

# EU Consumer Law

**Elective  
Past  
Papers**

LL.B. IV



# **GHAQDA STUDENTI TAL-LIĠI**

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2020/2021

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## ABOUT GhSL

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 *GhSL Online Law Journal*.

Moreover, GhSL boasts its own Thesis Library, located at the GhSL office in the Faculty of Laws. Additionally, GhSL 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](mailto: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  
JUNE 2004 SESSION  
ECL4003 EC CONSUMER LAW

Monday 31 May 2004

11.45 – 12.45

ANSWER ONE QUESTION

1. Compare and contrast the product liability directive and the product safety directive, drawing out the relevant issues and highlighting any shortcomings, where relevant also by reference to pertinent case law, and showing how the present product safety directive addresses some or several of the previous directive's shortcomings.
2. "Though there are several Community measures that regulate advertising, consumers are still not adequately protected against unfair advertising so that there is a gap in consumer protection in this area." Discuss.
3. "We feel that consumer policy at the Community level is still embryonic in its development and has certainly not come of age." (Howells and Wilhelmsson) In view of the changes brought about by the Maastricht and Amsterdam Treaties to the policy's legal basis and in the light of the recent changing trends in the Community's policy as evidenced by some recent Commission initiatives, do you agree with this statement?
4. How has the Court of Justice balanced the need to safeguard consumer choice by deregulating the market with the need to allow restrictive domestic laws that are protective of consumers?

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2005 SESSION  
ECL4003 EC CONSUMER LAW

Monday 24 January 2005

14.15 – 15.15

ANSWER ONE QUESTION

1. Critically analyse the issues underlying the product liability directive and the product safety directive, where relevant also by reference to pertinent case law. How can the product liability directive be improved from the consumer welfare perspective? Consider the extent to which the shortcomings in the previous product safety directive have been addressed in the current directive.
2. To what extent do the existing Community measures that regulate advertising, adequately protect consumers against unfair advertising?
3. Discuss the salient features of the Doorstep Selling and Distance Selling Directives, highlighting both their achievements and their shortcomings from the consumer welfare perspective.
4. "Lacking a proper legal basis for several years, the Community's Consumer Policy developed piecemeal according to the exigencies of the internal market rather than evolving into an autonomous and genuine consumer policy. This positive harmonisation effort was accompanied and aided by profuse negative harmonisation effected through ECJ case law under Art 28 of the EC Treaty (the free movement of goods provision) until the Keck judgment put the brakes on negative harmonisation in respect of certain consumer related legislation. This case law over the years has frequently put in sharp contrast the image that the ECJ and certain national courts have of the consumer that needs protection." Discuss the various issues outlined in this statement making reference, where necessary, to relevant cases.

UNIVERSITY OF MALTA

FACULTY OF LAWS

JANUARY 2006 SESSION

ECL4003 EC CONSUMER LAW

Monday 30<sup>th</sup> January 2006

13.00 – 14.00

*Permitted Material: Students may take a dictionary (other than a law dictionary) into the examination hall*

**ANSWER ONE QUESTION**

1. (a) To what extent, if at all, have successive amendments to the EC Treaty throughout the years successfully strengthened the Community's basis for an autonomous consumer policy?

and

(b) Discuss the role that the Court of Justice has played in safeguarding consumer choice.

2. 'In relation to advertising law the Community moved from piecemeal and largely ineffective harmonization aided to some degree also by case law under Article 28 of the EC Treaty to an all encompassing broad measure regulating unfair commercial practices that however has also elicited a certain degree of criticism.'

Discuss

3. What would you consider to be the main strengths and weaknesses of the Product Liability Directive from a consumer protection perspective? Should it be extended to services?
4. How do the various vertical 'new approach' safety directives and the horizontal General Product Safety Directive secure the safety of consumers in the market?



UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JUNE 2006 RESIT SESSION  
ECL4003 EC CONSUMER LAW

Tuesday 30<sup>th</sup> May 2006

09.15 – 10.15

*Permitted Material: Students may take a dictionary (other than a law dictionary) into the examination hall*

ANSWER ONE QUESTION

1. Considering the Treaty provisions on consumer policy and the case law of the Court of Justice, would you say that the Community's so-called 'consumer policy' is nothing more than an application of the market integration goal in disguise?
2. To what extent has the Community, through legislative measures, been successful in guarding consumers against all forms of unfair advertising and marketing techniques?
3. Critically analyse one of the following directives and illustrate how the directive safeguards consumer interests and explain what changes you would make to the directive in order to strengthen such protection:

(a) Product Liability Directive

OR

(b) General Product Safety Directive

*Handwritten signature*

UNIVERSITY OF MALTA

FACULTY OF LAWS

SEPTEMBER 2006 RESIT SESSION

ECL4003 EC CONSUMER LAW

Monday 4<sup>th</sup> September 2006

09.15 – 10.15

*Permitted Material: Students may take a dictionary (other than a law dictionary)  
into the examination hall*

ANSWER ONE QUESTION

1. How has the Court of Justice balanced the need to safeguard consumer choice by deregulating the market with the need to allow restrictive domestic laws that are protective of consumers?
2. To what extent do the existing Community measures that regulate advertising and marketing, adequately protect consumers against unfair advertising and marketing techniques?
3. Analyse the responsibilities and obligations imposed by the General Product Safety Directive on business operators in the market and national authorities and the mechanisms it provides for the protection of consumers. How does this directive interact with other product safety directives? Do you think it should be extended to services?
4. If you had to redraft the Product Liability Directive what changes would you recommend in order to (i) enhance consumer protection; (ii) clarify some of its existing provisions; and (iii) safeguard the interests of traders? Your answer should be illustrated, where relevant, with references to case law.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2008 SESSION  
ECL4003 EC CONSUMER LAW

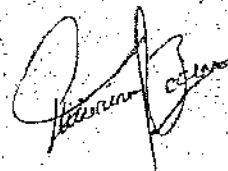
Wednesday 23<sup>rd</sup> January 2008

09.15 - 10.15

*Permitted Material: Students may take a dictionary (other than a law dictionary) into the examination hall*

ANSWER ONE QUESTION

1. "EC consumer law was traditionally an area which was characterised by minimum harmonisation measures, which whilst permitting a high minimum standard of protection to consumers did not necessarily ensure homogeneity between national consumer laws. In recent years a number of important documents re-shifted the course in the harmonisation of consumer protection measures and set the trend for what was to become the future of consumer protection legislation throughout the Community." Discuss this statement with the aid of examples, exploring the benefits and criticisms attributed to the different degrees of harmonisation.
2. The *Tobacco Advertising* cast a shadow on the appropriateness of Article 95 of the EC Treaty as a proper legal basis for consumer protection measures, and has unfortunately re-opened an age-old wound. Discuss, in light of the development of Community competence in consumer policy.
3. Critically analyse the issues underlying the Product Liability Directive, by reference to relevant case law. What changes could you recommend to this Directive in order to strengthen the protection to consumers?



UNIVERSITY OF MALTA  
FACULTY OF LAWS  
SEPTEMBER 2008 SESSION  
ECL4003 EC CONSUMER LAW

Monday 1<sup>st</sup> September 2008

09.15 – 10.15

*Permitted Material: Students may take a dictionary (other than a law dictionary) into the examination hall*

ANSWER ONE QUESTION

1. How does Community law address the problem of traders who engage in unfair commercial practices?
2. How has the Court of Justice balanced the need to safeguard consumer choice by deregulating the market with the need to allow restrictive domestic laws that are protective of consumers?
3. Discuss the extent to which successive amendments to the EC Treaty throughout the years have strengthened the Community's basis for an autonomous consumer policy.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2009 SESSION  
ECL4003 EC CONSUMER LAW

Monday 26<sup>th</sup> January 2009

09.15 – 10.15

ANSWER ONE QUESTION

1. Critically analyse the case law relative to the Product Liability Directive and explain how this (a) contributes to the debate on minimum v maximum harmonisation and (b) sheds light on the interpretation of some parts of the directive. Do you think the Directive is in need of revision?
  
2. Show how the European Community through various legislative measures relating to consumer transactions protects consumers' economic interests by introducing new consumer rights and imposing additional obligations on traders in the pre-contractual stage and post-contractual stage as well as by regulating the substance of the transaction itself.
  
