



THE LAW SOCIETY OF SCOTLAND INTRA UK TRANSFER TEST

PAPER III EUROPEAN UNION LAW AND INSTITUTIONS

1 NOVEMBER 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

Candidates MUST answer at least ONE question from this part

Question 1

The UK prime minister Ms May has promised to table a 'Great Repeal Bill' designed to end the supremacy of EU law in the United Kingdom.

- a) Discuss the source of principle of the supremacy of EC/EU law, how it evolved, how it became part of UK law, and how it has been interpreted hitherto by the British courts.
- b) How ought the Great Repeal Bill, if it is cleanly and effectively to achieve its purpose, to be drafted?

Question 2

Discuss

- a) the role each of the Union institutions plays in the adoption of EU policy and EU legislation; and
- b) the nature of the differing types of legislation they can adopt, and the legal effects each produces.

Question 3

Discuss the purpose and operation of each of the following articles of the Treaty on the Functioning of the European Union:

- a) Article 263
- b) Article 267
- c) Article 277
- d) Articles 268 and 340, second paragraph.

Please avoid simply reproducing the texts of the articles that will earn no marks.

The Court of Justice asserts frequently that, taken together, these provisions "establish a complete system of legal remedies and procedures designed to confer on the judicature of the European Union jurisdiction to review the legality of acts of the institutions of the European Union". Do you agree?

Question 4

The European Commission has recently taken the view that the levels of nitrates used in fertilisers in Scottish farms, which go on to pollute surface runoff, far exceed those permitted under a number of EU agricultural regulations. In order to compel compliance with the regulations it intends to raise enforcement proceedings under Article 258 TFEU. Agricultural matters such as this are devolved competences under the Scotland Act 1998. In a recent speech given at NFU Scotland the first minister gave assurances that the government would not enforce the regulations because it believes them to be unlawful.

- a) Discuss the procedures the Commission must follow.
- b) What role does the Scottish government have to play in the proceedings?
- c) Can the alleged illegality of the regulations at issue be pled as a defence to the action?

- d) If the Commission is successful in the action and the Court grants the declaration sought, what is its legal force? In particular, what can the Commission or the Court of Justice do in order to compel compliance with it, and does it create any sort of enforceable right for a private individual?

END OF PART A

PART B

Candidates MUST answer at least ONE question from this part

Question 5

- a) "The prohibitions of, on the one hand, customs duties and charges having equivalent effect, and, on the other, a system of internal taxation which benefits domestic production, are mutually exclusive. So they must be, for different tests apply to each".

Discuss.

and:

- b) It is said that there are three principal judgments from the Court of Justice which have determined the meaning and scope of Article 34 TFEU:

- Procureur du Roi v Dassonville (1974)
- Rewe-Zentral v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon) (1979)
- Criminal proceedings against Keck & Mithouard (1993).

Discuss what each was about and how each has advanced our understanding of Article 34.

Question 6

Analyse critically the manner in and extent to which the exploitation of intellectual property, including its licensing, is constrained by EU free movement rules and competition law. Consider whether the correct balance has been achieved between the interests of the owners of intellectual property rights and the interests of competition.

Question 7

"The right of free movement of persons was originally tied very closely to economic activity. But over the years we have seen, in the words of Advocate-General Mazák, 'a process of emancipation of Community rights from their economic paradigm'. Discuss how this has come to pass, and how far a member state may now limit a Union citizen's right of free movement on the grounds he/she falls outwith the scope of the Treaties.

Question 8

"As regards HB's argument relating to application of the rule of reason in the present case, the Court would point out that the existence of such a rule in Community competition law is not accepted. An interpretation of Article [101](1) of the Treaty, such as suggested by HB, is moreover difficult to reconcile with the structure of the rules prescribed by Article [101].

Article [101] expressly provides, in its third paragraph, for the exemption of agreements that restrict competition where they satisfy a number of conditions.... It is only within the specific framework of that provision that the pro and anti-competitive aspects of a restriction may be weighed. Article [101](3) would lose much of its effectiveness if such an examination had already to be carried out under Article [101](1)."

- Case T-65/98 van den Bergh Foods Ltd v Commission (2003)

Do you agree with this observation from the General Court and its understanding of the "rule of reason"? Does the latter have any role to play in the interpretation of article 101(1) TFEU, and, if so, how does its use compare to article 101(3)?

END OF PART B

END OF PAPER