

International Business Law

Spring 2022

Exam Paper – May/June 2022

Type

- 3-hour exam.
- On-site 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. Only exceptionally should literature in other languages be referred to.
- The slides used by the lecturer should not be cited. Instead, primary material should be referred to (e.g., the book).
- 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 (Recommendations: OSCOLA, Chicago 17th).
- Students should make sure that they are answering their chosen questions as articulately as they can.
- Answer papers are anonymised, and graded by both an external examiner and an internal examiner.



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

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Dan Dryer (officially *Dan Dryer A/S*) is a company domiciled in Randers, Denmark. It designs, develops, manufactures, and markets appliances used for company and public toilet and washroom facilities. The company was founded in the 1980s, and in recent years, has a new owner.

Dan Dryer's goods range from the classic type of hand dryer that it has been manufacturing since near the company's inception, to modern designs that are seen in toilet and washroom facilities of all kinds: public restrooms, retail stores, companies, and major transit hubs.



Over time however, the company has moved beyond merely manufacturing hand dryers. Today, its customers expect more wide-ranging solutions on hygiene, and thus, *Dan Dryer* now also manufactures and sells complementary products for toilet and washroom facilities, including bins, soap and disinfectant dispensers, and baby-changing units.

Within its sector, however, *Dan Dryer* has developed a particular special niche. Over time, it has increased its expertise in making hand dryers for the railway sector, and is a leading provider of hand dryers to railway companies for their toilet and washroom facilities on-board their carriages. *Dan Dryer's* customers, for whom the company has produced custom-made goods for, including for high-speed railway companies like TGV in France and SJ X2000 in Sweden; but also normal railway companies like SNCF in France, Deutsche Bahn in Germany, and Øresundståg in Denmark/Sweden, amongst others throughout the EU.



Whilst it is a reasonably small company in terms of the number of employees, it has nonetheless established greater market share for hand dryers over time, given its iconic brand within the industry. Given the highly competitive nature of the market for goods to be installed in toilet and washroom facilities, *Dan Dryer* is always seeking to innovate, and constantly improve the quality of its goods that it has in its portfolio, but it is also willing to consider new goods that could be added to its catalogue. *Dan Dryer's* buyers are not necessarily end-use customers themselves, but rather, distributors in both Denmark and other EU Member States.

Dan Dryer aims to be a solution-oriented company, with its hand dryers being able to complete the task of it that people expect in as little time as possible. Hand dryers are a universal product, needed in all markets across Europe. *Dan Dryer* does not have distributors in all the markets that it wants to, and is keen to grow the sales of its goods into markets where its goods have previously not been made available. Given the increased awareness of the need for sanitary equipment in public places since the COVID pandemic, *Dan Dryer* expects the demands for its goods to remain high for many years to come.





Questions

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Section A (Question 1)

Question 1

— *Dan Dryer* manufactures all the goods that it sells at its premises in Randers, which is just under 40 kilometres north of Aarhus. As a city in Jutland, Randers is an attractive place to have a manufacturing hub, given that it is on the E45 motorway, and is therefore easily connected by road to the rest of Europe, given the company sells a large number of its goods to its customers in other EU Member States.

The EU's internal market would appear to be indispensable to a company like *Dan Dryer*. The apparent ease upon which the company can export its goods from Denmark, and the fact that its goods can be imported into other EU Member States without formalities, makes 'doing business' for *Dan Dryer* in Germany as straightforward as it would be doing business in Denmark.

— Non-fiscal barriers could stand in the way of *Dan Dryer* having its goods available in all EU Member States, however. Such regulatory barriers can impede the ability of the company to have its manufactured goods used in other EU Member States, and thus, non-fiscal barriers could impede the access to the market for *Dan Dryer's* goods.

Given your knowledge of the EU internal market, and the law concerning the free movement of goods, and in particular non-fiscal measures, explain how *Dan Dryer* benefits from Articles 34-36 TFEU. In your answer paper, ensure that sufficient references is made to the EU Treaties concerning non-fiscal measures, as well as the applicable case law of the Court of Justice of the European Union, and academic literature in support of your answer.