3. (a) Describe the role that the European Court of Justice has played in the negative harmonisation of restrictive national consumer laws and the influence that this case law has had on the harmonisation directives in the consumer protection field.  
AND  
(b) Why did the introduction of Article 153 in the EC Treaty establishing formal EC competence in the consumer protection field fail to lead to the adoption of Community legislation pursuing purely consumer protection objectives distinct from internal market exigencies?

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
SEPTEMBER 2009 SESSION  
ECL4003 EC CONSUMER LAW

Friday 4<sup>th</sup> September 2009.

09.15 – 10.15

ANSWER ONE QUESTION

1. In what way and to what extent do the Product Liability Directive and the General Product Safety Directive safeguard consumers' health, safety and economic interests?
2. Considering the Treaty provisions on consumer policy and the case law of the Court of Justice, would you say that the Community's so-called 'consumer policy' is nothing more than an application of the market integration goal in disguise?
3. Select THREE of the following directives and show how through the introduction of new consumer rights and/or additional obligations on traders in the national legislation, they strengthen the protection of consumers' economic interests in relation to business-to-consumer transactions:
  - a. Doorstep Selling Directive
  - b. Distance Selling Directive
  - c. Package Travel Directive
  - d. Guarantees Directive
  - e. Timeshare Directive
  - f. Unfair Commercial Practices Directive
  - g. Unfair Contract Terms Directive.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2010 SESSION

ECL5061 EC CONSUMER LAW

Thursday 4<sup>th</sup> February 2010

09.15 – 11.15

ANSWER TWO QUESTIONS

1. Explain, with reference to case law, how the Doorstep Selling Directive and the Distance Selling Directive empower consumers to make an informed choice in the market and generally protect consumers' economic interests. Will the proposed Directive on Consumer Rights diminish or strengthen consumer protection in respect of these two types of marketing techniques?
2. Is the travelling consumer adequately protected by the Package Travel Directive and the Timeshare Directive? Illustrate your answer with references to relevant case law.
3. To what extent has an EU-wide harmonised notion of 'fairness' in relation to consumer contracts and commercial practices been introduced in national legal systems through EU directives and ECJ case law? What role are national courts and national authorities being called upon to play in the evolution of this 'fairness' notion?
4. In its 2006 report on the application of the Product Liability Directive, the Commission concluded that:

*After having taken into account the information obtained regarding the application of the Directive, the Commission does not consider it necessary, at this stage, to submit any proposal for its amendment. More specifically regarding the Council Resolution of 19 December 2002 on the amendment of the liability for defective products Directive, the opinion of the European Commission is that if the Resolution were given effect, this would mark a departure from the objective of harmonisation of product liability laws under the Directive. Nevertheless, it should not be underestimated that further harmonisation can also be achieved by accomplishing the highest possible common grounds of interpretation of the legal concepts of the Directive. This can be achieved using:*

- *The case law of the Court of Justice of the European Communities.*
- ...

Discuss.

PLEASE TURN OVER

5. How has the Court of Justice in its case law under Article 34 TFEU (ex Article 28 EC) balanced the need to safeguard consumer choice by deregulating the market with the need to allow restrictive domestic laws that are protective of consumers? In contrast with this case law, do you see the Court as taking a more consumer-friendly approach when interpreting the provisions of the harmonisation directives?



