

Competition Law

**Elective
Past
Papers**

LL.B. III



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2020/2021

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ABOUT GħSL

Għaqda Studenti Tal-Ligi (The Malta Law Students' Society) is a faculty-based, non-profit organisation at the University of Malta that represents all law students within the Faculty of Laws.

The organisation plays a pivotal role in law students' academic and social life at the University of Malta. The organisation has also been responsible for publishing the prestigious *Id-Dritt*, and the *GħSL Online Law Journal*.

Moreover, GħSL boasts its own Thesis Library, located at the GħSL office in the Faculty of Laws. Additionally, GħSL is the only law organisation responsible for the distribution of authoritative law notes and past papers.

For further queries on this set of notes, as well as any other, please feel free to contact our **Resources Officer** at resources@ghsl.org.



Advice from an Alumna

By Dr Priscilla Mifsud Parker

The law course is a long journey, but one that, if well-travelled, will lead to beautiful destinations. In an industry which is today attracting many young individuals looking to develop their career in law, it is important to stay ON the beaten track and remain focused. It may go without saying that it is of great importance for all students to attain good academic grades, to be dedicated to their work, as well as to be determined in this highly-competitive industry in order to fulfil their dream of becoming lawyers one day. However what is crucial is that as students and later on as professionals we are innovative by being sensitive to the changes around us. These changes might be political, economic, environmental, socio-cultural or others; what is for sure is that they all have an impact on the profession of a lawyer. We are members of a dynamic profession which is very sensitive to its surroundings. The type and 'genre' of advice which is required from us is all affected by what is being experienced by the receivers of this advice.

Work experience is considered as a vital part of the staple diet of any prospective lawyer in order to put into practice and refine the knowledge gained from the theoretical reality of the lecture halls and lawbooks into the skills required for a successful career in law. An internship will not only show future recruiters that you have a genuine interest in pursuing a career in this sector, but that you have the practical knowledge and skills to succeed in your role.

Here are some personal suggestions that I feel helped me during my journey:

1. *Being Ambitious*

A powerful trait in any competitive industry, ambition will help you in your law course, in your career as a lawyer, as well as in your life. Whilst the law course can be quite intimidating and challenging, an ambitious individual who is dedicated to learning new things has the potential to understand and realize long-term goals. Do not view the journey as one whole insurmountable mountain but focus on the next small goal and once achieved move on to the next and goal by goal you will reach your final target point.

In this respect, gaining valuable work experience through an internship is an important step taken by an ambitious young lawyer who wants to attain certain skillsets, and remain a step ahead of his/her peers. By being inquisitive, analytical and humble enough to accept guidance and mentoring one is guaranteed a fruitful experience in a law firm. It is also not only a means to start focusing on the direction of your career and to build upon your chosen path, but will undoubtedly expose you to the international world. This is crucial, as most of the traditional legal sectors have been intertwined with new areas of legislation and all these together now present much more opportunity for intra-jurisdictional work.

2. *Networking*

By engaging with counterparty students abroad and in international fora one gains an insight into another reality and is exposed to different cultures, ways of communicating and is able to bridge



the differences between parties to a mundane discussion which will eventually become a transaction or a major project in professional life.

3. Organisational Skills

Organisation is key in any industry. Good organisation skills always stand out to a recruiter when considering potential applicants. Such skills can be obtained by gaining experience either through organising one's own work, study plan, student events or cultural/philanthropic events.

Going hand-in-hand with this, is having a study plan. By planning your studies ahead, one will have a sufficient amount of time to meet all the demands, while also being able to participate in productive outside activities. Reviewing notes or case briefs before class can also help you follow and participate in class discussions better, whilst following case-law allows you to apply them for specific situations. In view of the amount of material involved summarising and carving out the most crucial points is essential to then build your argument in papers.

