

THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EUROPEAN UNION LAW

Thursday 10 February 2022

1300 – 1700
(Four hours)

Please read the following instructions carefully

The examination is of four hours' duration. Candidates are required to answer **FOUR** questions. **ONE** question must be answered from **Section A** and **ONE** question from **Section B**. The **third** and **fourth** questions can be answered from anywhere in the paper. 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.**

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EXAMINATIONS

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Section A

Candidates MUST answer at least ONE question from this section.

Question 1

Brexit gave rise to three important judgments, two from the Supreme Court and one from the European Court of Justice:

Miller I (*R (Miller and anor) v Secretary of State for Exiting the European Union*) (UKSC, 2017);

Wightman (Case C-621/18 *Andy Wightman and ors v Secretary of State for Exiting the European Union*) (ECJ, 2018); and

Cherry/Miller II (*Cherry and ors v Advocate General for Scotland; R (on the application of Miller) v The Prime Minister*) (UKSC, 2019).

How did each clarify our understanding of the constitutional rules regulating the UK's place within, and exit from, the European Union?

Question 2

In his Opinion in July in Case C-261/20 *Thelen Technopark Berlin v MN*, Advocate-General Szpunar said:

“It follows from the third paragraph of Article 288 TFEU that, unlike a regulation, a directive is binding upon each Member State to which it is addressed. Hence, it cannot of itself create obligations on the part of individuals and therefore, in principle, cannot be relied upon against them. This is referred to as the lack of direct horizontal effect of directives....

In this context, I wish to recall that the issue of the horizontal effect of directives must be distinguished from the issue of the direct horizontal effect of primary legislation and regulations. In the latter case, we say that provisions have horizontal effect where the scope of their application covers the behaviour of individuals (private persons). In other words, the issue is whether individuals are the direct addressees of the obligations or prohibitions arising from those provisions....

If the direct horizontal effect of directives is excluded, we face a different problem...”.

Discuss what that problem is, and the remedies which have been fashioned by the Court of Justice to solve it.

Question 3

Discuss the origins of the EU Charter of Fundamental Rights, its nature and force, its relationship with the European Convention on Human Rights, and the manner in which, and to whom, it is applied.

Question 4

Following the election of a surprisingly high number of devout Christians to the European Parliament in 2019, last month the Parliament and Council adopted Regulation 2022/12. It reads in part:

**Regulation 2022/12
on the promotion of rest on the Sabbath
as a time for prayer and contemplation**

**The EUROPEAN PARLIAMENT and the
COUNCIL OF THE EUROPEAN UNION**

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 153 thereof,

Having regard to a proposal from the Commission,

Whereas Europe is a continent formed and steeped in the history and traditions of the Christian Church, and its Christian heritage and ethos ought to be safeguarded and strengthened,

Whereas the multiplicity of religious and social rules and conventions in the various Member States on divine worship and days of rest distort significantly the operation of the internal market,

Whereas it is in addition desirable for social reasons that workers should have at least one day per week free of toil, and that day should be Sunday,

....

have adopted this regulation:

Article 1

The common day of divine worship and of rest from servile work throughout the European Union is hereby recognised and declared to be the seventh day of the week, that upon which God rested, that is Sunday.

Article 2

No business may be conducted, and offices and shops offering the sale of products or services to consumers, and home deliveries of same, are required to be closed for an uninterrupted period of 24 hours beginning at midnight on Saturday and lasting until midnight on Sunday.

Article 3

Religious masses and services shall be held between 8:00 hours and 12:00 hours on Sunday.

Citizens are enjoined to spend the rest of the day in prayer and contemplation.

....

Article 18

1. The teaching of Christianity and Christian ethics shall be a compulsory part of the curriculum, comprising at least 5 hours of teaching per week, in all non-Christian primary and secondary schools.

2. The detail of the religious curriculum shall be set out in an implementing Regulation adopted by the Commission.

...

Article 23

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Done at Strasbourg
24 January 2022

For the Parliament
The President
[Roberta Metsola]

For the Council
The President
[Roselyne Bachelot]

Immediately it was adopted Regulation 2022/12 met with some alarm, and there is urgent discussion in some quarters that it should be challenged, either in whole or in part.

- a) Discuss the various means by which, and by whom, the legality of Regulation 2022/12 could be challenged.
- b) What are the grounds which may be invoked in that challenge?

END OF SECTION A

Section B

Candidates MUST answer at least ONE question from this section.

Question 5

- a) A bill has been introduced by the *Freiheitliche Partei Österreichs* (FPÖ), a populist party founded in the 1950s by ex-Nazis, into the Parliament of *Land Niederösterreich* (Austria) to ban the sale of kosher or halal meat except to devout jews and muslims who can prove their devotion by means of religious tests administered by the Ministry of Religious Affairs.

Discuss if and how such a law, if adopted, would run foul of EU law.

and:

- b) In his opinion in Case C-412/93 *Edouard Leclerc-Siplec v TF1 Publicité* (1995) Advocate-General Jacobs said:

“The importance of the ‘*Cassis de Dijon*’ principle cannot be overstated: if a Member State were allowed to prevent the importation and sale of products lawfully manufactured in another Member State, simply because they were not made in the manner prescribed by the law of the importing State, there would be no such thing as a common market.”

Discuss how the judgment in *Cassis de Dijon* countered this danger, and what safeguards it left the member states.

Question 6

- a) Discuss the circumstances in which an EU member state may lawfully prevent the admission of and/or remove a citizen of another member state from its territory.

and

- b) Pierre works in a garage in Strasbourg as a motor mechanic, for which he is qualified by virtue of having obtained a *Brevet mécanicien automobile* (Certificate of automobile mechanic) following a two year apprenticeship with his present employer. He wishes to emigrate and work as a motor mechanic in Stuttgart, but discovers that that profession (of ‘*Fahrzeugmechaniker*’) is open only to a holder of the *Bescheinigung über motormechanische Fähigkeiten*, awarded by the *Land* (State) of Baden-Württemberg after a three year course of study in a German *Fachhochschule* of, amongst other things, engineering, chassis and engine design, physics, electronics, computer science, aerodynamics, fluid mechanics and human anatomy. Pierre of course does not have the *Bescheinigung*.

Advise Pierre if EU law can assist him.

Question 7

According to Mr Mario Monti, EC Commissioner for competition from 1999 to 2004, cartels are the 'cancerous sores' of the free market economy, whilst according to the late Mr Justice Scalia of the American Supreme Court they are 'the supreme evil of antitrust'.

How would you define a cartel, why are they so injurious to the EU, and how are they addressed in the Treaties? Consider whether there are in EU law adequate

- powers making their detection and prosecution likely,
- sanctions, and
- private enforcement through civil actions for damages

effectively to combat them.

Question 8

“Article 345 of the TFEU provides:

‘The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership’.

It marks a trade-off between the competition rules and the special privileges afforded the proprietors of intellectual property rights, made necessary in the interests of innovation.”

Do you agree that this trade-off is necessary? How does it work in practice in the EU?

END OF SECTION B

END OF QUESTION PAPER