



Law Society
of Scotland

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER III
EUROPEAN UNION LAW AND INSTITUTIONS

9 May 2017
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

Mr David Davis, Secretary of State at the Department for Exiting the European Union, is worried his civil servants are pretty clueless as to the events which have led to 'Brexit', and the options now before the government. He therefore invites you to give a seminar at the Department addressing

- a) the background, run-up to and the result of the June 2016 referendum
- b) the reasons for, and consequences of, the judgment in *R (Miller) v Secretary of State for Exiting the European Union*, [2017] UKSC 5
- c) the purpose of the 'Great Repeal Bill' and how it ought best to be drafted.

What will you tell them? If you were to give the same seminar to the Scottish Government in Victoria Quay, would you moderate it in any way?

[Questions continued next page]

Question 2

In 2014 the *Højesteret* (Danish Supreme Court) heard an appeal in a dispute involving a Dane who claimed to have suffered discrimination at the hands of his (private) employer on account of his age. It sent a reference to the Court of Justice under Article 267 TFEU seeking clarification of the law. The Court responded in 2016 (Case C-441/11 *Dansk Industri*, EU:C:2016:278) saying, in effect, that age discrimination was prohibited by a directive (Directive 2000/78) but it also formed a general principle of EU law derived from the European Charter and so should be applied in a civil dispute between private persons.

On 6 December the *Højesteret* disposed of the case. It said:

The EU Court of Justice has jurisdiction to rule on questions concerning the interpretation of EU law under Article 267 TFEU. It is therefore for the EU Court of Justice to rule on whether a rule of EU law has direct effect and takes precedence over a conflicting national provision, including in disputes between individuals.

The question whether a rule of EU law can be given direct effect in Danish law, as required under EU law, turns first and foremost on the 1972 Law on accession by which Denmark acceded to the European Union [that is, the Danish equivalent of the European Communities Act 1972]....

A situation such as this, in which a general principle at treaty level under EU law is to have direct effect (thereby creating obligations) and be allowed to take precedence over conflicting Danish law in a dispute between individuals, without the principle having any basis in a specific treaty provision, is not foreseen in the Law on accession....

It follows that principles developed or established on the basis of the Charter have not been made directly effective in Denmark under the Law on accession. We find no basis for holding that the EU law principle prohibiting discrimination on grounds of age have been made directly effective in Denmark....

In summary, we accordingly find that the Law on accession does not provide the legal basis to allow the unwritten principle prohibiting discrimination on grounds of age to take precedence over the *Funktionærloven* [the relevant Danish labour law statute]. The *Højesteret* would be exceeding its powers as a court if it were to dis-apply that statute in this situation. As a result, Danish courts cannot do so.

What does this judgment tell us about;

- a) Article 267 TFEU?
- b) the application of directives by national courts?
- c) the the application of the primacy of EU law by national courts?

Question 3

- a) The European Commission has recently taken the view that lead levels in drinking water in Scotland far exceed those permitted under a number of EC/EU directives. In order to compel compliance it intends to raise enforcement proceedings under Article 258 TFEU. Environmental standards such as this are devolved competences under the Scotland Act 1998.
- i) Discuss the procedures the Commission must follow.
 - ii) What role does the Scottish government have to play in the proceedings?
 - iii) 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?

and:

- b) How do the following judgments of the Court of Justice add to our understanding of the manner in which judicial protection in EU law operates?
- i) Case 25/62 *Plaumann v EEC Commission* (1963)
 - ii) Case 11/83 *Piraiki-Patraiki v Commission* (1985)
 - iii) Case C-50/00P *Unión de Pequeños Agricultores v Council* (2002)
 - iv) Case C-583/11P *Inuit Tapiriit Kanatami v Parliament and Council* (2013).

Question 4

Discuss the development of the rules which govern the non-contractual liability of (a) the Union institutions and (b) the member states in the sphere of EU law. Has the Court of Justice got it about right?

END OF PART A

PART B

Candidates MUST answer at least ONE question from this part

Question 5

In his opinion in Case C-412/93 *Edouard Leclerc-Siplec v TF1 Publicité* (1995) Advocate-General Jacobs said:

'The importance of the '*Cassis de Dijon*' principle cannot be overstated: if a Member State were allowed to prevent the importation and sale of products lawfully manufactured in another Member State, simply because they were not made in the manner prescribed by the law of the importing State, there would be no such thing as a common market.'

a) Discuss how the judgment in *Cassis de Dijon* countered this danger, and what safeguards it left the member states.

and:

b) How, if at all, did the subsequent judgment in Cases C-267 & 268/91 *Criminal proceedings against Keck and Mithouard* (1993) modify *Cassis de Dijon*?

Question 6

Discuss critically the following concepts/cases/legislation and their importance for our understanding of EU competition law and/or how it operates.

- concerted practices
- block exemptions
- abuse of a dominant position
- Regulation 1/2003
- Case C-453/99 *Courage v Crehan* (2001).

[Questions continued next page]

Question 7

- a) Restaurants in Naples are famed for the quality of their pizza. Whether it is the flour and the water that go into the dough, the woodfires used, or simply the Neapolitan air, the pizza there is exquisite, and draws gustatory tourists from all over the world.

In order to maintain and protect the standards of Naples pizza, the *Comune di Napoli* has adopted a *decreto di legge* (byelaw) which requires that any chef employed by a restaurant within the city be a qualified *pizzaiolo* (pizza chef), the qualification obtained by successful completion of 4-week course at the local Istituto di Vera Pizza Napoletana.

The Gran Caffè Gambrinus in Naples has just taken on two new chefs, Michel and Claudia. Michel is French and a Michelin two-star chef from Paris, Claudia is Italian but she too has worked for several years in the kitchen of an upmarket restaurant in Paris. Because neither is a qualified *pizzaiolo/pizzaiola*, the *Comune* imposes a fine upon the Gran Caffè of €10,000 for breach of, and in accordance with, the *decreto di legge*.

Has the Gran Caffè any defence to the fine in EU law?

and:

b) In the picture postcard Cornish village of St Ives, the housing market is out of control. Locals find it impossible to purchase homes of any sort as they are priced out of the market by second home buyers from London: a quarter of homes are second homes, up 67% since 2001, injuring the economic life and any sense of the community. Following a local referendum on restricting second home ownership, the Town Council has adopted a byelaw which binds the housing department to limit planning permission for 'new build' housing to that reserved for people who live full time in St Ives or the surrounding area.

Is the byelaw compatible with EU law?

[Questions continued next page]

Question 8

Article 345 TFEU provides:

'The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.'

Discuss the manner in which article 345 has been interpreted and applied by the Court of Justice so as to immunise intellectual property rights from the Treaty provisions on (a) the free movement of goods and (b) competition.

END OF PART B

END OF PAPER