

Feedback — Module 2 - Homework

[Help](#)

You submitted this homework on **Thu 22 Jan 2015 10:42 AM PST**. You got a score of **15.00** out of **15.00**.

Question 1

The meaning of 'worker' in EU law is to be found in the following...

Your Answer	Score	Explanation
<input type="radio"/> Directive 2004/38.		
<input type="radio"/> The TFEU.		
<input checked="" type="radio"/> Case law of the Court of Justice.	✓ 1.00	
<input type="radio"/> National legislation.		
Total	1.00 / 1.00	

Question Explanation

The TFEU does not define 'worker' and the Court of Justice has emphasized that the term may not be defined by national law but has a Union meaning. Clarification was provided in Lawrie-Blum, in which the Court of Justice stated that the 'essential feature of an employment relationship ...is that for a certain period of time a person performs services for and under the direction of another person in return for remuneration'. The Court of Justice has interpreted 'worker' broadly, including within its scope part-time work (Levin, Kempf), persons on fixed-term contracts (Ninni-Orasche). Jobseekers also have rights, Union citizens being entitled to enter and remain in another Member State to seek work (Directive 2004/38, Article 14).

Question 2

What status is established by Article 20 TFEU?

Your Answer	Score	Explanation
<input type="radio"/> Worker status.		
<input checked="" type="radio"/> European Union citizenship.	✓ 1.00	
<input type="radio"/> Minor status.		
<input type="radio"/> Citizenship of the Member States.		
Total	1.00 / 1.00	

Question Explanation

Article 17 EC, inserted into the EC Treaty by the Treaty on European Union, established citizenship of the European Union and provides that every national of a Member State is a Union citizen. Article 21 TFEU grants free movement rights to all

Union citizens, subject to 'the limitations and conditions' in the Treaty and secondary legislation. Clarification of Union citizens' free movement rights is found in case law and in Directive 2004/38. The Court of Justice has used Union citizenship as a basis for rights, for instance in Sala, Grzelczyk and Baumbast.

Question 3

Who are family members for the purposes of Directive 2004/38? Please select all that apply.

Your Answer		Score	Explanation
<input checked="" type="checkbox"/> Parents who are dependants.	✓	0.25	
<input checked="" type="checkbox"/> Children who are dependants.	✓	0.25	
<input type="checkbox"/> Siblings who are dependants.	✓	0.25	
<input type="checkbox"/> Uncles or aunts who are dependants.	✓	0.25	
Total		1.00 / 1.00	

Question Explanation

Family members of EU citizens have rights dependent on the citizen's rights. Article 2(2) Directive 2004/38 specifies who are family members: the spouse, the partner with whom the Union citizen has contracted a registered partnership, the direct descendants under 21 or who are dependants and those of the spouse or partner, and the dependent direct relatives in ascending line and those of the spouse of partner.

Question 4

Which secondary legislation elucidates the scope of 'public policy, public security or public health'?

Your Answer	Score	Explanation
<input type="radio"/> Regulation 2790/99.		
<input type="radio"/> Regulation 492/2011.		
<input checked="" type="radio"/> Directive 2004/38.	✓ 1.00	
<input type="radio"/> Directive 70/50.		
Total	1.00 / 1.00	

Question Explanation

Directive 2004/38 draws on the provisions of Directive 64/221, which it repealed, and also consolidates the pre-existing case law.

Question 5

Which provision of Directive 2004/38 sets out the scope of the public policy and public security grounds?

Your Answer	Score	Explanation
<input type="radio"/> Article 39.		
<input type="radio"/> Article 2.		
<input checked="" type="radio"/> Article 27.	✓ 1.00	
<input type="radio"/> Article 43.		
Total	1.00 / 1.00	

Question Explanation

Article 27 of Directive 2004/38 requires that measures taken on public policy or public security grounds must be proportionate and based exclusively on the personal conduct of the individual concerned. The personal conduct must represent a 'present' threat to the requirements of public policy. Article 27 precludes public policy and public security justifications that are 'isolated from the particulars of the case or that rely on considerations of general prevention'. Previous criminal convictions are not in themselves grounds for measures taken on public policy or public security grounds. All these principles have been applied by the Court of Justice.

Question 6

All EU citizens have a right of residence for up to three months in another Member State. It is irrelevant whether they are economically active and whether they have sufficient resources and health insurance.

Your Answer	Score	Explanation
<input type="radio"/> False		
<input checked="" type="radio"/> True	✓ 1.00	
Total	1.00 / 1.00	

Question Explanation

Article 6 Directive 2004/38 provides that Union citizens have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. Article 14 (2) provides however, that the host Member State is not obliged to confer entitlement to social assistance during the first three months of residence. Furthermore Article 6 states that citizens no longer have the right of residence in a Member State for up to three months if they become an unreasonable burden on the social assistance system of the host Member

Question 7

In the context of freedom of establishment, it has been held that national rules which hinder or make less attractive the exercise of the fundamental freedom of establishment violate the THEU unless they are justified. The test for justification can be referred to as...

Your Answer	Score	Explanation
<input type="radio"/> The Foster test.		

☐ The non-discrimination test.

☒ The Gebhard test.



1.00

☐ The proportionality test.