UNIVERSITY OF MALTA  
FACULTY OF LAWS  
SEPTEMBER 2010 SESSION  
ECL5061 EC CONSUMER LAW

Friday 3<sup>rd</sup> September 2010

09.15 – 11.15

**ANSWER TWO QUESTIONS**  
***ALL QUESTIONS CARRY EQUAL MARKS***

1. Critically analyse the case law relative to the Product Liability Directive and explain how this (a) contributes to the debate on minimum v maximum harmonisation and (b) sheds light on the interpretation of some parts of the directive. Do you think the Directive is in need of revision?
2. Describe the role that the Court of Justice of the European Union has played in the negative harmonisation of restrictive national consumer laws and the influence that this case law has had on the harmonisation directives in the consumer protection field.
3. Analyse the responsibilities and obligations imposed by the General Product Safety Directive on business operators in the market and national authorities and the mechanisms it provides for the protection of consumers. How does this directive interact with other product safety directives? Do you think it should be extended to services?
4. Discuss, where necessary by referring to relevant case law, the salient features of the Doorstep Selling and Distance Selling Directives, highlighting both their achievements and their shortcomings from the consumer welfare perspective. Will the proposed Directive on Consumer Rights diminish or strengthen consumer protection in respect of these two types of marketing techniques?
5. Select any TWO of the following directives and show how through the introduction of new consumer rights and/or additional obligations on traders in the national legislation, they strengthen the protection of consumers' economic interests:
  - a) Package Travel Directive
  - b) Guarantees Directive
  - c) Timeshare Directive
  - d) Unfair Commercial Practices Directive
  - e) Unfair Contract Terms Directive.

Illustrate your answer with references to relevant case law.

In addition, if you choose (a), (b) or (e), show what changes the Commission is proposing for these directives respectively and, if you choose (c), explain in what ways the newly adopted timeshare directive that must be transposed by February 2011 is an improvement on the previous directive.

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
JANUARY 2011 SESSION

ECL5061 – EU CONSUMER LAW

Thursday, 3<sup>rd</sup> February 2011

11.45 – 13.45

ANSWER TWO QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

1. Critically analyse the protection afforded to consumers by

Either

(a) the Doorstep Selling Directive (Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises)

Or

(b) the Distance Selling Directive (Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts)

as interpreted by the Court of Justice of the European Union. Consider any shortcomings in terms of consumer protection or the internal market manifested by the respective directive and how these shortcomings may best be addressed should the directive be revised. To what extent does the Proposal for a Directive on Consumer Rights adequately address these shortcomings and does it strengthen or weaken consumer protection?

2. In its 2006 Third Report on the application of the Product Liability Directive (Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended) the Commission concludes that the directive is not in need of any revision because it strikes the right and fair balance between competing interests. In the light of the various European Court and national court judgments on the interpretation and application of this directive, do you agree with the Commission?
3. How does the European Union ensure the safety of products that are sold on the market?
4. Considering the Treaty provisions on consumer protection and the case law of the Court of Justice under Article 34 TFEU (ex Article 28 EC), would you say that the European Union's so-called 'consumer policy' is nothing more than an application of the market integration goal in disguise?

UNIVERSITY OF MALTA  
FACULTY OF LAWS  
SEPTEMBER 2012 SESSION  
ECL5061 EU CONSUMER LAW

Monday 3<sup>rd</sup> September 2012

10:30 – 12:30

ANSWER TWO QUESTIONS  
*ALL QUESTIONS CARRY EQUAL MARKS*

1. Analyse the responsibilities and obligations imposed by the General Product Safety Directive on business operators in the market and national authorities and the mechanisms it provides for the protection of consumers.
2. How does the new Directive on Consumer Rights strengthen consumer protection and build on the pertinent case law that evolved under the preceding directives that the new Directive will replace?
3. Critically analyse the case law relative to the Product Liability Directive and explain how this (a) contributes to the debate on minimum v maximum harmonisation and (b) sheds light on the interpretation of some parts of the directive. Do you think the Directive is in need of revision?
4. Explain, by referring to the relevant case law, how the Unfair Contract Terms Directive and the Unfair Commercial Practices Directive protect consumers' economic rights.

UNIVERSITY OF MALTA

FACULTY OF LAWS

JANUARY 2013 SESSION OF EXAMINATIONS

ECL 5061 – EU Consumer Law

Date: Wednesday 30<sup>th</sup> January 2013

Time: 9.15 a.m. – 11.15am

ANSWER TWO QUESTIONS FROM THE FIVE SET OUT BELOW.

ALL QUESTIONS CARRY EQUAL MARKS.

Question 1

Explain briefly the history of consumer protection in the EU and analyze clearly the difficulties encountered in establishing a sound legal basis for the adoption by the European Union of consumer protection directives since its inception and how this problem was surmounted or resolved.

