

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER III
EUROPEAN COMMUNITY LAW AND INSTITUTIONS

1 MARCH 2005

1000 – 1200

Please read the following instructions carefully

The examination is of two hours' duration. Candidates are required to answer **four** questions, two from Part A and two from Part B. 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 a copy of *Blackstone's EC legislation* (Foster(ed)) or a copy of *Basic Community Law* (Rudden and Wyatt (ed)) or a copy of the EC and EU Treaties published by the Office of Official Publications of the European Communities. These materials can be underlined and highlighted, but not annotated.

The Treaty of Amsterdam brought a change to the numeration of all Treaty Articles. Where Treaty Articles are cited in this paper, the Amsterdam numeration is used. Candidates are required to use the Amsterdam numeration when citing Treaty Articles in their answers.

PART A :

Candidates must answer two questions from this section.

1. (i) Why was it necessary for the European Court of Justice (ECJ) to develop case law concerning national remedies for breach of Community law? **AND** (ii) what principles established by the ECJ must national courts apply when they assess the adequacy of national remedies?

2. (i) In what circumstances will the ECJ decline to answer a question referred to it for a preliminary ruling? **AND** (ii) In what circumstances is a national court/tribunal obliged to make a reference to the ECJ even though that court/tribunal is *not* a court/tribunal ‘against whose decisions there is no judicial remedy under national law’?

3. One Advocate General at the ECJ said that there are circumstances where an individual or a company may be left without any judicial remedy against unlawful conduct on the part of the Community institutions. Is this an accurate description of the situation? Please justify your answer.

4. Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, requires Member States to “adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their effects”. Projects for extraction of minerals fall within the scope of the Directive. In 1947, a mining permission was granted to Aberdeen Open Cast Mining Company to operate a quarry near Stonehaven. This site has since been recognized to be environmentally extremely sensitive and is adjacent to areas of conservation under the Birds and Habitats Directive. The quarry was in operation until 1968. At the beginning of 2004 the company applied for permission to resume mining operations. The Scottish Ministers made a decision permitting the resumption of mining operations, they did not however consider it necessary to make an environmental impact assessment (EIA). The RSPB is of the view that resumption of operations under an old mining permission requires an EIA. Accordingly it wants to force the Scottish Ministers to revoke their decision in order to remedy the lack of an EIA. The RSPB is however unsure whether it can challenge the Scottish Ministers failure to require an EIA. Advise the RSPB.

PART B :

Candidates must answer two questions from this section.

5. John who studies in Belgium, has been denied the *minimex*, a minimum subsistence allowance paid in Belgium to Belgian students. Previous case law from the ECJ has established that the *minimex* was a social advantage within the meaning of Regulation 1612/68/EEC. However that Regulation concerns workers, and John is only a student. In addition Directive 93/96/EC provides that a host State may require migrant students to support themselves as a precondition for enjoying rights of residence. John is however of the view that he should receive this allowance as the ban constitutes discrimination on grounds of nationality prohibited by Article 12 of the EC Treaty. Is John correct? Please justify your answer.

6. In an effort to boost fruit producers' income, the Apple and Pear Council is trying to convince the Scottish Executive they should finance an advertising campaign designed to promote the health benefits of regular fruit consumption. The campaign would involve TV and radio messages, bill posters and free distribution of fruit at snack time in all State schools in Scotland. The Scottish Executive is keen to take up this idea, but has concerns that this may be in breach of Community law. You are a lawyer for the Apple and Pear Council and your job is to allay the fears of the Executive and demonstrate that no Community rules would be broken. How would you proceed?

7. What routes are open to a company which believes that a supplier is breaching EC competition rules?

8. Which forms of sex discrimination may be objectively justified and which forms can never be justified?