



## THE LAW SOCIETY OF SCOTLAND INTRA UK TRANSFER TEST

### PAPER III EUROPEAN UNION LAW AND INSTITUTIONS

10 November 2015  
1000 - 1200

**Please read the following instructions carefully**

The examination is of two hours' duration. Candidates are required to answer **FOUR** questions, **ONE** question must be answered from **Part A** and **ONE** question from **Part B**. The **THIRD** and **FOURTH** questions can be answered from anywhere in the paper.

All questions are of equal value.

Please note that where a question consists of two parts ((a) and (b)), both parts must be answered.

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**.

**No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.**

## **PART A**

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

### **Question 1**

Mr Cameron claims to anticipate little difficulty in securing fundamental changes to the Union before the UK 'in-out' referendum to be held before the end of 2017. His wish list appears to include:

- an end to the right of a Union citizen to travel to another member state in order to look for work
- a diminution of the rights of migrant workers to benefits as provided in Union social security legislation
- an end to the supremacy of EU law
- a UK opt out from the Union goal (as articulated in the opening of the preamble of the TFEU) of 'an ever closer Union among the peoples of Europe'.

a) Are these realistic goals? What will be necessary to achieve them?

**and**

b) Should the in-out referendum produce a clear majority to leave the EU, how can that result be achieved?

### **Question 2**

Discuss the procedural steps the Commission must follow in bringing enforcement proceedings against a member state for failure to comply with an EU law obligation. What defences may the member state raise? If the Commission action is successful, what are the legal consequences of the Court's judgment?

### Question 3

'The tests for title and interest necessary to bring a direct action for the annulment of a Union measure are so restrictive as to amount to a *deni de justice*. It is only because there are other avenues by which a natural or juridical person may challenge Union legislation that the Union scrapes compliance with article 6 of the European Convention on Human Rights.'

Discuss.

### Question 4

There is a particular problem in the horizontal enforcement of directives in a national court, which, according to Advocate-General Bot in Case C-555/07 *Kücükdeveci* (2010), has been remedied by a number of 'palliatives':

- *interprétation conforme* (uniform interpretation)
- *Francovich* damages
- the direct effect of a directive which articulates a general principle of EU law.

Why is there a problem with the horizontal enforcement of directives? Consider whether it is in fact cured by these 'palliatives'.

**END OF PART A**

## **PART B**

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

### **Question 5**

- a) Over the last several years outbreaks of varroasis, a parasite of bees, has been moving northwestward through Europe. Incidents involving the presence of varroasis have now been reported in France and Belgium. The parasite is easily passed from bee to bee, and once attacked the host bee dies a slow and unpleasant death.

In order to protect British bees from this fate, and so also the British honey industry, the British government has banned the importation from the continent of all bees and honey. It has also imposed additional controls upon all imports from the continent of cut flowers, fresh fruit, and generally any good which is likely to attract apian interest. Each consignment is rigorously inspected for the presence of bees before being cleared for entry. The controls also apply at main rail and road crossings between Ireland and Northern Ireland, although there has never been a documented occurrence of varroasis in Ireland. In order to meet the extra workload, Her Majesty's customs inspectors are required to work overtime, and the cost to the government is prohibitive. The government therefore requires importers to contribute a fee of £35 for each consignment inspected.

Discuss whether these measures are compatible with EU law.

**and**

## Question 5 (continued)

- b) The Customs Consolidation Act 1876 prohibits the importation into the United Kingdom of 'indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles'. It therefore bans the importation of 'indecent' books and magazines from other member states in which they are lawfully produced and marketed. In England production of and trade in such goods is prohibited only if they are 'obscene' (Obscene Publications Act 1959).

On returning from Amsterdam last weekend Morag was stopped by Her Majesty's customs authorities at Heathrow. They searched her luggage and discovered an album of erotic art she had bought (for an eccentric maiden aunt in Edinburgh who collects such things) in an Amsterdam flea market. The customs authorities agree the artwork in the album is not obscene but claim it is indecent, confiscate it in accordance with powers they enjoy under the 1876 Act and charge Morag with an offence of contravention of the Act. If convicted she is subject to a term of imprisonment of up to 6 months and/or a fine of up to £1,000.

She appears before Hounslow magistrates this morning. Has she a defence in EU law to the charge?

## Question 6

- a) There are a number of Romanian beggars in Glasgow organised by a Romanian gangmaster who assigns them each a patch in the city centre, provides them with nightly accommodation and collects their takings from which he gives them pocket money. Of the beggars, Catina is particularly successful, in part because of her habit of drugging her infant child with a mild opiate to make her look particularly doleful and pitiable.

Catina is arrested, convicted of administering a controlled drug to a child (who is taken into care) and sentenced to 2 years' imprisonment. The sentence is suspended and she is ordered by the Secretary of State to leave the UK.

Can she use EU law to resist the removal order?

**and**

- b) In Northern Ireland a newly qualified driver must display a green 'R' (for 'restricted') on his or her motorcar as a warning to other drivers of the fact. A newly qualified driver is also banned from motorways. The obligation lasts for a year from the date of qualification.

Although originally from Belfast, Seamus lives now in Dundalk (in the Republic), and has just passed his driving test there. To celebrate he drives to Belfast in order to attend an Antrim v Louth football match. He is stopped on the M1 coming into Belfast and is charged with the offences of, being a newly qualified driver, driving on a motorway and failing to display an 'R' on his car.

Has Seamus a defence in EU law?

### **Question 7**

a) Discuss the application of EU competition law to vertical agreements.

**and**

b) Discuss the circumstances in which a firm may be obliged by EU competition law to license the use of its intellectual property rights to another firm.

### **Question 8**

According to Mrs Neelie Kroes, EC Commissioner for competition 2004-2009, success in the fight against cartels depends upon five preconditions:

- the adequacy of powers making detection and prosecution likely
- the severity of sanctions
- the availability of criminal sanctions for particularly serious cases
- the availability of private enforcement through civil actions for damages
- a means of eroding the confidence of undertakings in the discipline of their cartel.

Assess the extent to which these conditions are present, and successful, in EU competition law.

**END OF PART B**

**END OF PAPER**