

THE LAW SOCIETY OF SCOTLAND  
INTRA UK TRANSFER TEST

PAPER III  
EUROPEAN COMMUNITY LAW AND  
INSTITUTIONS

6<sup>th</sup> November 2007

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**.

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 :**

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**Candidates MUST answer TWO questions from this section**

1. "The rule that EC directives cannot produce horizontal direct effects has been greatly undermined by the case law of the European Court of Justice."

Discuss with reference to the case law of the European Court of Justice.

2. What are the strengths and limitations of the way **EITHER** Article 226 EC **OR** Article 234 EC has worked in practice?

3. "Law making in the Community has become excessively complex, not just in the type of legislation adopted and different procedures but also that the chosen legal base for a provision may be subject of a legal challenge."

Discuss.

4. To what extent has the principle of subsidiarity solved the division of competences between the European Community and the Member States?

## **PART B :**

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### **Candidates MUST answer TWO questions from this section**

5. Following a recent spate of health scares in Spain involving over consumption of caffeine-fuelled energy soft drinks, the (fictitious) Spanish Food Standards Board (SFSB) has taken the following action.

First, it has drawn up new regulations stipulating the maximum caffeine content of energy drinks that may be sold on the Spanish market and, second, it has banned television advertising of all energy drinks in Spain. Blue Cow plc is a British firm that manufactures energy drinks. It has sold its products in the Spanish market for three years and has also recently expanded its advertising from magazines to Spanish television. Blue Cow's products contain levels of caffeine that exceed the new maximum levels stipulated by the SFSB. Blue Cow plc are unhappy about the recently introduced Spanish measures, especially because they have heard that the health problems associated with the energy drinks stem from over-consumption of the product only when mixed with alcohol.

Advise Blue Cow plc of the compatibility of the Spanish measures with EC rules regulating the free movement of goods.

6. Joana, a Spanish national, has been living in Scotland for the last few years. She works for a British engineering company and wishes to attend an engineering course in a local college in order to learn about new developments in the world of engineering. At enrolment she was asked to pay a fee which UK nationals were not required to do. She has also asked for a maintenance grant from the local authority but has been refused. In the meantime her Spanish boyfriend, Juan, and their child wish to move to Scotland to reside with her. As they are not married but are cohabitantes, Joana is worried that this will give rise to some difficulties. She is also worried about what rights (ie education and residence) her child will have when she arrives in Scotland.

Advise Joana, Juan and the child of their rights, if any, under EC law.

7. Scotbo is a British manufacturer of seamless line pipes which are sold worldwide for the transportation of oil. Scotbo is only one of two EC manufacturers of seamless line pipes but there are about twenty such manufacturers worldwide, with the majority based in the US. In 2002 Scotbo established a "Europe-Asia Club" which consisted of its own Chief Executive and the equivalent managers of the seven seamless line pipe manufacturers based in Asia. The "Europe-Asia Club" meets every six months in Australia to set sale prices. One of the fundamental

rules of the Club is that no undertaking will sell their product in the domestic market of any other Club member. At the most recent meeting of the Club, the members agreed that there should be no transfer of the technology outside the Club circle. They also agreed to begin talks on pooling their resources and technologies to develop a new product.

Advise Scotbo, and the Europe-Asia Club, as to whether their practices are compatible with EC competition law.

8. In an effort to reverse the long term decline in productivity, Simplex plc introduced a package of measures in 2006. One such measure was the introduction of incentive payments for all of its employees who attend four training weekends per annum. These incentive payments are in addition to the basic wage.

Jane and Thomas were both hired by Simplex plc in 2001. Jane is employed on a part-time basis and Thomas on a full-time basis. To date, Jane has never qualified for the incentive payments, whereas Thomas has received the payment each year.

Jane wishes to know if she has any potential remedy in EC law. Advise her.