Section B (Question 2 or Question 3)

Question 2

Dan Dryer prides itself on the durability of its goods. Given their location in companies and public locations, they are goods that are used frequently, often several hundred times per day. Depending on their location, some are even used thousands of times per day. Yet, *Dan Dryer* is confident of the durability of its goods. For its classic hand dryers, it offers a five-year guarantee on all functional parts of the goods, including vandalism. For customers looking for a guarantee beyond five-years, however, *Dan Dryer* is considering entering into the services market. For example, after the initial five-years, it is likely the motor in the hand dryers will have to be inspected, serviced, and potentially be replaced.

Diversification is key. *Dan Dryer* is not yet a service provider itself, but given it could be an area in which it could drive new revenues, it is considering doing so on a limited basis, firstly in both the home market of Denmark, but also in the neighbouring markets of northern Germany and southern Sweden.

Given your knowledge of the freedom to provide services in the EU internal market, explain the legal regime that governs such a freedom. In your answer paper, ensure emphasis is placed on the applicable provisions of the EU Treaties, any secondary legislation, the relevant case law of the Court of Justice of the European Union, and academic literature to support your answer.

Question 3

Dan Dryer is domiciled in Denmark – it is its headquarters, but also the site of its production facilities. However, in order to reach new customers in other markets within the EU internal market, *Dan Dryer* has long realised that it would be better suited to its interests if it had establishments in other EU Member States also. Thus, some years ago, *Dan Dryer* set up a subsidiary company in Toulouse, France.

Having a subsidiary in France has proven to be beneficial for the company in terms of accessing new customers in markets where it wished to grow. But further expansion across the EU's internal market is also being considered. For example, another secondary establishment is being considered in Poland to target central and eastern European markets, and then in Italy to target southern European markets.

Given your knowledge of the freedom of establishment for legal persons in the EU's internal market, explain and detail how *Dan Dryer* exercises such a freedom. Furthermore, consider the possibilities for a company like *Dan Dryer* to move their primary establishment from Denmark to another EU Member State. In your answer paper, ensure reference is made to the applicable provisions of the EU Treaties, relevant case law of the Court of Justice of the European Union, and academic literature.



Section C (Question 4 or Question 5)

Question 4

Dan Dryer has a small workforce. Yet, given the innovation that will have to occur in the years ahead, consideration is being given by the management of the company to creating an entirely new research and development (R&D) team. This new team will be tasked with ensuring that the company's existing range of goods keeps with new technology, but will also be charged with developing new goods that complement the company's existing portfolio.

The company intends to launch a targeted recruitment campaign for its new R&D team. To do so, *Dan Dryer* brings in a leading recruitment consultancy firm, which is charged with approaching relevant people in the goods innovation sector, and *Dan Dryer* tells the consultants to look widely, beyond Denmark, to ensure it can attract the best possible talent.

Given your knowledge of the EU's internal market, explain how the free movement of workers' provisions benefit from companies like *Dan Dryer*. In your answer paper, sufficient reference should be made to the relevant provisions of EU primary law, EU secondary law, case law of the Court of Justice of the European Union, and relevant academic literature.

Question 5

Dan Dryer conducts a large number of sales through its subsidiary that is in France. Whilst it retains the profits from its secondary establishment there, the company every third year seeks to repatriate profits back to its primary establishment company in Denmark. This is so that the company can re-invest its earned capital into its new R&D team, and ensure that the business will remain competitive in the years to come. Therefore, the company engages in extensive cross-border capital movements. Next, recalling that the company only has two establishments – a primary establishment in Denmark, and a single secondary establishment in France – *Dan Dryer* only engages in extensive cross-border payments between the distributors in other EU Member States, and the company.

The free movement of capital is thus an essential component of how *Dan Dryer* does business. Given your knowledge and arrangement of the law concerning the free movement of capital, explain the applicable provisions of the EU Treaties in this regard, including how they might have changed from the time that *Dan Dryer* was a company founded in the early 1980s. In your answer paper, make sure you refer to the applicable provisions of the EU Treaties, any other EU laws such as secondary law, the relevant case law of the Court of Justice of the European Union, and relevant academic literature to support your answer.