

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**EUROPEAN UNION LAW**

**Thursday 9 February 2017**

**1330 – 1630  
(Three Hours)**

**Please read the following instructions carefully**

The examination is of three 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.**

[Candidates are permitted to have at hand during the examination one of: *Blackstone's EU Treaties & Legislation* (Foster (ed)); *Cambridge Statutes, EU Treaties and Legislation* (Schütze (ed)); *Core EU Legislation* (Smith (ed)); *European Union Legislation* (Kenner (ed)); a copy of the EU Treaties published by the Office of Official Publications of the European Union. These materials can be underlined and highlighted, but not annotated.]

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**Candidates MUST answer at least ONE question from this part.**

**SECTION A**

**Question 1**

On 24 January the Supreme Court gave its judgment in R (Miller and anor) v Secretary of State for Exiting the European Union. What events led to the judgment, and how has it clarified our understanding of the constitutional rules regulating the UK's, and Scotland's, place within the European Union?

**Question 2**

In Miller the Supreme Court said:

'So long as the United Kingdom is party to the EU Treaties, UK courts are obliged (i) to interpret EU Treaties, Regulations and Directives in accordance with decisions of the Court of Justice, (ii) to refer unclear points of EU law to the Court of Justice, and (iii) to interpret all domestic legislation, if at all possible, so as to comply with EU law. And (iv), so long as the United Kingdom is party to the EU Treaties, UK citizens are able to recover damages from the UK government in cases where a decision of one of the organs of the state based on a serious error of EU law has caused them loss.'

Discuss the sources of these four obligations and the manner in which they play out in the British courts. Given obligation (ii), should the Supreme Court not have referred the case to the Court of Justice?

**Question 3**

'Most modern, sophisticated democracies operate upon a basis of a legislative branch which enjoys popular legitimacy and an executive branch which is drawn from, and responsible to, the legislature. This is manifestly not the case in the institutional machinery of European Union, which puts its claim to be founded upon principles of democracy (Article 2 TEU) seriously in question.'

Discuss.

#### **Question 4**

The Court of Justice now says frequently:

'The European Union is based on the rule of law and the acts of its institutions are subject to review by the Court of their compatibility with EU law and, in particular, with the Treat[ies]... The Treaty on the Functioning of the European Union has established a complete system of legal remedies and procedures designed to confer on the judicature of the European Union jurisdiction to review the legality of acts of the institutions of the European Union.'

Analyse critically this proposition. Is it unduly complacent?

**END OF SECTION A**

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Candidates **MUST** answer at least ONE question from this part.

## **SECTION B**

### **Question 5**

In what circumstances may a member state lawfully derogate from Treaty rules on the free movement of goods, persons and services by invoking public policy considerations? How is it different from justifications pleaded upon the basis of 'mandatory requirements' (for goods) and 'imperative reasons in the public interest' (for persons and services)? Please use examples to illustrate your answer.

### **Question 6**

How, if at all, has the creation of the status of 'citizenship of the Union' added to the rights, privileges and obligations enjoyed by citizens (previously) of merely one of the member states? Can the rights of Union citizenship for those with a UK link (e.g., long-term British residents of another member state, long-term residence of citizens of other member states in the UK) possibly survive Brexit?

### **Question 7**

- a) The American Sherman Act prohibits contracts 'in restraint of trade'. The courts have interpreted this prohibition as applying only to contracts which restrain competition 'unreasonably', which is recognition that some restraints of competition are legitimate in, perhaps beneficial to, commercial contracts. The Americans call this a 'rule of reason'.

Is there an equivalent rule in Article 101 of the TFEU?

**and**

- b) In Article 101, when does an agreement or concerted practice between undertakings restrict competition 'by object', as opposed to 'by effect'? What different legal consequences apply?

### **Question 8**

'Hardcore cartel agreements and exploitation of market power represent nothing less than an assault on our open market economy. Indeed they have a greater adverse economic impact on society than do theft and fraud for they generally result in further detrimental effects on the economy. Therefore effectively to combat them they ought to be subject to the full panoply of administrative, criminal and civil sanctions.'

Consider whether the various means by which Article 101 and 102 TFEU are enforced satisfy this proposition, and whether any improvements in the system could be made.

**END OF SECTION B**

**END OF QUESTION PAPER**