Question 2

Compare and contrast the new Timeshare Directive of 2008 with the earlier and older Timeshare Directive which it recently replaced. In your answer, explain clearly how the measures introduced in the 2008 Directive have further protected consumers and improved their legal rights.

Question 3

Explain, compare and contrast the measures adopted in the EU Directive that seeks to protect consumers against unfair commercial practices with the Directive that protects consumers from unfair contractual terms. In your answer, please explain clearly in what ways or features are the two relative Directives similar and in what ways or features do they diverge.

Question 4

Explain how the European Union protects consumers from unsafe products and tries to ensure the safety of consumer products placed on the market, with reference primarily to the Product Safety Directive but also to the Product Liability Directive. In your answer, briefly analyze the differences in approach and techniques adopted by these two Directives.

Question 5

Critically analyze the provisions, objectives and improvements to consumer protection brought about by the recent Directive on Consumer Rights of 2011.

UNIVERSITY OF MALTA

FACULTY OF LAWS

SEPTEMBER 2013 SESSION OF EXAMINATIONS

ECL 5061 – EU Consumer Law

Date: Thursday 12<sup>th</sup> September 2013

Time: 10.30a.m. – 12.30pm

ANSWER TWO QUESTIONS FROM THE FIVE SET OUT BELOW.

ALL QUESTIONS CARRY EQUAL MARKS.

Question 1

Discuss the shift from minimum to maximal harmonization in Community consumer law and policy, highlighting the advantages and disadvantages to consumers arising from both types of Directives.

Question 2

Analyze and discuss the use and significance of consumer information, transparency and disclosure of information in the Community's consumer protection initiatives.

Question 3

What amendments would you affect to Community rules regarding unfair contract terms in order to improve consumer rights? In your answer, please describe and enumerate at least four specific suggested reforms.

Question 4

Analyze and discuss the development, significance and effectiveness of the cooling-off period and related right of withdrawal in the various Community consumer protection directives.

Question 5

Critically analyse the various remedies that the consumer has under Directive 1999/44/EC (on certain aspects of the sale of consumer goods and associated guarantees) in light of the consideration that this is a minimum harmonisation directive. Do you agree that this Directive should remain a minimum harmonisation directive? Give reasons for your opinion.

UNIVERSITY OF MALTA

FACULTY OF LAWS

JANUARY 2014 SESSION OF EXAMINATIONS

ECL 5061 – EU Consumer Law

Date: Monday 20<sup>th</sup> January 2014

Time: 9.15 a.m. – 11.15am

ANSWER TWO QUESTIONS FROM THE FIVE SET OUT BELOW.

ALL QUESTIONS CARRY EQUAL MARKS.

Question 1

Analyse in detail the underlying concept behind an unfair commercial practice as provided for in Directive 2005/29/EC. Do you agree that this Directive should be a maximum harmonisation directive? Give your reasons.

Question 2

Critically discuss the various remedies that a consumer has under Council Directive 93/13/EEC (the Unfair Contract Terms Directive). Do you agree that this Directive should remain a minimum harmonisation directive? Give your reasons focusing on the impact on consumers.

Question 3

Explain the reasoning behind the Directive 2009/22/EC (the Injunctions Directive) and state if this Directive has effectively served its purpose stating whether there is scope for amendments to this Directive. In doing so give your reasons.

Question 4

Product safety and product liability are two sides of the same coin. Describe and compare the EU Directives on these two subjects, explaining clearly and separately how consumers stand to benefit from each one of them

Question 5

Describe what you would like to see in future EU initiatives on consumer protection and in what direction you wish the EU Commission to move.

the whole territory of the EU. Discuss Directive 93/13 in terms of this 'dual function' of harmonisation. (50 marks)

5. The rules on misleading advertising under Directive 2006/114 (concerning misleading and comparative advertising) set minimum standards; the rules on unfair commercial practices under Directive 2005/29 (which are defined in the Directive with special reference to misleading and aggressive practices), is a measure of maximum harmonisation. Discuss the advantages and disadvantages of both minimum and maximum rules regulating unfair commercial practices and misleading advertising, with particular reference to the effective protection provided by these Directives to the average consumer and the vulnerable consumer. (50 marks)

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**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.D. 1<sup>st</sup> & 2<sup>nd</sup> YEAR**  
**SEPTEMBER 2015 EXAMINATIONS**

**EXAMINATION: ECL 5061 EU Consumer Law**

**DATE:** 11 September 2015

**READING TIME:** 11.30AM to 11.35AM

**DURATION OF EXAMINATION:** 11.35AM to 1.35PM

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**INSTRUCTIONS TO STUDENTS:**

Students are to answer **ANY TWO QUESTIONS** of the following five questions.

