

# THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

## EUROPEAN UNION LAW

Thursday 8 February 2018

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**

The European Union (Withdrawal) Bill, at present being debated in the House of Lords, provides, *inter alia*:

**1. Repeal of the European Communities Act 1972**

The European Communities Act 1972 is repealed on exit day.

**2. Saving for EU-derived domestic legislation**

- 1) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.
- 2) In this section “EU-derived domestic legislation” means any enactment so far as—
  - a. made under section 2(2) of the European Communities Act 1972,
  - b. passed or made, or operating, for a purpose mentioned in section (2) (a) or (b) of that Act.

**3. Incorporation of direct EU legislation**

- 1) Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day.
- 2) In this Act “direct EU legislation” means any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day.

**4. Saving for rights etc. under section 2(1) of the ECA**

Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972 continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Assuming the Bill passes Parliament as presented and the UK leaves the Union without agreeing terms on Brexit, describe the substance and application of EU law in the UK immediately after exit day.

## Question 2

In Case C-550/09 *Criminal proceedings against E and F* (2010) the Court of Justice said:

"[T]he 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 Treaties and the general principles of law. 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".

How does this 'complete system of legal remedies' work? Is it in your view an effective system?

## Question 3

Article 13 of the Treaty on European Union provides:

1. The Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission,
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.

Describe the role played by each of the four 'political institutions' (the first four listed) in the adoption of Union legislation. What does this duty of 'mutual sincere cooperation' entail?

*[Please turn over]*

#### Question 4

In a judgment last month (Case C-616/16 *Presidenza del Consiglio dei Ministri v Pantuso and ors*) the Court of Justice said:

"[T]he Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts....

[E]ven in the absence of specific national measures to transpose a directive, it is for the national court to interpret the national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, which requires that national court to do whatever lies within its jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by that law....

[I]f the result prescribed by that directive cannot be achieved by way of interpretation, ... EU law requires the Member States to make good damage caused to individuals through failure to transpose that directive, provided that the necessary conditions are fulfilled."

What does this passage tell us about the enforcement of directives?

**END OF SECTION A**

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

**SECTION B**

**Question 5**

John, Paul, George and Ringo are friends from Liverpool, each of whom has travelled to Germany for various purposes. The following events unfold.

Ringo has worked for some months now as a session drummer in a Hamburg nightclub. He is an avid football fan, and last weekend watched in his local pub, crestfallen, as Liverpool was knocked out of the FA Cup by West Bromwich Albion. As a result Ringo got very drunk and vented his displeasure with a display of goose-stepping and Nazi salutes to passers-by on the Reeperbahn. He was arrested (making the Nazi salute being a criminal offence in Germany) and, using powers he enjoys under public order legislation, the city's chief of police ordered Ringo's immediate deportation.

George is a Scientologist. Upon arrival at Frankfurt airport he was asked by an immigration official the purpose of his stay. He replied that he intended to live in a tent in the Alps, read the works of L Ron Hubbard (Scientology's founder) extensively, and find a job 'when my karma is right'. George was refused entry because Germany disapproves of Scientology and so bars admission into the country of all Scientologists, and because the immigration official is satisfied that George is an idle layabout with no intention of working.

John is a keen botanist and gardener. On a tour of the *Botanischer Garten* in Berlin, a garden covering 100+ acres and one of the most important scientifically in the world, he is delighted to spot a notice advertising research job vacancies. He straightaway asks for an application form, but is told that, as the *Botanischer Garten* is owned by *Land Berlin* (the federal state of Berlin) its employees are all civil servants, and in Germany civil service posts are reserved to German citizens. He is therefore ineligible to apply.

Paul is a solicitor and has worked in a Munich law firm for some years. He is homosexual, and last month was married in Edinburgh to Biff, an American citizen who has lived and worked in Edinburgh for over ten years now. As Paul and Biff intend to live in Munich, Biff applies to the Munich *Auslanderamt* (aliens' office) for a residence permit as the spouse of a Union citizen and a long-term resident of the UK, but is told that Bavaria is a deeply Catholic part of Germany, neither the Bible nor German law will countenance his 'marriage' to Paul, and as he is not an EU citizen his application is turned down.

Advise Ringo, George, John and Biff as to whether they have any redress in EU law.

[Please turn over]

### Question 6

In an explanatory communiqué to the Council and Parliament following the *Keck* judgment (Cases C-267 and 268/91 *Criminal proceedings against Keck and Mithouard* (1993)), the Commission said that 'with *Keck*, the Court of Justice has completed its case law on the free movement of goods'.

What is the case law to which the Commission refers, and how has *Keck* completed it?

### Question 7

Discuss critically any FOUR of the following concepts/cases/legislation and their importance for our understanding of Article 101 TFEU and how it works.

- a) concerted practices
- b) block exemption
- c) the Commission's leniency programme
- d) Case C-309/99 *Wouters v Algemene Raad van de Nederlandse Orde van Advokaten* (2002)
- e) Directive 2014/104.

### Question 8

Discuss the development, substantive rules and enforcement of ONE of the European Union's

- a) social policy
- b) environmental policy
- c) (external) commercial policy.

**END OF SECTION B**

**END OF QUESTION PAPER**