



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EUROPEAN UNION LAW

Thursday 11 August 2016
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.]

SECTION A

Candidates MUST answer at least ONE question from this section

Question 1

Sketch the events which led to the 'Brexit' referendum on 23 June and the issues which dominated the public debate. The result across the UK was 52/48 voting to 'Leave', 'though 62/38 in Scotland and 56/44 in Northern Ireland to remain.

What happens now?

Question 2

Each of the following judgments of the Court of Justice/General Court adds to our understanding of the manner in which judicial protection in EU law operates. Write a note on any FIVE of them, discussing how they do so.

- a) 25/62 Plaumann & Co v EEC Commission (1963)
- b) C-106/89 Marleasing SA v La Comercial Internacional de Alimentación (1990)
- c) C-188/89 Foster v British Gas (1990)
- d) C-309/89 Codorníu SA v Council (1994)
- e) C-46 and 48/93 Brasserie du Pêcheur v Germany and R v Secretary of State for Transport, ex parte Factortame (No. 3) (1996)
- f) T-177/01 Jégo-Quééré & Cie v Commission (2002).

Question 3

Article 267 TFEU has two purposes: to ensure the uniform application of EU law and to make up for the limited access to judicial protection afforded natural and juridical persons by Article 263.

Explain how Article 267 does these things, and assess whether it does them well.

Question 4

Discuss the development, sources and methods of protection of fundamental rights in EU law. If the European Commission takes the view (as it has) that ongoing government interference in the work of the courts in Poland constitutes 'a systemic threat to the rule of law' there, is there anything the EU can do about it?

END OF SECTION A

SECTION B

Candidates MUST answer at least ONE question from this section

Question 5

Discuss the compatibility with EU law on free movement of goods with the following situations.

- a) Epoisse de Bourgogne is a French cheese from Burgundy. Owing to recent exposure on a BBC cookery show it has become quite popular in the UK. However it is exceptionally smelly, so much so that Lothian Regional Transport, owned and operated by the City of Edinburgh Council, has taken the exceptional step of banning its carriage on all their buses.

and:

- b) Ketchup is a sickly sweet table sauce made primarily from tomatoes. HJ Heinz of Pennsylvania produces a popular brand of it and markets it throughout Europe as Heinz Tomato Ketchup. However in Germany it cannot be sold as 'ketchup' (*Tomaten-Ketchup*) but only as 'tomato seasoning' (*Tomate-Würze*) as it contains insufficient tomato purée to be ketchup there.

and:

- c) Owing to an increase in incidents of 'air rage', Heathrow Airport Holdings Ltd, the successor to BAA, intends to ban the sale of alcoholic drink at any restaurant, bar or like premises within Heathrow airport. 'Duty free' sales will not be affected.

Question 6

The British government espouses two key planks in post-Brexit relations with the EU: continued access to the internal market, not least protection of the present privileges enjoyed by the city of London; and repatriation to the UK of control of immigration.

Are these two goals compatible? Can you design an acceptable outcome by which both can be achieved?

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,

to combat them effectively.

Question 8

Coca Cola is an American company which produces a popular carbonated soft drink which is sold worldwide. Coca Cola is very heavily promoted, tied frequently to international sporting events such as the Olympics, the World Cup and the European Cup.

Tesco is the largest supermarket chain in the UK, with 30% of the UK market. Sainsbury's is next, with 15%.

Coca Cola UK's research shows that in Tesco's shops in poorer areas (as measured by the Index of Multiple Deprivation (IMD)) there are significant sales of Tesco's own brand Cola, which sells at about 55% of the price of Coca Cola. In better off areas sales of Tesco Cola are negligible.

Coca Cola UK therefore enters into an agreement with Tesco whereby Tesco will not sell its own brand Cola at less than 90% of the Coca Cola price in defined high IMD areas, in return for which Coca Cola will lower below its list prices the price it charges Tesco for Coca Cola sold in those shops.

Does this conduct betray a breach of EU competition rules? If you have been a faithful buyer of Tesco Cola in a high IMD area and now discover you have been paying inflated prices for it, is there anything you can do about it?

END OF SECTION B

END OF PAPER