4. Taking your own class notes

It is always important to take down your own notes as laws are always evolving and passed-down notes would provide the context but are not ideally used for the detail. Researching the particular topic and comparing Malta's law with that of other jurisdiction gives one a completely different outlook and commenting on these variances in an exam paper, dissertation or assignment would distinguish one student from another. Not to be overlooked are also the consultation papers, commentaries and other official public documents that are issued by local authorities from time to time on different areas of law and industry. Being abreast of what is happening in industry will help putting the particular law or regulation in context.

5. Participation

Participation is a main element of the learning process. Being actively involved during seminars and lectures and participating in legal debate sessions, mock trial competitions and moot courts are essential in order to improve your persuasive and presentation skills. If you find this very difficult (all of us have different characters and traits), then try to focus on participation in other events which will expose you to public speaking starting off in smaller groups in a more familiar environment and trying out new experiences and larger audiences as you go along.

6. Practice is the key to success

This leads us to our next point – practice. Attaining good grades is undoubtedly an important part of the law course, however, in themselves, they are not enough to show that you have substantial material to succeed. Working within a law firm introduces you to the world of work, and allows you to gain specific industry-related skills which one will only ever be able to learn in a workplace setting.

Work experience can provide you with valuable insight which will help you decide what your career aspirations are and in which areas you would like to further delve into.

UNIVERSITY OF MALTA
FACULTY OF LAWS
JANUARY SESSION EXAMINATIONS
LL.B. – Year III HONS
COMPETITION LAW (CML3006)

26th January 2015

9.15 – 11.15 a.m.

Answer any TWO (2) questions

All questions (including (a) and (b) questions) carry equal marks
Answer each question (including (a) and (b) questions) on a separate script

1. *"The notion of undertaking is a relative concept in the sense that a given entity might be regarded as an undertaking for one part of its activities while the rest fall outside the competition rules."* Discuss.
2. To what extent, if at all, can apparently unilateral conduct on the part of an undertaking adopted in the context of its contractual relations with other undertakings be considered the basis of an agreement for the purposes of article 5(1) of the Competition Act and article 101(1) TFEU.
3. (a) Low prices are considered predatory, and in breach of article 9 of the Competition Act and article 102 TFEU, when they are so low that they drive competitors from the market, thereby strengthening the position of the 'predator' on the market. Discuss.

(b) Write short notes on any TWO of the following:
 - i. The single economic entity doctrine;
 - ii. Infringement by object in the context of article 5 of the Competition Act and article 101 TFEU;
 - iii. The relevant product market.
4. *'Tying and bundling may make good commercial and economic sense for reasons which are not necessarily anti-competitive'* (Alison Jones and Brenda Sufrin *EU Competition Law*). However, tying and bundling may constitute an abuse of dominance in terms of Article 9 of the Competition Act and Article 102 TFEU in certain circumstances. Discuss, analysing when undertakings have been found to have infringed Article 9 of the Act and Article 102 TFEU in practice.

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. - YEAR III
SEPTEMBER 2015 EXAMINATIONS

EXAMINATION: CML3006 - COMPETITION LAW

DATE: 7th September 2015

READING TIME: 08:30AM to 8.35AM

DURATION OF EXAMINATION: 08:35AM to 10:35AM

INSTRUCTIONS TO STUDENTS:

1. Answer any TWO (2) questions;
 2. The (a) and (b) questions carry equal marks.
 3. The percentage mark allotted to each answer is indicated at the end of each question.
 4. Answer each question (including (a) and (b) questions) on a separate script.
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1. *'[T]he concept of an agreement [in article 5(1) of the Competition Act and Article 101(1) TFEU] ... centres around the existence of a concurrence of wills between at least two parties'. Discuss. (50%)*

2. There is no place for a 'rule of reason' approach in evaluating agreements under article 5(1) of the Competition Act and Article 101(1) TFEU. Discuss. (50%)

3. (a) The 'essential facilities' doctrine has now been accepted in European Union, and consequently Maltese, competition law. Discuss, making reference to any relevant case-law. (25%)

(b) Write short notes on any TWO of the following, commenting on their relevance in the context of article 5 of the Competition Act and article 101 TFEU:

