

THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EUROPEAN UNION LAW

Thursday 28 July 2022

1300 – 1700
(Four 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.**

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EXAMINATIONS**

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Section A

Candidates MUST answer at least ONE question from this part.

Question 1

Critically discuss the following observations:

“The principle of direct effect plays a crucially important role in the protection of individuals rights in EU law. Without it, there would simply be no effective EU legal order. The remarkable thing is that there is no authority for it in the Treaties, the Court simply made it up – yet it is an obligation dutifully discharged by national courts across the Union. Now, given the constitutional difficulties it encounters with directives, it is time for the Court to take the final plunge and find that that they can produce horizontal direct effect.”

Question 2

The European Commission is very concerned with recent developments in Poland touching upon the Polish judiciary, and wishes to take action to deter Poland from its present course.

- a) What is the Commission's concern? Given the EU principle of the judicial autonomy of the member states, what business is it of the Commission, or of the EU, how Poland arranges and administers its courts?

and:

- b) What tools do the Treaties afford the Commission, and the Union, to pursue action against Poland, and how effective are they?

Question 3

Describe and critically discuss the sources, role and operation of the general principles of EU law, as they apply to the conduct of both the Union institutions and the member states, in the EU legal order.

Question 4

The dominant EPP group in the European Parliament counts a high number of devout Christians amongst its number. As a result of an EPP initiative, last month the Parliament and Council adopt Regulation 2022/666, which reads in part:

**Regulation 2022/666
on the promotion of rest on the Sabbath as a time for prayer and contemplation**

The European Parliament and the Council of the European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 153 thereof,

Having regard to a proposal from the Commission,

Whereas Europe is a Christian continent and its Christian ethos and traditions ought to be safeguarded and strengthened,

Whereas the multiplicity of religious and social rules and conventions in the various Member States on divine worship and days of rest distort significantly the operation of the internal market,

Whereas it is desirable for social reasons that workers should have at least one day per week free of toil, and that day should be Sunday,

...

have adopted this regulation:

Article 1

The common day of divine worship and of rest from servile work throughout the European Union is hereby recognised and declared to be the seventh day of the week, that upon which God rested, that is Sunday.

Article 2

No business may be conducted, and offices and shops offering the sale of products or services to consumers, and home deliveries of same, are required to be closed for an uninterrupted period of 24 hours beginning at midnight on Saturday and lasting until midnight on Sunday.

Article 3

Religious masses and services shall be held between 8:00 hours and 12:00 hours on Sunday.

Citizens are enjoined to spend the rest of the day in prayer and contemplation.

...

Article 18

1. The teaching of Christianity and Christian ethics shall be a compulsory part of the curriculum, comprising at least 5 hours of teaching per week, in all non-Christian primary and secondary schools.
2. The detail of the religious curriculum shall be set out in an implementing Regulation adopted by the Commission.

...

Article 23

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Immediately it is adopted Regulation 2022/666 meets with some consternation, and there are mutterings in various circles that it should be challenged, either in whole or in part.

- a) Discuss the various means by which, and by whom, the legality of Regulation 2022/666 may be challenged.
- b) What are the grounds which may be invoked in that challenge? What is the likelihood of success?

END OF SECTION A

Section B

Candidates MUST answer at least ONE question from this part.

Question 5

In 2001 the Parliament and Council adopted Directive 2001/37 on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco products. The directive was adopted upon a Treaty base of Article 95 EC (now Article 114 TFEU) in order “to eliminate the still substantial differences between the Member States' laws, regulations and administrative provisions on the presentation and sale of tobacco products which impede the functioning of the internal market”. Directive 2001/37 was to be implemented by the end of 2004 at the latest.

Article 5 of Directive 2001/37 provides:

<p style="text-align: center;"><i>Article 5</i> Labelling</p> <p>1. Each unit packet of tobacco products placed on the market, except for tobacco for oral use and other smokeless tobacco products, must carry the following warning:</p> <p style="padding-left: 40px;">“Smoking seriously harms you and others around you”.</p> <p style="padding-left: 40px;">That warning shall be printed on the other most visible surface of the unit packet, and on any outside packaging, used in the retail sale of the product.</p> <p style="padding-left: 40px;">...</p> <p>6. The text of warnings required pursuant to paragraph 1 shall be:</p> <p style="padding-left: 40px;">....</p> <p style="padding-left: 40px;">(c) in the official language or languages of the Member State where the product is placed on the market.</p>

Ireland implemented the directive by means of an amendment to the Public Health Act, 1984. A new section 70 introduced in 2004 provides:

<p>s. 70: - The following warning, in both the Irish and the English languages, shall be affixed to each unit packet of tobacco products placed on the market on the most visible surface of the packet:</p> <p style="padding-left: 40px;">“Déanann caitheamh tobac díobháil thromchúiseach duit agus do na daoine móirthimpeall ort”</p> <p style="padding-left: 40px;">“Smoking seriously harms you and others around you”.</p>

According to the Irish constitution (Article 8), Irish is the national language and the first official language of the State, English recognised as a second official language.

