



THE LAW SOCIETY OF SCOTLAND APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER III EUROPEAN COMMUNITY LAW AND INSTITUTIONS

4TH MARCH 2008

1000 – 1200

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.

APTITUDE TEST FOR EU QUALIFIED LAWYERS

PART A

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

1. “The development of general principles as a source of law represents one of the E Court’s most remarkable and inspired initiatives, not only filling in the gaps which emerged in the EC Treaty framework but also allowing the Court to draw on national law.”(Arnull)

Discuss.

2. “The rule that EC directives cannot produce horizontal direct effect has been greatly undermined by the case law of the European Court of Justice. In fact, it is questionable that the rule still exists today.”

Discuss.

3. Discuss critically the law making process in the European Community. How far do you agree with the opinion that the balance between the institutions in this process is about right?

4. “The European Parliament has come a long way from the Assembly envisaged in the Treaty of Rome”. Discuss with relevant illustrations.

PART B

Candidates MUST answer TWO questions from this section

5. Limpa is a Portuguese firm which manufactures domestic and industrial cleaning agents. It decides to expand and export its products to other EU Member States. However it runs into a number of difficulties when it attempts to access the UK market. First, the UK Goods Council has recently started to impose sanctions on all companies which market domestic cleaning agents containing the toxic substance, xepon, banned by UK law. All of Limpa's cleaning agents contain small amounts of xepon. Secondly, Limpa is disappointed to discover that doorstep promotion campaigns, a preferred method of sales promotion for their firm, are contrary to UK law.

Limpa wishes to know if any of these measures are contrary to European Community rules relating to the free movement of goods

6. Christian, a German national, is married to Becky, an American national. In June 2005 Christian and Becky moved from Germany to Scotland where Christian hoped to obtain employment as a landscape gardener. In the UK landscape gardeners are required to hold a diploma obtained after six months study at a British horticulture college. Christian holds a similar (but not identical) diploma from a German college. Christian has been informed that his German diploma is insufficient to enable him to work as a landscape gardener in Scotland.

Upon arriving in Scotland Christian registered with an unemployment agency for temporary work. Through the agency Christian has obtained a total of four weeks employment. Christian's failure to find a suitable employment placed a strain on his marriage and he and Becky separated. Christian is now co-habiting with Cosette, a French national who has been employed in Scotland for a number of years.

Christian and Becky have both been told that they have no right to reside in Scotland. Advise both parties whether their rights under EC law have been infringed.

7. Scottoy is a Scottish manufacturer of a new electronic game that can only be played on its own games console. It wishes to sell its products in mainland Europe. The Managing Director of Scottoy believes that the company can make quick profits by marketing the console to a limited number of outlets in Ireland, France and Belgium. Each outlet will be provided with a fairly small number of consoles and games so as to encourage consumer interact for the next "must have" toy.

The strategy is a great success and demand outstrips supplies from Scottoy. Although Scottoy has a stockpile of products at its warehouse in Glasgow, the Sales Director agrees to supply only two of its original outlets in France and Ireland with additional consoles. Furthermore, the supply is conditional that the chosen outlets agree not to supply any other outlet with either games or consoles.

As Scottoy's lawyer advise the Managing Director of any potential problems of European competition law arising from this strategy.

8. James, a UK citizen, is employed by Quickair, a domestic airline. It is company policy that employees, together with their "spouses or persons of the opposite sex with whom a worker has a stable relationship," receive free air miles as an added job "perk". In line with this policy Wingspan refuses to allow free air miles for James' longstanding male partner.

James claims that the refusal constitutes "discrimination based on sex" within the meaning of Article 141 TEC Treaty and the directives on equal treatment of men and women.

Advise James on his position under European law.