



THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

EUROPEAN LAW AND INSTITUTIONS

12 May 2021

1500 – 1630
(90 minutes)

Candidates are required to answer TWO out of four questions.

The paper is divided into two sections, reflecting heads 1-5 and 6-8 of the syllabus. Candidates will be required to answer ONE question from section A, and ONE question from section B. All four questions are of equal value.

SECTION A

Question 1

National compliance with the obligations placed upon member states was initially to be secured by means of (what are now) Articles 258 and 259 TFEU. These were in themselves quite remarkable devices to be found in an international treaty. But the Court of Justice went further in Case 26/62 *van Gend en Loos* (1963), holding

“[t]he vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted...to the diligence of the Commission and of the Member States”.

How do these two-separate means of enforcement operate? Are there circumstances in which one or the other is ineffective, or one more effective than the other?

Question 2

Foie gras is an expensive delicacy made from geese or Muscovy duck livers, unnaturally distended by forced feeding (*gavage*) with corn boiled with fat. In France, its production and sale is regulated by French law (the *Code rural et de la pêche maritime*), which provides that “*foie gras* forms part of the cultural and gastronomic patrimony of France, protected by French law”. France and Hungary are the primary producers of *foie gras*. In many member states its production is banned, though its sale and consumption is not.

Last month the European Parliament and Council adopted Regulation 123/2021, banning the production of *foie gras*. The regulation drew upon Article 114 of the TFEU for its legal base.

An association representing the interests of French *foie gras* producers, the *Comité Interprofessionnel des Palmipèdes à Foie Gras* (CIFOG) wishes to challenge the legality of Regulation 123/2021. Advise CIFOG of the various means at its disposal for doing so, and the grounds it might argue to achieve that end. It also wonders whether, should it be successful, its membership can claim damages for loss suffered during the operation of Regulation 123/2021.

END OF SECTION A

SECTION B

Question 3

It is said that the extensive case law of the Court of Justice on Article 34 TFEU can be boiled down to three fundamental judgments:

- a) Case 8/74 *Procureur du Roi v Dassonville* (1974)
- b) Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* (Cassis de Dijon) (1979)
- c) Cases C-267 & 268/91 *Criminal proceeding against Keck & Mithouard* (1993)

How does each advance our understanding of Article 34? How did Case C-333/14 *Scotch Whisky Association and ors v The Lord Advocate and The Advocate General for Scotland* (2015) fit within the matrix?

Question 4

What changes occurred to competition law in the UK on 1 January this year, upon the expiry of the 'transition period' and the UK's effective exit from the EU?

END OF SECTION B

END OF QUESTION PAPER