- (i) Horizontal and vertical agreements;
 - (ii) Decisions by Associations of Undertakings;
 - (iii) Agreements of minor importance (*De Minimis*)
- (12.5% for each of the two answers for a total of 25%)

4. Loyalty or loyalty-inducing rebates, when granted by a dominant undertaking, 'can have actual or potential foreclosure effects similar to exclusive purchasing obligations' (European Commission 'Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings'). Explain, with reference to local and European case-law, when discounts and rebates may infringe Article 9 of the Competition Act and Article 102 TFEU. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. - YEAR III
JANUARY 2016 EXAMINATIONS

EXAMINATION: CML3006 - COMPETITION LAW

DATE: 25th January 2016

READING TIME: 10:00AM to 10:05AM

DURATION OF EXAMINATION: 10:05AM to 12:05AM

INSTRUCTIONS TO STUDENTS:

1. Answer any TWO (2) questions;
 2. The (a) and (b) questions carry equal marks.
 3. The percentage mark allotted to each answer is indicated at the end of each question.
 4. Answer each question (including (a) and (b) questions) on a separate script.
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1. A concerted practice has been defined as '*a form of coordination between undertakings which ... knowingly substitutes practical cooperation between them for the risks of competition*' (Imperial Chemical Industries Ltd. v Commission (Dyestuffs) – 1972 – C 48/69). The notions of 'coordination' and 'cooperation' require that each undertaking must determine its conduct in the market independently. Discuss. (50%)

2. Distinguish, in the context of article 5(1) of the Competition Act and article 101(1) TFEU, between 'infringements by object' and 'infringements by effect'. (50%)

3. (a) Low prices are considered predatory, and in breach of Article 9 of the Competition Act and Article 102 TFEU, when they are so low that they drive competitors from the market, thereby strengthening the position of the 'predator' on the market. Discuss. (25%)

(b) Write short notes on any TWO of the following:

- (i) The Single Economic Entity Doctrine;
 - (ii) Horizontal and Vertical agreements;
 - (iii) Block Exemptions
- (12.5% for each of the two answers for a total of 25%)

4. It is possible for a dominant undertaking to infringe Article 9 of the Competition Act and/or Article 102 TFEU by refusing to license intellectual property rights (IPRs). Discuss, considering the development in the case law and making reference to the conditions which must subsist in order for refusal to license IPRs to amount to a breach of Article 9 of the Competition Act and/or Article 102 TFEU. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. - YEAR III
SEPTEMBER 2016 EXAMINATIONS

EXAMINATION: CML3006 - COMPETITION LAW

DATE: 1 September 2016

READING TIME: 08:30AM to 08:35AM

DURATION OF EXAMINATION: 08:35AM to 10:35AM

INSTRUCTIONS TO STUDENTS:

- 1. Answer any TWO (2) questions;**
 - 2. All questions carry equal marks; the percentage mark allotted to each answer is indicated at the end of each question.**
 - 3. Answer each question on a separate script.**
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1. For the purposes of competition law, “the concept of an undertaking, encompasses every entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed” (Höfner and Elser v Macroton GmbH – C 41/90). Discuss. (50%)
2. In order to determine whether there is a breach of Article 5 of the Competition Act (Cap. 379 of the laws of Malta) and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”), “agreements which do not have as their object the restriction of competition should be assessed in their market context and an economic approach adopted when determining their effect” (A Jones and B Suftrin *EU Competition Law* (5th edn, OUP 2014), 232). Discuss this statement considering, in particular, whether this amounts to an acceptance of an analysis of article 5 and article 101 similar to the US “rule of reason approach”. (50%)
3. A dominant position is an essential pre-requisite to the application of Article 9 of the Competition Act (Cap. 379 of the laws of Malta) and Article 102 of the Treaty on the Functioning of the European Union (“TFEU”). Discuss the definition of ‘dominant position’ in EU and Maltese competition law, explaining how it is assessed in practice. (50%)
4. ‘Dominant undertakings do not have an absolute duty to supply all those who request them to do so. However, in certain situations a refusal to supply is an abuse.’ (A Jones and B Suftrin *EU Competition Law* (6th edn, OUP 2016), 496). Discuss. (50%)

