

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

EUROPEAN LAW AND INSTITUTIONS

8 November 2023

1500 – 1630
(90 minutes)

Candidates are required to answer TWO out of four questions.

The paper is divided into two sections. Candidates will be required to answer ONE question from section A, and ONE question from section B. All four questions are of equal value.

SECTION A

1. "The EU's institutions, built up over almost seven decades, are not ideally suited to responding flexibly to challenges such as the single currency, migration, or foreign and security policy. The club remains vulnerable to the charges of operating with a 'democratic deficit' that alienates many voters."
 - a) Critically discuss this statement, and
 - b) Evaluate the roles of the European Commission, the European Parliament, and the Council of the European Union in relation to the democratic decision-making in the European Union.
2. "In the realm of European Union law, Article 263 TFEU stands as a pivotal provision that not only underscores the principles of accountability and legality but also serves as a cornerstone of the EU's judicial architecture."
 - a) Analyse this statement critically, and
 - b) Identify and describe the different categories of applicants who can bring an action under Article 263 TFEU. What are the key criteria that applicants must meet to have standing before the Court of Justice of the European Union (CJEU)?

SECTION B

3. "In European Union law, Article 157 TFEU is a beacon of progress and equality, serving as a testament to the EU's unwavering commitment to eliminating gender-based discrimination in the workplace and promoting the principle of equal pay for equal work. This provision embodies the essence of social justice and gender equality, fostering a legal framework that is both aspirational and transformative."
 - a) Critically evaluate this statement, and
 - b) Discuss how the CJEU has interpreted and applied Article 157 TFEU in cases related to equal pay and gender discrimination.
4. Company A, a prominent player in the tech industry, holds a market share of 80% in the market for a particular type of software used by businesses across the European Union. Over time, Company A has introduced a series of licensing agreements with its customers that contain several restrictive clauses. These clauses include:
 - i. An exclusivity clause that prevents customers from using competing software alongside Company A's product.
 - ii. A tying arrangement clause that requires customers to purchase a separate software product (Product B) from Company A if they want to continue using its dominant software.

- iii. A loyalty rebate clause that provides significant discounts on the licensing fees for Company A's software to customers who exclusively use its product for a specified period.

As a result of these clauses, several competitors in the software market have seen their market share diminish, and some have even been forced out of business. Customers who wish to use Company A's dominant software find it practically impossible to do so without incurring additional costs for Product B.

- a) Discuss whether Company A's licensing agreements could be in breach of EU Competition law, and
- b) Assess the potential defences (if any) that Company A may raise to justify the licensing agreements.

END OF QUESTION PAPER