

## **W200 eTMA 04 (cut-off date: midday 4 July 2012)**

Your answer to this eTMA must not exceed 2,000 words. This is a maximum word limit and you may be able to answer the questions in fewer words. This eTMA counts for 15% of your continuous assessment marks. The completed assignment must be submitted to your tutor using the eTMA system by midday (UK local time) on 4 July 2012.

This assignment consists of two research questions on EU law. You must answer both questions, and you must use the internet to carry out the research as indicated.

Both questions concern the relationship between the Court of Justice and national courts in the application of EU law. Before attempting the assignment, you should review:

- the guidance on writing eTMAs set out in section 4 of your eTMA Guide;
- the advice for dealing with the internet-based eTMA set out in section 5 of your eTMA Guide; and
- the section headed “Evidence of use of the internet and showing a research trail” at the end of this eTMA.

You should also review your reading from Units 18 and 19. You may also wish to review the material in Unit 17, Part D on how to research EU law, and also the two Units on legal research in general (Units 3 and 15).

### **SOURCES OF EU LAW: THE RELATIONSHIP BETWEEN THE COURT OF JUSTICE AND NATIONAL COURTS**

**Using the internet to find the appropriate material, answer the following questions:**

#### **QUESTION 1**

Question 1 is worth 50% of the marks and has a recommended word limit of 1,000 words.

Find and read the Court of Justice judgment in case C-356/05, which is a case about motor car insurance.

- (a) Which EU Directive was in issue in the case? Why was interpretation of it important to the outcome of the case?**
- (b) Who was the President of the Court of Justice during these proceedings?**

- (c) Summarise the Court of Justice’s reasoning and answer to the question which it calls “Question 2”.
- (d) Which legal principle does the Court refer to in paragraph 42 of the judgment?
- (e) What does the case show about the relationship between the Court of Justice and national courts in terms of the application of EU law?
- (f) Would the arguments in the case have differed if the EU legislation had been a regulation, rather than a Directive? Your answer should include an explanation of the terms “directly applicable” and “direct effect”.
- (g) Why did the national court not ask the ECJ for a ruling on the meaning of the UK legislation?

## QUESTION 2

Question 2 is worth 50% of the marks and has a recommended word limit of 1,000 words.

National courts have also played a significant role in applying EU Law.

Find and read the judgment in the UK High Court (Queen’s Bench) case of *Byrne v Motor Insurance Bureau and another* [2007] 3 All ER 499; [2007] EWHC 1268 (QB). Note that this is the Queen’s Bench decision, not the later Court of Appeal decision.

- (a) What is the name of the Judge who heard the case?
- (b) According to paragraphs 57-63 of the judgment, why was the Motor Insurance Bureau *not* seen as an emanation of the state?
- (c) How would it have affected the court’s analysis if the Court of Justice in the case referred to in Question 1 above had ruled on whether the Motor Insurance Bureau was an emanation of the state?
- (d) As a result of this case, do we have a *definitive* answer as to whether the Motor Insurance Bureau (or its equivalent in other jurisdictions) is an emanation of the state?
- (e) What is the principle of EU law which the judge refers to in paragraph 64 of his judgment?

Now find the Court of Appeal decision in the same case. Read paragraphs 32-46 in the judgment.

- (f) **Sum up Lord Justice Carnwath's logic on the issue of state liability.**

### **Advice on answering eTMA 04**

*In this eTMA, we are looking for you to demonstrate that you have met the assessment criteria in the following ways:*

- **Knowledge and understanding:** *you need to show that you understand and can explain the relevant law covered by the questions. You need to explain the issues considered in the various cases accurately, and show that you can understand and can explain the judgments you read.*

*Interpretation of these cases involves using knowledge of the background cases on the relationship between the Court of Justice and national courts. You will need to use this knowledge to appreciate and explain the implications of the judgments. This is particularly relevant for Question 1(d) and (e), and Question 2 (c), (d), (e) and (f).*

- **Cognitive skills:** *having identified the relevant law to which the questions are directing you, you will need to consider how that law needs to be used to answer the specific questions which have been posed. You will need to analyse the judgments you read and identify the key issues in order to enable you to answer the specific questions.*

*This is particularly relevant for Question 1(a) and (c) and Question 2(b) and (c).*

- **Practical and professional skills:** *you must show that you can devise (and execute) strategies for researching and finding relevant materials using electronic sources. In relation to this eTMA, this will, of course, cover finding the right cases which the questions direct you to; these will be your "authority" when you come to deal with the other points which the questions have raised.*

*Question 1 concerns sources of EU law and the development of the principle of the supremacy of EU law by the Court of Justice. To be able to answer the questions, you will need to find the Court of Justice judgment using just the case number.*

*For Question 2, as in Question 1, you need to use the internet, but this time to find a judgment of the national courts. Bear in mind that you will now need to decide which database(s) is/are most likely to enable you to find an English case.*

*When deciding how best to find the cases, consider:*

- *What internet resources you have at your disposal*

- *What database(s) is/are most likely to allow you to find cases decided in the Court of Justice (you may find it useful to consult Unit 17, Part D on this point)*
- *How best to formulate your searches, given the information you have about the two cases.*

*Obviously, once you have found the cases you will need to read them carefully to be able to answer the questions which have actually been asked.*

*You should consult the section in the Study Guide which deals with how to access the internet if you are having problems with this: you may also find it helpful to consult Units 3 and 15 for further general guidance on researching electronic sources.*

- **Key skills:** *Set out your answer in a structured, logical manner which is easy to read in clear, plain English. A key skill, both for doing well in exams, and in advising clients as a lawyer, is to write clearly and with easy-to-follow logic. Questions 1(a), (c) and (e), and Question 2(b), (c), (e) and (f) in particular will test your skills in this area, so pay close attention to those.*

### **Evidence of use of the internet and showing a research trail**

As noted above, you must use the internet to research your answer for both questions. You must also indicate as part of your answer that you have used the internet by describing briefly the steps which you took and the searches which you made in arriving at your answers to both Question 1 and Question 2. This section of your answer is NOT part of the word limit stated above, but must be kept brief.

This means that you will need to give a brief description of the search strategy you adopted and the searches you made. All you need to do is list the following information:

- the database(s) which you used to conduct your research.
- the search(es) which you entered into those databases(s) which gave you the information you required (you do not need to list any searches which came to a dead end).
- if not already stated in the questions, references (i.e. citations) for the cases you found.