A question **INCLUDES ALL** its sub-parts and has to be answered in its entirety.

All questions carry equal marks.

1. “National consumer protection law may come into collision with EU law of market integration, which is itself designed to advance the consumer interest.” (Weatherill 2013)

Explain this statement, focusing on how the Court of Justice of the European Union, the EU’s *judicial* institution, becomes a participant in the debate about the place of the consumer in a market economy where the application of negative law forces it to confront the validity of national choices about consumer protection that confine consumer choice. (50 marks)

2. The Product Liability Directive (Directive 85/374, as amended) is a major measure of EU consumer protection policy. Discuss. (50 marks)

3. “Techniques such as mandatory information disclosure and ‘cooling-off’ periods can be summarised as attempts to use the law to support the consumer in the pre- and post-contractual phase.” (Weatherill 2013)  
Discuss in terms of the Directive on Consumer Rights (2011/83/EC) (which replaces, as of 13 June 2014, Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises.) (50 marks)

4. Directive 93/13 on unfair terms in consumer contracts establishes an EU-level understanding of the proper reach of legal intervention into contractual autonomy but it does so according to a policy agenda which insists on the need for a common approach as a precondition to establishing a genuine internal market stretching across



4. "Directive 93/13 on Unfair Terms in Consumer Contracts and Directive 99/44 on Consumer Sales and Guarantees regulate the substance of consumer transactions".

Discuss the standard of consumer protection provided by these EU Directives, with reference to the particular vision of the consumer implicit in the regulatory technique employed.

5. Discuss the relationship between the rules on product safety and the rules on product liability for the supply of defective products in terms of the following legislative responses to unsafe products: Directive 85/374 on Product Liability and Directive 2001/95 on General Product Safety.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LLD I & II**  
**JANUARY 2015 SESSION OF EXAMINATIONS**

**EXAMINATION:** ECL5061 – EU Consumer Law  
**DATE:** Saturday 31<sup>st</sup> January 2015  
**TIME:** 9.15AM – 11.15AM

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- Students are to answer **ANY TWO QUESTIONS** out of the following five questions.
- A question **INCLUDES ALL** its sub-parts and has to be answered in its entirety.
- All questions carry equal marks.

1. Discuss how the EU law of free movement and EU legislative harmonisation – so-called ‘negative law’ and ‘positive law’ respectively – contribute to EU market integration, supplementing your answer with examples from case-law and legislation.

2. “The European Union does not enjoy a general competence to act as it sees fit, nor does it possess the competence to extend its own competence.” (Weatherill, 2014)

Discuss in terms of

**BOTH**

(i) Articles 114 & 115 TFEU (including the concept of “competence sensitivity” following the ECJ’s judgment in Tobacco Advertising), and Article 169 TFEU; **(30 Marks)**

**AND**

(ii) the duty of the EU institutions to pay attention to the quality of consumer protection (Article 12 TFEU; Article 169(1) TFEU; Article 38 EU Charter of Fundamental Rights). **(20 Marks).**

3. “Harmonisation is not simply a technical matter of finding common rules but rather a process that requires that attention be paid to the content of the harmonised rules.” (Weatherill)

Discuss with reference to EU advertising and marketing law suppressing unfair commercial practices (Directive 2006/114 concerning misleading and comparative advertising, codifying Directive 84/450 harmonising national measures concerning misleading advertising, as amended by Directive 97/55 to cover comparative advertising and Directive 2005/29 on unfair commercial practices).