Total

1.00 / 1.00

Question Explanation

Gebhard made it clear that the Court of Justice interpreted Article 49 broadly, applying the same principles and interpretation to the provisions on free movement of goods, services, workers and establishment. It was held that national rules which could hinder or make less attractive the exercise of the freedom of establishment are prohibited unless they are justified. They are justified when they fulfil four conditions: 1) they must be applied in a non-discriminatory manner; 2) they must be justified by imperative requirements in the general interest; 3) they must be suitable for securing the attainment of the objective which they pursue; 4) they must not go beyond what is necessary in order to attain it.

Question 8

Who may be classed as a self-employed person under EU law? Please select all that apply.

Your Answer

Score

Explanation

☒ A prostitute.



0.25

☐ A school teacher.



0.25

<input checked="" type="checkbox"/> A dentist.	✓	0.25
<input type="checkbox"/> A retail assistant.	✓	0.25
Total		1.00 / 1.00

Question Explanation

The Court of Justice has defined a self-employed person as a person who provides a service outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration, under that person's own responsibility in return for remuneration paid to that person directly and in full. As such it is clear that a dentist is most probably a self-employed person and a school teacher and a retail assistant are not. As for prostitutes case law has determined that they can be classed as self-employed (Jany).

Question 9

Which secondary legislation sets out the rights of residence of self-employed persons?

Your Answer	Score	Explanation
<input type="radio"/> Directive 70/50.		
<input type="radio"/> Regulation 2790/99.		
<input type="radio"/> Regulation 492/2011.		

☒ Directive 2004/38. ✓ 1.00

Total 1.00 / 1.00

Question Explanation

Directive 73/148/EEC provided that Member States had to abolish restrictions on the movement and residence of nationals wishing to establish themselves in another Member State as self-employed persons or to provide services in another Member State or to enter another Member State to receive services. They also had to abolish restrictions on the movement and residence of the self-employed person's family members. This Directive has been replaced by Directive 2004/38 on free movement rights for citizens and their family members.

Question 10

Which legislation guarantees residence rights for companies?

Your Answer	Score	Explanation
<input type="radio"/> Regulation 492/2011.		
<input type="radio"/> Article 20 TFEU.		
<input checked="" type="radio"/> Article 49 TFEU.	✓ 1.00	
<input type="radio"/> Directive 2004/38.		

Total

1.00 / 1.00

Question Explanation

Directive 2004/38 sets out the rights of EU citizens and their families. It does not apply, however, to companies. This does not mean companies do not have such rights as they can rely on Article 49 TFEU directly, as this article has vertical and, at least partial, horizontal direct effect. See e.g. Marks&Spencer v David Halsey

Question 11

Directive _____ on Services in the Internal Market implements the TFEU provisions on the freedom of establishment and the free movement of services.

You entered:

Your Answer		Score	Explanation
2006/123	✓	1.00	
Total		1.00 / 1.00	

Question Explanation

Directive 2006/123 aims to facilitate the freedom of establishment and the free movement of services by removing legal and

administrative barriers. It pursues four main objectives: 1) to ease freedom of establishment and the freedom to provide services; 2) to strengthen the rights of recipients of services; 3) to promote the quality of services; 4) to establish administrative cooperation between the Member States.

Question 12

Because Article 56 TFEU only refers to service providers, recipients of services cannot derive any rights from this provision and therefore there is no such thing as a "freedom to receive services".

Your Answer	Score	Explanation
<input type="radio"/> True		
<input checked="" type="radio"/> False	✓ 1.00	
Total	1.00 / 1.00	

Question Explanation

Although Article 56 TFEU is silent on the recipients of services, secondary legislation gives them certain rights. Furthermore the Court of Justice has confirmed that Article 56 applies to both providers of services and recipients of services (e.g. *Luisi and Carbone*)

Question 13

Which cases involved direct discrimination based on nationality in the context of freedom of establishment? Please select all that apply.

Your Answer		Score	Explanation
<input type="checkbox"/> Dassonville	✓	0.25	
<input checked="" type="checkbox"/> Reyners	✓	0.25	
<input checked="" type="checkbox"/> Commission v Italy (Dentists).	✓	0.25	
<input type="checkbox"/> Italy v Commission (Lawyers).	✓	0.25	
Total		1.00 / 1.00	

Question Explanation

In the case of Reyners a lawyer was refused admission to the Bar in Belgium based solely on his lack of Belgian nationality. In Commission v Italy (Dentists) Italian law determined that dentists moving their residence to another Member State lost their registration with the Italian dental association unless they had Italian nationality. In both cases national law was directly discriminatory based on nationality.

Question 14

Which of the following conditions must be satisfied in order to justify a measure affecting free movement of goods in the EU with support of the Cassis de Dijon case? Please check all that apply.

Your Answer	Score	Explanation
<input checked="" type="checkbox"/> The measure is indistinctly applicable (same treatment of domestic and foreign goods)	✓ 0.25	
<input checked="" type="checkbox"/> The measure is proportionate to the aim in view	✓ 0.25	
<input checked="" type="checkbox"/> The measure entails no discrimination	✓ 0.25	
<input checked="" type="checkbox"/> The measure is justified by a mandatory requirement	✓ 0.25	
Total	1.00 / 1.00	

Question Explanation

All the conditions must be met.

Question 15

Should a rule regarding the use of a product be considered as a 'certain selling arrangement' in the meaning of the Court's ruling in Keck, and possible fall outside the scope of Article 34 TFEU?

Your Answer	Score	Explanation
<input type="radio"/> Yes		



No



1.00

Total

1.00 / 1.00

Question Explanation

The correct answer is No. The Court of Justice has made clear that rules regarding the use of a product is not to be considered as 'certain selling arrangements'

