Dutch plumber who trained in Belgium and was later restricted from establishing himself in The Netherlands upon his return. The Court noted that to 'nationals of a Member State' who wish to establish themselves 'in the territory of another Member State' cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a trade qualification which is recognized by the provision of Community law, are, with regard, to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty. Other relevant cases on this point include *Bouchouca*.*

*Students should reference that freedom of establishment is guaranteed under Article 49 TFEU which has direct effect per *Reyners v. Belgium*. They should note the key case on mutual recognition of qualifications in the absence of harmonising EU measures, namely, *Vlassopoulou*, where a Greek qualified lawyer sought admission to German bar after practising for number of years in Germany. The CJEU held that even if measures applied without any discrimination, they may have the effect of hindering nationals of the other Member States. As regards equivalence, Member States were entitled to carry out a comparative examination of diploma, taking account of the differences identified between the national legal systems concerned. If the knowledge and qualifications certified by foreign diploma correspond to national provisions, the Member State had to recognise that diploma as fulfilling national requirements; if foreign diploma only partially corresponded, host Member State entitled to require the person concerned to demonstrate acquisition of knowledge and qualifications which are lacking. The Court held that if said analysis found divergence, said requirements could be satisfied with a period of preparation or training for entering the profession. Students would be expected to apply *Vlassopoulou* here. While it is clear that training is permissible where there is insufficient equivalence, arguably this requirement set by the IHF is reverse discrimination and contrary to Article 49 TFEU where Mary asserts that not only is her qualification equivalent, but in fact, it is superior to the domestic qualification.*

Question 6

“[Article 101 TFEU] draws a distinction between the concept of ‘concerted practices’ and that of ‘agreements between undertakings’ or of ‘decisions by associations of undertakings’; the object is to bring within the prohibition of that article a form of coordination between undertakings which, without having reached the stage where an agreement properly so-

called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.” C-48/69 *ICI v. Commission* [1972]

In the light of this quote, critically discuss how the CJEU determines whether business behaviour constitutes a concerted practice that is illegal for the purposes of Article 101 TFEU.

Sample Answer 6

A typical successful answer should refer to:

The need for the tackling of concerted practices because of the possibility that undertakings may avoid a formal agreement or leave no trace of such an agreement.

*The case of *ICI v. Commission* which determined that certain factors such as simultaneous price changing and giving advance notice of changes can contribute to a finding that there is a concerted practice.*

*The case of *Hüls v. Commission* where the practice of a small firm of following an existing agreement between other firms amounted to a concerted practice.*