UNIVERSITY OF MALTA
FACULTY OF LAWS
LL.B. HONS. 3rd Year
JANUARY 2017 EXAMINATIONS

EXAMINATION: CML3006 – COMPETITION LAW

DATE: Wednesday 18th January 2017

READING & NOTING TIME: 8.30AM to 8.35AM

DURATION OF EXAMINATION: 8.35AM to 10.35AM

INSTRUCTIONS TO STUDENTS:

1. Answer ANY two (2) Questions.
 2. All Questions carry equal marks.
 3. Writing is permitted during the Reading and Noting time.
 4. Answer each question on a separate script.
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1. For the purposes of article 5 of the Competition Act and article 101 of the Treaty on the Functioning of the European Union (“TFEU”), the concept ‘agreement’ “centres around the existence of a concurrence of wills between at least two parties, the form in which it is manifested being unimportant so long as it constitutes the faithful expression of the parties’ intention” (Case T 41/96 *Bayer AG v Commission* [2000] ECR II-3383). Discuss
2. When considering whether an agreement has the effect of restricting competition, an ancillary restraint, i.e. a restriction that is directly related and necessary to achieving a main operation, will not be in breach of article 5(1) of the Competition Act and article 101(1) of the Treaty on the Functioning of the European Union (“TFEU”) if the main operation falls outside the scope of those articles. *Discuss*.
3. The abuse of margin squeeze has become more relevant today in view of the liberalisation of various markets, particularly the telecommunications market. Discuss this statement with reference to local and European Union cases, explaining how and when margin squeeze occurs.
4. ‘The existence of a dominant position may derive from several factors which, taken separately, are not necessarily determinative but among these factors a highly important one is the existence of very large market shares.’ (Case 85/76 *Hoffmann-La Roche & Co AG v Commission* [1979] ECR 461). Discuss this statement in the light of how the assessment of a ‘dominant position’ is carried out in practice.

UNIVERSITY OF MALTA

FACULTY OF LAWS

CML 3006 - COMPETITION LAW

DATE: MONDAY 22ND JANUARY 2018

DURATION OF EXAMINATION: 1.00PM TO 3.05PM

Answer ONE question from SECTION A and ONE question from SECTION B

All questions carry equal marks

Answer each question on a separate script

SECTION A

1. The criteria of coordination and cooperation inherent in the notion of “concerted practice” under article 5 of the Competition Act (Cap. 379 of the laws of Malta) and article 101 of the Treaty on the Functioning of the European Union (TFEU) require undertakings to determine the policy they intend to adopt independently but does not deprive them of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors. Discuss.
2. To what extent, if at all, has EU and Maltese Competition Law adopted (a) the US rule of reason approach and (b) the ancillary restraints doctrine to determine whether an agreement has anti-competitive effects for the purposes of article 5 of the Competition Act (Cap. 379 of the laws of Malta) and article 101 of the Treaty on the Functioning of the European Union (TFEU).

SECTION B

3. A dominant undertaking may refuse to license intellectual property rights (IPRs), however in certain circumstances doing so would result in a breach of Article 9 of the Competition Act and/or Article 102 of the Treaty on the Functioning of the European Union (“TFEU”). Discuss, considering the development in the case law and referring to the conditions which must subsist for a refusal to license IPRs to amount to a breach of Article 9 of the Competition Act and/or Article 102 TFEU.
4. One of the ways undertakings compete on the market is through price. However, when a dominant undertaking charges very low prices, its pricing may be considered predatory and consequently abusive, in breach of Article 9 of the Competition Act and Article 102 of the Treaty on the Functioning of the European Union. Discuss.

