



SCHOOL OF BUSINESS AND SOCIAL SCIENCES
AARHUS UNIVERSITET

Summer exam 2020

Ordinary exam

Take-home written exam: 460141E035 – International Business Law

Duration: 3 hours

Aids: All aids allowed

Technical problems: Contact BSS IT, phone: 87150933 or e-mail: bss.it@au.dk

Contact person (academic staff): Graham butler – gb@law.au.dk

In case of errors or the like in the examination paper, contact Graham Butler by e-mail during the first hour of the exam. After the first hour, Graham Butler will upload an overall reply to all relevant inquiries on Blackboard.

International Business Law

Spring 2020

Exam Paper – June 2020

Type

- 3-hour exam.
- Take-home written exam with upload of the exam paper in WISEflow, use of the internet allowed during the exam, own PC required.
- Please read full university policy on the examination format.

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Note

- All students should read the exam guidelines and instructions carefully, and read the entire exam paper before writing their answers.
- Students must cite their sources throughout their answer paper appropriately and accurately.
- Students should include a full bibliography of academic literature, case law (where relevant), and all sources used as a reference in their answer paper.
- As far as practicable, students must be able to cite English-language literature in EU law. Only exceptionally should literature in other languages be referred to.
- Students may use a footnote/reference manager (eg. EndNote, Mendeley, Zotero, etc.) to assist them in keeping track of their references.
- Students may use any citation method they use, as long as it is used consistently, and it is clear and unambiguous.
- Students should make sure that they are answering their chosen questions as articulately as they can.



Format

- There will be five questions in total on the examination paper.
- Of those five questions posed, students must answer a total of **three questions**. They must select their questions in the following way:
 - o Students must answer the single question from **Section A** (Question 1).
 - o Students must answer one question from **Section B** (Question 2 or 3).
 - o Students must answer one question from **Section C** (Question 4 or 5).
- In their answer paper, students should make clear which questions they are answering.

Technicalities

- The answer paper should have page numbers.
- The answer paper should be completed with the main text in the Times New Roman font, size 12, spaced 1.15, and justified.
- The same applies for the footnotes, except for the font size, which should be 10.



Exam Paper



Royal Unibrew A/S is a company domiciled in Faxe, Denmark, and is the second largest multi-beverage provider in the Member State. It produces, markets, sells, and distributes beverages of various kinds, namely: beer, malted beverages, ciders, soft drinks, and other ready-made drinks. It is active in some northern EU Member States (Denmark and Finland); the Baltic region (Estonia, Latvia, and Lithuania); and selected other large national markets in the European Union (France, Germany, and Italy).



Royal Unibrew was formed in the late 1980s through a merger of a number of different smaller breweries, and subsequent acquisitions. These mergers and acquisitions, over time, included *Faxe* (Sjælland), *Ceres* (Aarhus), *Thor* (Randers), and *Albani* (Odense) – from different regions of Denmark. The principle reason behind the coming together of these small breweries to form one overarching company was to become a more forceful competitor to the dominant beverages company in Denmark – *Carlsberg*.



Within the *Royal Unibrew* company, it has a number of beverage brands, including Royal Beer, Royal Export, Faxe Pilsner, and Faxe Kondi, amongst many others. In 2020, *Royal Unibrew* had approximately 25% market share of the Danish beer market. Beyond Denmark however, in each of the markets in the EU where it is active, it offers a range of locally based brands that are ultimately owned by *Royal Unibrew*.

Yet *Royal Unibrew* does not just work with its own brands. It also has licencing and distribution arrangements with other major drinks brands. For example, it brews *Heineken* (Dutch beer) for the Danish beer market, and distributes *Pepsi* (American soft drink) in the Danish drinks market. In Denmark, *Royal Unibrew* is a direct competitor to *Carlsberg*, who brews its own beer, and distributes *Coca-Cola* (American soft drink) in Denmark.



A number of years ago, *Royal Unibrew* decided to expand its operations, and try build up market share in the Baltic region. It did so by making a number of acquisitions, such as *Taurus* and *Kalnapilis* (both in Lithuania), and *Lāčplēša Alus* and *Bauskas Alus* (both in Latvia). Furthermore, *Royal Unibrew* also believes there is opportunity in other markets in the EU, and thus, in recent years, acquired *Etablissements Geyer Frères* (France).

Trends in the drinks industry are changing. Modern consumers do not just want traditional beers and soft drinks, but are also seeking new products, such as non-alcoholic beers, and other health-conscious, sugar-free options. Thus, *Royal Unibrew* has to constantly innovate with its range of products and brands. This involves having a strong research and development (R&D) unit in the company.



Questions

Section A

Question 1

The EU internal market features at many different stages of the lifecycle of *Royal Unibrew's* range of products. *Royal Unibrew* sells its beverages – goods – in many different EU Member States. Thus, it relies on the EU internal market for its business model.

For example, for the production stage of its beverages, *Royal Unibrew* needs raw materials for its goods, which come from a range of different suppliers from many other EU Member States. Such raw materials – goods – ultimately have to cross into Denmark for the production process. *Royal Unibrew* has three production facilities in Denmark – in Faxe (Sjælland), Hvidovre (Sjælland), and Odense (Fyn).

