



THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER III
EUROPEAN UNION LAW AND INSTITUTIONS

8 May 2019
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.**

PART A

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

Question 1

Brexit has already engendered three important judgments from the Supreme Court and the European Court of Justice:

- *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5
- *Case C-621/18 Wightman v Secretary of State for Exiting the European Union*, EU:C:2018:999
- *Reference re the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64

Discuss how these judgments came about and what they tell us about EU and UK constitutional law and the Brexit procedure.

Question 2

a) Identify the meaning and application of the following principles of EU constitutional law:

- proportionality
- subsidiarity
- sincere cooperation.

and

b) Here are two recent statements from, respectively, Jacob Rees-Mogg MP and Mark Francois MP:

'If the United Kingdom is stuck in we must use the remaining powers we have to be difficult'.

'If you attempt to hold us in the European Union against the democratically expressed will of the British people, then in return, we will become a Trojan horse within the EU'.

This is taken to mean that, so long as the U.K. remains a member state, 'we' (presumably the British government, the British member of the Commission, and British MEPs) would, certainly should, do all they can to frustrate the business of the EU.

How far does the institutional machinery of the EU allow this to happen?

Question 3

Directive 2017/123 lays down health and safety rules for hospital wards throughout the European Union. The deadline for the implementation of the Directive was 31 December 2018.

The Directive includes the following provisions:

Article 6

All members of staff working in hospital wards where infectious diseases are being treated must be provided with protective masks.

Article 8

Any hospital employee suffering any harm because of a failure to comply with the obligation imposed by Article 6 shall be entitled to compensation. The Member States shall also ensure that employers responsible for a failure to comply with the requirements of this Directive will be liable to prosecution.

The U.K. has always been wary of EU health and safety legislation; in the government's view, health and safety of hospital employees is a matter best left to be regulated by the member states individually. But the U.K. was outvoted in the Council when Directive 2017/123 was adopted. The government would now like to challenge its legality.

Ireland implemented the Directive in December 2018. However, the Irish implementing legislation contains an exception which stated that only hospitals constructed after 1st January 2019 had an obligation to comply with the provisions of the Directive. Bernadette is a nurse who works in a private hospital in Galway built in 1970. She was not provided with a protective mask while working in a ward where patients suffering a vicious strain of influenza were being treated and she became seriously ill.

The government paralysed by Brexit, the U.K. took no steps to implement the Directive. Piotr works as a member of the cleaning staff in an NHS (public) hospital in Clydebank that does not provide protective masks for its employees. He became very ill after working without a protective mask in a ward treating infectious patients.

Please advise

- a) the U.K. government
- b) Bernadette, and
- c) Piotr

of their rights and possible remedies available to them under EU law.

Question 4

Discuss both of the following propositions:

'If the European Community still exists 50 or 100 years from now, historians will look back on *Van Gend en Loos* as the unique judicial contribution to the making of Europe'.

and

'The principle of the primacy of EU law is both unsubtle and deceptively simple. What is surprising is

- a) the Court of Justice conjured it from nothing, there is no basis for it in the Treaties, and
- b) national courts, especially national constitutional courts, have accepted it and applied it without question or protest.'

END OF PART A

PART B

Candidates MUST answer at least ONE question from this part

Question 5

With Brexit still unresolved, we continue to hear casual (and frequently ignorant) chat about the merits of the UK joining/adopting in its future relations with the EU

- free trade with regulatory harmonisation
- the customs union
- the internal market
- the Norway/EEA model.

Discuss

- a) what each of these means and how the Treaties/EU law provide for them in the purely EU context, and
- b) the advantages/burdens of the UK agreeing to them.

Question 6

Over the past year there have been strident calls from various quarters in Scotland:

- a) to subject the sale of wine to a substantial excise tax based upon the alcoholic strength the wine, so as to combat a growing propensity amongst the middle classes to wine drinking and so to alcohol-related diseases;
- b) for a ban on the sale of veal, being a meat the product of calves raised (briefly) in dark crates and fed solely on milk so as to produce an anaemic flesh; and
- c) for a ban on shopping and ferry services on Sunday in the Western Isles.

Can the Scottish Executive adopt legislation implementing these measures without infringing EU law? Identify the provisions of EU law at issue. If it was to act, what limitations might the Executive be required to observe?

Question 7

Consider these observations by two Advocates-General:

'[T]he concept of Union citizenship ... marks a process of emancipation of Community rights from their economic paradigm'.

- Advocate-General Mazák in Case C-158/07 *Förster v Hoofddirectie van de Informatie Beheer Groep* (2008)

'From the moment that the Member States decided to add, to existing concepts of nationality, a new and complementary status of 'citizen of the Union', it became impossible to regard such individuals as mere economic factors of production. Citizens are not 'resources' employed to produce goods and services, but individuals bound to a political community and protected by fundamental rights.'

- Advocate-General Sharpston in Case C-34/09 *Ruiz Zambrano v Office national de l'emploi* (2011)

What does Advocate-General Mazák mean by the 'economic paradigm' and the 'emancipation' from it? Have the considerations identified by Advocate-General Sharpston resulted in an increase in rights beyond those of the original economic paradigm?

Question 8

'The sole purpose of the definition of the relevant market, in the context of the application of Article 101(1) TFEU, is to determine whether the agreement in question is capable of affecting trade between Member States and has the object or effect of preventing, restricting or distorting competition within the internal market'.

- Case C-179/16 *Hoffmann-La Roche Ltd v Autorità Garante della Concorrenza e del Mercato* (2018)

Discuss the analysis that goes into definition of relevant market for purposes of EU competition law, drawing upon examples from the case law. Is it of the same central importance across the 'three pillars' of EU competition law, Article 101, Article 102 and the rules on merger control?

END of EXAMINATION