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**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.D. 1<sup>st</sup> YEAR & LL.B. HONS. 4<sup>th</sup> YEAR**  
**JANUARY 2016 EXAMINATIONS**

**EXAMINATION: ECL 4006 EU Consumer Law**

**DATE:** Wednesday 27 January 2016

**READING TIME:** 10.00AM to 10.05AM

**DURATION OF EXAMINATION:** 10.05AM to 12.05AM

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**INSTRUCTIONS TO STUDENTS:**

- Students are to answer **ANY TWO QUESTIONS** out of the following five questions.
- All questions carry equal marks.

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1. "The heartland of EU consumer law is occupied by two distinct sets of legal provisions which are not presented predominantly as inspired by consumer protection, but which nevertheless exert a powerful influence upon it, both at national and at EU level. These are the EU law of free movement and EU legislative harmonisation. They concern negative law and positive law respectively: the work of the judiciary and the political institutions respectively." Weatherill 2013. Discuss this statement.

2. Discuss the evolving willingness to use the law to check some aspects of the substance (or 'content') of a contract between a trader and a consumer in terms of EITHER Directive 93/13 on Unfair Terms in Consumer Contracts OR Directive 99/44 on Consumer Sales and Guarantees.

3. The harmonisation of laws governing liability for defective products has had a profound impact on the position of the consumer. Discuss in terms of Directive 85/374 (as amended by Directive 1999/34/EC) on Product Liability.

4. "A final critical anxiety about the shaping of EU consumer law asks whether adequate vigour is attached to enforcement of the EU rules. Part of this is manifest in the frustration that the Court persists in denying consumers the improved access to justice that would be ensured by allowing Directives to exert horizontal direct effect, part is directed at sluggish progress in developing collective redress mechanisms, part concerns the obstacles to streamlining effective cross-border enforcement by public agencies."

**Weatherill 2013. Discuss in terms of the progress made by the EU towards improving access to justice for consumers, and the limitations thereof.**

**5. Discuss the image or images of the consumer found in EU consumer protection law (the alert and circumspect 'empowered' consumer, the inattentive consumer, the vulnerable consumer etc), giving examples of how rules are tailored to address the varying needs of the different categories of consumer.**

UNIVERSITY OF MALTA  
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SEPTEMBER 2016 EXAMINATIONS

EXAMINATION: ECL 4006 EU Consumer Law

DATE: 5<sup>th</sup> September 2016, *Thursday*

READING TIME: 10.00AM to 10.05AM

DURATION OF EXAMINATION: 10.05AM to 12.05PM

**INSTRUCTIONS TO STUDENTS:**

- Students are to answer ANY TWO QUESTIONS out of the following five questions.
- All questions carry equal marks.

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1. "The shape of 'consumer policy' in the integrating European market must be gleaned from an accumulation of random judicial opportunities to judge the permissibility of national measures that conflict with the impetus towards border-free trade combined with the incremental progress towards a legislative framework." Weatherill 2013. Discuss this statement.

2. Directive 2008/48/EC on credit agreements for consumers aims at "maximum (or 'total') harmonisation" and thereby sets a precedent for future EU instruments in the field of consumer contract law. Discuss this Directive in terms of its chosen regulatory technique (mandatory information disclosure/right of withdrawal) and the significance of maximum rules.

3. "In a world of mass production of technologically advanced products and services, provided through extended distribution chains which leave the consumer remote from the producer and, typically, subject to contractual terms contained in the small print of standard-form contracts, the idea of free negotiation is a myth." (Weatherill 2013) Discuss in terms of the Unfair Contract Terms Directive 93/13/EEC.

4. Product liability in the EU is regulated by the rather "old" Product Liability Directive 85/374/EEC which has been amended once by Directive 1999/34/EC after the BSE scandal. Discuss in terms of the products covered by the Directive, the persons liable under the Directive, the notion of 'defectiveness' and the 'pre-emptive' effect of the Directive.

5. "Advertising and marketing take many forms and not all deserve favourable appreciation. Advertising may mislead, it may offend, marketing practices may deceive, they may be aggressive." Weatherill 2013. Directive 2005/29/EC on unfair commercial practices has introduced a comprehensive fairness approach to B2C marketing practices. This is supplemented by Directive 2006/114/EC concerning misleading and comparative advertising. Discuss.

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