After the production of the beverages is completed at these facilities in Denmark using the raw materials from other EU Member States, many of the beverages – goods – are then made available for sale in other EU Member States, thus, being exported from Denmark. Such integrated supply chains, transcending across a number of EU Member States, is typical of today's business environment in the beverages industry.

When operating in the EU internal market, companies like *Royal Unibrew* are not subject to customs levies on raw materials (goods) coming into Denmark; and nor are there customs levies on its beverages (goods) when they leave Denmark. Moreover, *Royal Unibrew* is able to sell many of its beverages in other EU Member States on a level-playing field against other local competitors.

Given your knowledge of the free movement of goods; from a legal perspective, detail the legal regime governing the free movement of goods in the EU, and how *Royal Unibrew* benefits from this aspect of the EU internal market. In your answer, make sure you utilise the relevant provisions of the EU Treaties, applicable case law of the Court of Justice of the European Union, and any supporting academic literature.



Section B

Question 2

When *Royal Unibrew* goes to purchase the raw materials that it needs from companies in other EU Member States to make its beverages, it engages in cross-border transactions, in the form of payments. Subsequently, when *Royal Unibrew* sells its goods in other EU Member States, and the profits are booked by its subsidiaries, it will thereafter transfer such capital back to its parent company in Denmark, in the form of capital movements.

Given that the base currency of *Royal Unibrew* is the Kroner (DKK), and the currency of most of the rest of the European Union is the Euro (€), this complicates matters. However, *Royal Unibrew* avails of interchange facilities with major financial institutions to smoothen the process. EU internal market law makes it possible for companies like *Royal Unibrew* to engage in extensive cross-border payments and capital movements, with relative ease.

Given your knowledge of the legal aspects of EU internal market law, detail and analyse the law concerning the free movement of capital in the EU. In your answer paper, make sure you refer to the applicable provisions of the EU Treaties, any other EU laws, the relevant case law of the Court of Justice of the European Union, and relevant academic literature to support your answer.

Question 3

Royal Unibrew's product range includes a mixture of both well-known brands at national levels in EU Member States, as well as regional brands within those states. However, consumer habits change over time, and the company is keen to stay competitive by having beverages available in the regions and Member States where it is active in having a brand portfolio that reflects consumers' tastes.

To do this, *Royal Unibrew* invests heavily in its Research and Development (R&D) departments across its markets, aiming to attract the best possible talent from across the EU to work on developing its range of products. In light of *Royal Unibrew's* R&D department's aims, many people are able to take up offers of employment at the company, regardless of which Member State they are a national of. In getting such talented employees working at *Royal Unibrew*, the company employs the best suited persons for the roles in its R&D department.

Given your knowledge of the legal aspects of EU internal market law, analyse and discuss how companies such as *Royal Unibrew* have benefited from the existence and operation of the free movement of workers. In your answer, make sure you reference the applicable provisions from the EU Treaties concerning the free movement of workers, as well as any case law of the Court of Justice of the European Union to support your answer.



Section C

Question 4

One of *Royal Unibrew*'s main strategies for business expansion is to engage in mergers and acquisitions (M&A) with existing companies in other EU Member States. However, this is not the only method of expansion. Given that *Royal Unibrew* only operates in a number of Member States, there are many other EU Member States that are not supplied by *Royal Unibrew*.

— *Royal Unibrew* is considering entering into new national markets in the EU, namely Belgium, Luxembourg, and the Netherlands (the Benelux states) as part of its longer-term growth strategy. This would entail setting up *Royal Unibrew* subsidiaries in those three EU Member States where it does not currently have business operations of any kind.

— Drawing upon your knowledge of the freedom of establishment – which allows companies to establish themselves in other EU Member States within the internal market – detail, analyse, and discuss the legal aspects of this freedom. Specifically, in your answer, make reference to the applicable provisions of the EU Treaties, the arising case law of the Court of Justice of the European Union, and academic literature on the rights of businesses like *Royal Unibrew* to begin engaging in commerce in other EU Member States.

Question 5

Royal Unibrew is mainly a goods producer, which it sells and distributes in Denmark, as well as in other EU Member States. Its goods are sold in a number of different types of locations, including supermarkets, kiosks, bars/pubs, and restaurants.

— Whilst goods are *Royal Unibrew*'s prime interest, it is considering diversification away from focusing solely on goods, and considering becoming a services provider too. *Royal Unibrew* is considering opening up a number of its own bars/pubs (to be called 'RU-Bar'), where it will sell its complete range of branded products. It has been exploring two Member States in which it would open its own bars/pubs – Denmark, and Finland – two national markets in the EU where its goods are already for sale, and thus, consumers have familiarity with its products. *Royal Unibrew* is therefore branching out into becoming a services provider, as well as being a goods manufacturer.

Detail and analyse the legal regime governing the free movement of services in the EU. Given that *Royal Unibrew* is considering becoming a services provider, explain the applicable services aspects of the EU Treaties, taking into account the case law of the Court of Justice of the European Union, and relevant academic literature concerning the freedom to provide services for companies in the EU internal market.