



THE LAW SOCIETY OF SCOTLAND  
INTRA UK TRANSFER TEST

PAPER III  
EUROPEAN UNION LAW AND INSTITUTIONS

12 May 2015

1000 – 1200

**Please read the following instructions carefully**

The examination is of two hours' duration. Candidates are required to answer **FOUR** questions, **ONE** question must be answered from **Section A** and **ONE** question from **Section B**. The **THIRD** and **FOURTH** questions can be answered from anywhere in the paper.

All four questions are of equal value.

Answers must be fully reasoned and supported by authority where appropriate. Candidates need to take care to **read the questions carefully and to answer what is asked**.

**No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.**

## **PART A**

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**Candidates *MUST* answer at least ONE question from this section**

### **Question 1**

Define the following principles/concepts of, and their operation and importance in, EU law:

- conferral and Treaty base
- subsidiarity
- proportionality
- direct effect
- horizontal direct effect
- general principles of EU law

### **Question 2**

Compare and contrast the rules regulating the non-contractual liability of the Union and that of the member states in the sphere of EU law. Are the tests, in your view, overly restrictive?

### **Question 3**

In *R (on the application of HS2 Action Alliance) v The Secretary of State for Transport* (January 2014) the Supreme Court (Lords Neuberger and Mance) said:

The United Kingdom has no written constitution, but we have a number of constitutional instruments ...The common law itself also recognises certain principles as fundamental to the rule of law. It is, putting the point at its lowest, certainly arguable (and it is for United Kingdom law and courts to determine) that there may be fundamental principles, whether contained in other constitutional instruments or recognised at common law, of which Parliament when it

enacted the European Communities Act 1972 did not either contemplate or authorise the abrogation.

What does this passage tell us about the UK's adaptation to the principle of the primacy of EU law? Do other member states adopt comparable approaches?

#### **Question 4**

Eilidh is an undergraduate student at Glasgow University. She is spending an agreeable third year away in Germany as part of the EU-funded Erasmus student exchange programme. Erasmus students receive €150 per month to cover the cost of living during the duration of their studies abroad as part of their scholarship. The academic year in Germany runs to mid-July.

In April the Parliament and Council adopted Regulation 123/2015, amending substantially the rules governing the Erasmus programme. As part of a general response to accusations of financial mismanagement and opaque accountancy, Regulation 123/2015 requires member states to make available an online register of all recipients of Erasmus funding, backdated to 1 January (the beginning of the Union's budgetary year), detailing the full name, nationality, date of birth, gender, address, and the amount of funding received of each recipient of an Erasmus grant. A recipient may refuse to be placed on the register, but he or she then loses entitlement to funding and is obliged to repay any funding already received.

Having been imbued with a German love of data protection during her stay in Germany, Eilidh refuses to be placed on the register. The British Council, which administers the Erasmus grants in the UK, therefore stops Eilidh's monthly payments and demands that she repay the amount disbursed from January to April. Eilidh wishes, naturally enough, to resist this turn of events.

**(Question 4 continued)**

a) Can Eilidh challenge Regulation 123/2015 directly before the European courts? What grounds can she invoke?

**and**

b) Should she choose additionally to raise a petition for judicial review of the British Council's actions in the Court of Session, arguing that it, the British Council, is acting in breach of the EU Charter of Fundamental Rights,

i) is Regulation 123/2015 compatible with the Charter and, if it is not, what bearing has it on the conduct of the British Council?;

**and**

ii) are there circumstances in which the judge hearing the petition in the Outer House would be obliged to refer the case to the Court of Justice under Article 267 TFEU?

**END OF PART A**

## **PART B**

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**Candidates *MUST* answer at least ONE question from this section**

### **Question 5**

Articles 30 and 34 TFEU prohibit charges/measures "having equivalent effect to" a customs duty (Article 30) and a quantitative restriction (Article 34). How are these terms defined? By reference to relevant case law, give examples of each. In what circumstances can they be justified?

### **Question 6**

a) Following the re-introduction of exit checks at UK ports and airports, Maryam, wearing a *niqāb* (the full face veil favoured by some muslim women), is stopped by the Border Agency (UKBA) officer as she makes to fly out of Edinburgh airport. She proffers her (British) passport and her boarding card which indicates she is flying to Athens. She also reveals she is carrying £100,000 in cash in her handbag. She is asked by the UKBA officer the purpose of her travel, but declines to answer. A computer check reveals she has an uncle suspected of fighting with Islamic State in Iraq.

Can the UKBA prevent Maryam from leaving without infringing EU law?

**and**

b) The United Kingdom's domestic counter-intelligence and security agency, MI5, is recruiting for employees to staff a new section. It is now running an advertising campaign (true, by the way) which provides that an applicant for a post must-

- be at least 18 years of age
- have a university degree
- be a fluent Russian speaker with a phenomenal recall of detail
- have lived in the UK for 8 of the last 10 years
- have at least one parent who is a British citizen.

Are these terms compatible with EU law?

### **Question 7**

Discuss the meaning of the following terms found in Article 101 TFEU:

- undertaking
- agreement
- concerted practice
- may affect trade between member states
- object or effect
- prevention, restriction or distortion of competition (horizontal and vertical).

### **Question 8**

Competition rules throughout the world are enforced by administrative, civil and criminal means. Discuss the authority by which, the manner in which, and the effectiveness with which, these various approaches are brought into play to combat anticompetitive conduct in EU law.

**END OF PART B**

**END OF PAPER**