Siobhán owns and operates a newsagent/tobacconist shop in Dundalk near the border with Northern Ireland. To take advantage of the strength of the euro, she imports her tobacco supplies from Northern Ireland. The packets of cigarettes she sells bear the legend “Smoking seriously harms you and others around you” (in compliance with UK

legislation), but there is no Irish warning on the packets. On inspection of her shop by Co Louth trading standards officials, Siobhán is found to be selling cigarettes unlawfully (for breach of section 70 of the Public Health Act), her tobacco supplies are confiscated and destroyed in accordance with the Act, and she is charged before Dundalk Circuit Court with an offence under the Act.

In her defence Siobhán argues

1. Article 5(6) of Directive 2001/37 is unlawful in and insofar as it requires a bilingual health warning on tobacco products, especially in a member state in which few people speak one of the official languages and virtually everyone speaks the other;
 2. In requiring the Irish language health warning on tobacco products, section 70 of the Public Health Act, 1984 constitutes a breach of EU law; and
 3. She is therefore entitled to an acquittal and damages from Co Louth trading standards for the loss she has suffered as a result of the confiscation and destruction of her tobacco supplies.
-
- a) How ought the Circuit Court to approach and deal with Siobhán's argument in (1)?
 - b) Discuss the issues the Court must consider in dealing with (2).
 - c) If she is acquitted, is Siobhán likely to succeed in her claim for damages under (3)?

Question 6

- a) Alarmed at the number of British citizens living and working in Ireland, the likelihood of more to come fleeing the economic downturn in the United Kingdom, and at the large number of immigrants generally, the *Taoiseach* (prime minister) has adopted as a mantra “Irish jobs for Irish workers” and espouses it frequently.

As a matter of EU law, how far and in what manner can the Irish government secure and restrict employment to Irish citizens to the exclusion of (a) British citizens and (b) other EU citizens?

and:

- b) Seamus works in a garage in Galway as a motor mechanic, for which he is qualified by virtue of having obtained an NFQ (Irish National Framework of Qualifications) Diploma in Light Vehicle Maintenance and Repair and completed a two year apprenticeship with his present employer. He wishes to emigrate to and work as a motor mechanic in Hamburg, but discovers that that profession (of ‘*Fahrzeugmechaniker*’) is open only to a holder of the *Bescheinigung über motormechanische Fähigkeiten*, awarded after a three year course of study of, amongst other things, engineering, chassis and engine design, physics, electronics, computer science, aerodynamics, fluid mechanics and human anatomy. Seamus of course does not have the *Bescheinigung*.

Advise him if EU law can assist him.

Question 7

- a) “Article 101(2) of the TFEU provides simply that ‘Any agreements or decisions prohibited pursuant to this Article shall be automatically void’, with no further detail as to what exactly this is to mean. This makes enforcement by national authorities of Article 101 complex and unnecessarily difficult.”

Discuss the enforcement by national authorities of Article 101 in light of this observation.

and:

- b) Discuss the changes to competition law in the United Kingdom which have been wrought by Brexit.

Question 8

Carbon Dioxide (CO₂) is used in wine fermentation, by the drinks industry to put 'fizz' into beer and soft drinks, and to deliver keg beer in pubs. It is also used in fresh meat and salad packaging, as it delays deterioration of the product within airtight packaging, and as a refrigerant, in fire extinguishers, and, being stable and inflammable, in inflating life rafts, life jackets and the like.

Industrial CO₂ is produced primarily (90 percent of production) by a steam methane reforming process of ammonia as a by-product of fertiliser production. As demand for fertiliser peaks in winter, producers often shut down during the summer for maintenance work.

With demand for CO₂ rising in the summer, there has recently arisen a serious shortage of supply.

In the three Baltic states there are three fertiliser producers, now all offline for maintenance work. This traditionally causes no problems for CO₂ buyers, for plentiful supply is normally available from Russian producers. However with EU sanctions against Russia, that source of supply has disappeared.

The drinks and food industries in the Baltic states therefore face a 'desperate' shortage of CO₂ in the market, and have pleaded with the fertiliser producers to re-start production in order to supply the market. Each has refused.

Can EU competition law be used as a means of compelling the fertiliser producers to act?

END OF SECTION B

END OF QUESTION PAPER