

**THE LAW SOCIETY OF SCOTLAND  
APTITUDE TEST FOR EU QUALIFIED LAWYERS**

**PAPER III  
EUROPEAN COMMUNITY LAW AND INSTITUTIONS**

**3<sup>RD</sup> NOVEMBER 2009**

**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.

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**PARTA**

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

1. The European Parliament's powers have increased with every change made to the EC Treaties. Analyse the significance of those changes and discuss whether they have reduced the democratic deficit in the EC.

Discuss.

2. 'The *locus standi* of individual applicants seeking judicial review of EC legislative measures before the European Courts is far too restrictive.'

Discuss.

3. 'The *CILFIT* doctrine, which permits a national court to consider the answer to a Community law issue to be so clear that no Article 234 EC Treaty reference to the ECJ is required, has to be treated with care as it may endanger the consistent and uniform development of EC law.'

Discuss critically.

4. 'The principle of subsidiarity provides the solution to the demarcation of responsibilities between the EC and the Member States.'

Consider the validity of the above statement.

## **PART B**

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

5. Discuss critically the contribution of the European Court of Justice (ECJ) towards the attainment of an internal market in the context of the right of establishment and the provision of services granted by Articles 43 and 49 EC Treaty.
6. US Inc. is an American company which manufactures The Bimbi, a hi-fi system for cars. US Inc. markets the product through retail outlets in the UK, and Ireland. US Inc. has a 20% share of the total Community market for hi-fi systems for cars. The Bimbi is supplied only to retailers who enter into a standard form contract with US Inc. requiring them:
- (i) Not to sell directly or indirectly the product outside the territory. This refers to the geographical area of part of a member state, for example Scotland as part of the UK;
  - (ii) Not to sell the product from premises other than shops which specialize in the sale of hi-fi equipment;
  - (iii) To charge prices fixed by US Inc.
- Advise US Inc. on the compatibility of its standard form agreement with Article 81 EC Treaty.
7. Advise Scotprod in the following situations:
- (a) Scotprod exports apples to Germany. On arrival at the German border a consignment of apples was held for random inspection and a fee demanded. Of the consignment inspected half was found to have been sprayed with a chemical permitted in the UK but prohibited in Germany. The sprayed apples were returned to the UK and the remaining apples were certified fit to enter Germany.
  - (b) Scotprod has a trade mark "Scotbest" which it has registered in the UK and France. They have been supplying packed smoked salmon to

France for the last 5 years applying their trade mark to the products. They have now discovered that, due to the weakness of the pound, French retailers are importing from UK retailers and selling Scotprod salmon with the Scotbest trade mark in France undercutting Scotprod's prices in France.

8. Mario, an Italian citizen, is employed by Highland Railways, a company providing railway services in Scotland and the North of England. 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 rail travel on the company's trains as an added job perk. In line with this policy, Highland Railways refuses to allow free travel for Mario's longstanding male (same sex) partner.

Mario claims that the refusal constitutes "discrimination based on sex" within the meaning of Article 141 EC Treaty and the directives on equal treatment of men and women. Advise Mario on his position under European law.

**- END OF PAPER -**