

# THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

## EUROPEAN UNION LAW

Thursday 9 February 2023

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.**

### **Section A**

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

#### **Question 1**

- a) Outline the main points of Mr Johnson's 'oven ready deal' which he and Lord Frost negotiated with the EU a week before exit day.
- b) Mr Jacob Rees-Mogg, ex-minister for Brexit Opportunities, offering you too much money to refuse, invites you to draft a speech he intends to give trumpeting the many successes and opportunities Brexit has produced. What will you write?
- c) What will happen if/when the Retained EU Law (Revocation and Reform) Bill now before Parliament becomes law?

#### **Question 2**

"The member states have limited their sovereign rights, albeit within limited fields, and have created a body of law which binds both nationals and themselves. A consequence is that national courts must refrain from applying provisions of national law which conflict with EU law. However the concept of supremacy may be inadequate to capture and express the diversity of the relationship between EU law and national law."

Discuss how, and by what authority, the European Court of Justice developed the concept of the primacy of EU law. Is it always the case that EU law is supreme?

#### **Question 3**

"The case law surrounding the standing of individuals for the purposes of Article 263 TFEU sits ill with the frequent assertion by the Court of Justice that the Union system is one based upon rule of law. There is a very real chance of inconsistency with the European Convention on Human Rights, should it ever come to the test."

Do you find this an accurate assessment? What does the European Convention have to do with EU law?

#### **Question 4**

"Harmonisation of law is part of the Union toolbox but it requires a high degree of transfer of sovereignty from the member states to the Union. It has thus proved a difficult path to prosecute. Far more supple is the Court's development of the principles of mutual recognition, for they achieve the same end as harmonisation yet permit the continuation of diversity and member state autonomy."

Discuss.

**END OF SECTION A**

### **Section B**

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

#### **Question 5**

- a) Male chicks are of little economic value to poultry farmers, for they cannot lay eggs, and they are stringier and less meaty than their sisters. It is possible to determine the sex of an unhatched chick by piercing each egg to take and then test a sample from the albumen, but it is a process which, under present technology, cannot be carried out on an industrial scale.

As a result, every year around the world about 7 billion live male chicks are systematically shredded in industrial macerators, gassed, electrocuted or suffocated to death. In the EU this is expressly tolerated under Council Regulation 1099/2009, so long as death is instantaneous and the bird less than 72 hours old.

France proposes to ban use of all these methods of disposing of chicks and to ban the import of eggs from countries where the practices are permitted.

Can it do so without infringing EU law?

**and:**

- b) What were the issues of EU law raised in Case C-333/14 *Scotch Whisky Association v Lord Advocate and Advocate General for Scotland* (2015), and how were they resolved by the Court of Justice?

#### **Question 6**

- a) A practice has developed recently amongst 'Eco-zealots' of deflating the tyres of parked 'gas guzzling' cars. No further damage is normally done. The practice started in Germany, and has now spread elsewhere.

Hans is a German who has flown to Paris to attend a friend's wedding. He is stopped at the airport in a spot check by French immigration officials who discover he has two convictions for *Sachbeschädigung* (criminal damage) under the Criminal Code for tyre deflating in an upmarket area of Hamburg. In both cases he was given a one week sentence, suspended. He is told 'We don't need troublemakers in France' and is refused entry.

**and:**

- b) 'The concept of Union citizenship marks a process of emancipation of Community rights from their economic paradigm'.

- Advocate-General Mazák, in Case C-158/07 *Förster* (2008)

What does Advocate-General Mazák mean here, and what results have flowed from it?

**Question 7**

In 1871 an Ontario judge was able to say 'a contract to charge the same price is not an improper restraint of trade. It is merely a convenient mode of arranging two concerns which might otherwise ruin each other' (*Ontario Salt v Merchants Salt* (1871)), which cleaved tightly to the common law liberalism of the day and the overriding fealty given to freedom of contract.

How far is this freedom limited by Article 101 of the TFEU? How does EU law address what the common law considered to be a 'reasonable' restraint of trade? Do you think the limitations justified?

**Question 8**

A primary element of any competition law is the control of the market power of large undertakings. How does EU competition law address the issues? How do the rules apply where significant market power is shared amongst a small number of firms, and how do they apply to publicly owned undertakings which provide public services?

**END OF SECTION B**

**END OF QUESTION PAPER**