

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER III
EUROPEAN COMMUNITY LAW AND
INSTITUTIONS

4TH NOVEMBER 2008

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 :

Candidates MUST answer TWO questions from this section

1. Article 234 EC Treaty enables national courts to seek guidance from the European Court of Justice. Explain the system and discuss critically the advantages and disadvantages of this procedure.
2. Discuss the role and responsibility of the European Commission in the decision-making process established by the EC Treaty.
3. Explain and comment critically as to what is meant by horizontal and vertical direct effect of directives.
4. How far does EC law protect fundamental human rights of its citizens?

PART B :

Candidates MUST answer TWO questions from this section

5. Jim runs a delicatessen and a factory in Oban. He sells his products in Scotland and in other EU Member States. He has come across the following provisions in other Member States and seeks your advice as to their compatibility with Community law.

- (a) Portuguese law states that all sauces must indicate its country of origin and can only be sold in squeezable plastic bottles. Jim's whisky sauce comes in traditional glass bottles.
- (b) Irish legislation provides that can only be sold in 200 grammes packages. There also exists a ban on the sale of haggis, which is not made out of premises located in Ireland. Jim's haggis is his best-selling delicacy.
- (c) Jim would like to provide a once-a month door-to-door service in Dublin. Irish law states that such a service is permissible, but also requires traders to have a permanent place of business in Ireland.

Comment [s1]: A word missing?

6. Greta, a German national, married Jack, an American national in January 2007 and moved to Edinburgh where Greta took up a job as an interpreted with an international firm. After she has been working for five months, British immigration authorities inform Greta that her presence in the UK is viewed as unacceptable and that she must leave the country. She is told that this is because she has been convicted on several occasions in Spain of drug-related offences, and also because of her poor health.

Comment [s2]: Interpreter?

Jack spent his first three months of their stay in Scotland enjoying tourist attractions. He has recently taken up temporary work as a labourer, and is still looking for a permanent job. He is told by the Home Office that he must leave the UK with Greta. Expulsion orders are issued.

Advise Greta and Jack on their rights under Community law to challenge these orders. What difference, if any, would it make to their situation should Greta and Jack be in the process of divorcing each other?

7. Write a case note on C-32/93 *Webb v EMO Air Cargo (UK) Ltd* [1994] referring (briefly) to the facts but concentrating on how the case has contributed to the development of EC law on sex discrimination.
8. Zota manufactures two products in Portugal: widgets and pagets. In the whole of the EC, Zota has a 40% market share of the widget market and a 25% market share of the paget market. Zota has decided to restructure its distribution arrangements.

As regards the widgets, Zota wants to appoint one exclusive distributor, SuperD, for the whole of the EC and another, NA, to distribute in North America. Zota plans to forbid SuperD to export outside the EC and to forbid NA to export into the EC.

As regards the pagets, Zota wants to appoint different exclusive distributors in each Member State of the EC, except that SuperD will be free to distribute pagets to any customer who is buying widgets from it. Zota will undertake specially to supply SuperD with pagets for that purpose as required. Each distributor is not to engage in active sales into the territory of other distributors.

Each paget distributor will have to agree to take a minimum number of pagets every six months, inform Zota before it supplies a customer located outside its territory and keep lists of customers for Zota to inspect every six months. Zota will recommend resale prices to the distributors and will require the distributors to explain their reasons if they depart from the recommended price "in order for Zota to keep in touch with each distributor's marketing strategy."

Discuss the application of EC competition law to these arrangements.