UNIVERSITY OF MALTA
FACULTY OF LAWS

CML 3006 COMPETITION LAW

Date: Wednesday 5th September 2018

Duration of Examination: 10:00am – 12.05pm

Answer ONE question from SECTION A and ONE question from SECTION B
All questions carry equal marks
Answer each question on a separate script

SECTION A

1. To what extent, if at all, can apparently unilateral conduct on the part of an undertaking adopted in the context of its contractual relations with other undertakings be considered the basis of an agreement for the purposes of article 5 of the Competition Act and article 101 of the Treaty on the Functioning of the European Union (TFEU).
2. Compare and contrast, in the context of article 5(1) of the Competition Act and article 101(1) of the Treaty on the Functioning of the European Union (TFEU), ‘infringements by object’ and ‘infringements by effect.’

SECTION B

3. Compare the approach taken by the Court of Justice of the European Union (CJEU) in Commercial Solvents (Cases 6 and 7/73 Istituto Chemioterapico Italiano Spa and Commerical Solvents Corp v Commission [1974] ECR 223) and subsequent case-law and Commission decisions, to the approach taken by the CJEU in Oscar Bronner (Case C-7/97 Oscar Bronner GmbH & Co KG v Mediaprint [1998] ECR I-7791) and subsequent case-law and Commission decisions, bringing out the differences between the approaches taken by the CJEU when a dominant undertaking refuses to supply an existing customer and when it refuses to provide access to an essential facility.
4. Although it was originally thought that Article 102 of the Treaty on the Functioning of the European Union (TFEU), on which Article 9 of the Competition Act was modelled, only applied to abuses which were exploitative in nature, there are actually very few cases which deal with such abuses both at national and EU level. Discuss, making particular reference to cases dealing with exploitative pricing, and taking into account cases on unfair trading conditions and discriminatory pricing.

University of Malta
Faculty of Laws

January/February 2019 Examination Session

CML3006 COMPETITION LAW

Date: Monday 4th February 2019

Duration of Examination: 11:30AM-01:35PM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from Section A and **ONE (1)** question from Section B.

All questions carry equal marks.

Answer each question on a separate script.

Section A

1. For the purposes of competition law, “the concept of an undertaking, encompasses every entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed” (Höfner and Elser v Macroton GmbH – C 41/90). Discuss.
2. For the purposes of article 5 of the Competition Act and article 101 of the Treaty on the Functioning of the European Union (“TFEU”), the concept *agreement* “centres around the existence of a concurrence of wills between at least two parties, the form in which it is manifested being unimportant so long as it constitutes the faithful expression of the parties’ intention” (Case T 41/96 Bayer AG v Commission [2000] ECR II-3383). Discuss.

Section B

3. The abuse of margin squeeze is prevalent in telecommunications markets. Discuss with reference to local and EU cases on Article 9 of the Competition Act and Article 102 TFEU. In your answer explain how margin squeeze occurs and the principles laid out in the cases in relation to abusive margin squeeze.
4. Rebates and discounts are a normal business practice, however when offered by a dominant undertaking they may constitute an abuse in breach of Article 9 of the Competition Act and Article 102 TFEU. Discuss with reference to local and EU cases.

University of Malta
Faculty of Laws

September 2019 Examination Session

CML3006 COMPETITION LAW

Date: Saturday 14th September 2019 **Duration of Examination:** 8:30AM – 10:35AM

INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from **Section A** and **ONE (1)** question from **Section B**.

All questions carry equal marks.

Answer each question on a separate script.

Section A

1. A concerted practice has been defined as ‘a form of coordination between undertakings which ... knowingly substitutes practical cooperation between them for the risks of competition’. This definition requires that each undertaking must determine its conduct in the market independently. Discuss.
2. Explain the distinction between infringements by “object” and infringements by “effect” under article 5 of the Competition Act and article 101 TFEU.

Section B

3. ‘Dominant undertakings do not have an absolute duty to supply all those who request them to do so. However, in certain situations a refusal to supply is an abuse.’ (A. Jones and B. Sufrin, *EU Competition Law*). Discuss.
4. Low prices are considered predatory, and in breach of Article 9 of the Competition Act and Article 102 TFEU, when they are so low that they drive competitors from the market, thereby strengthening the position of the dominant undertaking on the market. Discuss.