



## THE LAW SOCIETY OF SCOTLAND INTRA UK TRANSFER TEST

### PAPER III EUROPEAN UNION LAW AND INSTITUTIONS

10 May 2016  
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.**

[Candidates are permitted to have at hand during the examination one of: *Blackstone's EU Treaties & Legislation* (Foster (ed)); *Cambridge Statutes, EU Treaties and Legislation* (Schütze (ed)); *Core EU Legislation* (Smith (ed)); *European Union Legislation* (Kenner (ed)); a copy of the EU Treaties published by the Office of Official Publications of the European Union. These materials can be underlined and highlighted, but not annotated.]

## PART A

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

### Question 1

Following agreement reached within the European Council in February on "a new settlement for the United Kingdom within the European Union", the "in/out referendum" is now set to take place on 23 June.

a) What is the European Council and what is the nature of the "settlement" reached?

**and:**

b) Discuss the likely/possible permutations which would follow:

- i) a UK-wide vote to remain
- ii) a UK-wide vote to leave
- iii) an overall UK vote to leave but a thumping majority in Scotland voting to remain.

### Question 2

"The European Union is a system based upon the rule of law.... In particular the Treaties established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions."

The Court of Justice first said this in 1986 and has repeated it consistently since. Yet is it not, as far as judicial protection of individuals is concerned, simply an empty boast? Have any improvements been made by the Lisbon Treaty?

### Question 3

Explain how the European Court of Justice developed and justified the principle of the primacy of European Community/Union law. Is it always the case the EU law is supreme? Have the courts in the United Kingdom fully accepted the ECJ view?

### Question 4

In 2013 the Parliament and Council adopted Directive 2013/12 on safety of inland waterways. *Inter alia* the directive requires that canals be maintained navigable and safe, prohibits the disposal of rubbish into canals and requires intentional fly tipping to be made a criminal offence. It also requires that canal lock gates comply with EC safety standard 3020. The directive was required to be implemented by 1 January 2016.

Distracted by the run-up to the May election, the Scottish government has done nothing to implement Directive 2013/12.

Last week Ian was on a narrowboat holiday on the Caledonian Canal. The canal is owned by Scottish Canals, a public body of the Scottish government. His narrowboat sustained significant damage to its hull, a result of striking a submerged metal girder which can be traced to Angus, a scrap metal merchant in Fort William who has taken to dumping unwanted scrap into the canal. Further along Ian sustains a serious injury to his arm when operating a lock gate at Banavie. The maintenance of the lock had been contracted out to Abhainn Ltd, a private company. Upon investigation it is shown that the gate in question does not comply with EC standard 3020.

- a) What action, if any, can the European Commission take in this situation?
- b) What action, and against whom, can Ian take by virtue of EU law?
- c) Can the Procurator Fiscal by virtue of Directive 2013/12 charge Angus with an offence of intentional fly tipping?

**END OF PART A**

## PART B

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

### Question 5

Analyse critically the legal issues which have arisen in Case C-333/14 *Scotch Whisky Assn v Lord Advocate and Advocate General for Scotland*, and what the outcome should in your view be. Early in submissions before the Outer House counsel for the Scottish government abandoned argument that it was a *Keck* case. Was this an unnecessary admission?

### Question 6

"The twin keys to a successful cartel are mutual trust amongst its members and ineffectual penalties should they be found out."

Discuss the measures adopted in EU competition law to erode this trust and to ensure cartels are not a costless exercise.

### Question 7

"Parallel trade is one of the principle mechanisms by which the benefits of Article 101 and 102 TFEU are passed on to the consumer. It is parallel traders operating in grey markets who make the internal market efficient."

Why and how is this so? Bearing in mind that the producer or supplier of goods may well wish to frustrate parallel traders, as a matter of EU law how far may he or she lawfully do so by means of:

- a) exclusive distribution agreements
- b) selective distribution agreements
- c) refusing to supply
- d) the exercise, licensing or assignation of an intellectual property right.

## Question 8

- a) Hans is a German citizen who has come to the UK to look for work. In his second week here he is involved in a minor road accident, riding his bicycle into a stationary motorcar. No damage was done but the driver of the motorcar, Nigel, is furious. Upon hearing Hans' accent Nigel demands to see his 'EC Residence Permit'. Told by Hans he has none, Nigel says he will report him to the police, who will deport him on grounds he is in the UK unlawfully.

Need Hans be concerned about Nigel's threat?

**and:**

- b) Hans has found a job in Edinburgh in a bank. Now settled, he hopes to bring his wife and 20 year old son to Scotland. His wife Lyudmila is a Russian citizen with qualification as a pharmacist from the university in St Petersburg which is recognised by the Hamburg *Apothekerkammer*, so enabling her to work as a pharmacist in Hamburg. She hopes to find like work in Scotland. A clerk at the German consulate has advised Hans that because she is not an EU citizen Lyudmila will have to secure a work permit from the Home Office before she is allowed to work (a time consuming process, the result by no means certain), and she will certainly not be able to work as a pharmacist as she hasn't any qualifications recognised by the General Pharmaceutical Council. Hans is also advised his son is unlikely to be admitted to the UK as he has a criminal record, a result of being caught up in the New Year's events at Cologne Central Station, convicted of *Landfriedensbruch* (breach of the peace) and sentenced to 3 months' imprisonment.

Is the clerk at the consulate right?

**END OF PART B**

**END OF PAPER**