



THE LAW SOCIETY OF SCOTLAND  
QUALIFIED LAWYERS ASSESSMENT

**EUROPEAN LAW AND INSTITUTIONS**

3 November 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.

## **SECTION A**

### **Question 1**

Last month the Polish Constitutional Tribunal gave the following judgment:

“1. The first and second paragraphs of Article 1, in conjunction with Article 4(3) TEU, in so far as the European Union, established by equal and sovereign States, creating an 'ever closer union among the peoples of Europe', whose integration, taking place on the basis of Union law and through its interpretation by the Court of Justice of the European Union, is reaching a 'new stage', in which:

- a) the bodies of the European Union operate outside the limits of the competences delegated by the Republic of Poland in the Treaties,
- b) the Constitution is not the supreme law of the Republic of Poland, having priority of validity and application,

is inconsistent with Article 2, Article 8 and Article 90(1) of the Constitution of the Republic of Poland.

2. The second subparagraph of Article 19(1) of the Treaty on European Union insofar as, in order to ensure effective legal protection in the fields covered by Union law, it confers on national courts (ordinary courts, administrative courts, military courts and the Supreme Court) the power to:

- a) omit the provisions of the Constitution in the process of adjudicating
- b) adjudicate on the basis of non-binding provisions, repealed by the Sejm [Parliament] or declared unconstitutional by the Constitutional Tribunal,

is inconsistent with Article 2, Article 7 and Article 8(1), Article 90(1), Article 178(1) and Article 190(1) of the Constitution.”

Why has this judgment set the cat amongst the pigeons? Is the Constitutional Tribunal the first national court to make the point? What can the EU do about it?

### **Question 2**

“It must be emphasised that the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty. In particular ... the Treaty established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions.”

So said the Court of Justice in Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* (1986). Discuss *critically* whether you agree that the Treaties provide a complete system of legal remedies for the judicial protection of individual rights against measure adopted by the Union institutions; that could, say, withstand scrutiny by the European Court of Human Rights.

**END OF SECTION A**

## **SECTION B**

### **Question 3**

Porage/porridge is a nutritious food staple dating from the paleolithic period, more recently made from oat flour and consumed in Scotland since the Middle Ages, normally served hot for breakfast in wintertime. It is consumed in England though less widely. It is popular in various local forms across much of Europe.

Porage marketed in the UK comes from four principal producers:

- Scott's Porage Oats Ltd, of Edinburgh
- Quaker Oats Ltd, based in Chicago (USA) but marketing in the UK through a wholly owned subsidiary in Leicester (England)
- Weetabix Ltd, which produces Ready Brek, in Kettering (England)
- Flahavan's CT, of Kilmacthomas, Co Waterford (Ireland).

Amongst them they account for around 85 percent of the UK porage market, enjoying roughly equal market shares; the remaining 15 percent goes to small independent wholefood shop suppliers. Flahavan's enjoys an 80 percent market share in Ireland, both North and South, on its own. Just recently Waitrose in the UK has begun to stock an organic porage produced by Fermes d'Avoine SA of Liocourt (France), and assisted by an extensive marketing campaign its popularity amongst the well-heeled is climbing significantly.

The sales managers of Scott's, Quaker Oats, Weetabix and Flahavan's bumped into each other at the International Oatfest annual conference in Geneva. After sitting through several boring lectures on gluten-related disorders of the gut, they sneaked away and found a lakeside pub. After some drink was taken, the conversation turned to complaining about the difficulties of maintaining, let alone increasing, profits in the face of Brexit and the threat they all faced from the growing success in the UK market of Fermes d'Avoine. They therefore discussed a scheme to consolidate their respective market shares, as follows:

- a) Flahavan's would cease selling in Britain and the other three would withdraw from the Irish markets. This was the likely course for Scott's, Quaker Oats and Weetabix anyway, for the Northern Ireland Protocol made it increasingly difficult for British-produced foodstuffs to enter the Northern Irish market; and
- b) Each would agree to offer to their distributors, wholesalers and retailers a 5 percent discount in return for a promise not to stock or sell Fermes d'Avoine porage.

Scott's, Quaker Oats and Flahavan's agreed enthusiastically to the scheme. The Weetabix manageress listened intently throughout, but in the end felt the arrangement was somehow improper, so said she could not agree to it.

What is the nature of the infringements, if any, and by whom, of EU and/or UK competition law? If there are infringements, what can be done, and by whom, to pursue them?

#### **Question 4**

The Treaties provide for the 'four freedoms' - the free movement of goods, persons, services and capital - each in very similar terms. But as the EFTA Court has observed, 'there are fundamental differences distinguishing the labour market on the one hand from goods, services and capital markets on the other'; Case E-8/00 *Landsorganisasjonen i Norge v Kommunenes Sentralforbund* (2002).

Discuss how the rules on free movement of persons are similar to the other three, and how, because of their 'fundamental differences', they are different.

**END OF SECTION B**

**END OF QUESTION PAPER**