

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

EUROPEAN LAW AND INSTITUTIONS

11 May 2023

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 Law Society 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

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

Question 1

In 2021, in response to a judicial opinion sought by the prime minister, the Polish Constitutional Tribunal ruled that:

“1. The first and second paragraphs of Article 1 in conjunction with Article 4(3) of the Treaty on European Union are, insofar as they have as their effect that

- a) the bodies of the European Union act outside the limits of the competences transferred by the Republic of Poland in the Treaties,*
 - b) the Constitution is not the supreme law of the Republic of Poland, having the priority of validity and application,*
 - c) The Republic of Poland cannot function as a sovereign and democratic State*
- are inconsistent with Articles 2, 8 and 90(1) of the Constitution of the Republic.*

2. The second subparagraph of Article 19(1) of the Treaty on European Union, insofar as it confers on national courts the power to:

- a) set aside provisions of the Constitution in legal proceedings*
- is inconsistent with Articles 2, 7, 8(1), 90(1) and 178(1) of the Constitution;*
- b) determine legal issues on the basis of legal provisions declared unconstitutional by the Constitutional Tribunal*
- is inconsistent with Articles 2, 7, 8(1), 90(1), 190(1) of the Constitution.”*

Why has this judgment caused such a furore? If the EU as a body objects, what can it do about it?

(NB: in answering the question you are not expected or required to know the content of any provisions of the Polish constitution.)

Question 2

“The 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 EU law. The Treaty on the Functioning of the European Union has established a complete system of legal remedies and procedures designed fully to ensure review of the legality of acts of the institutions of the European Union, and so compatibility with Article 6 of the European Convention on Human Rights.”

- a) Analyse this statement *critically*.
- b) What are the ‘general principles of EU law’, what is their source, and how do they fit within the EU hierarchy of laws?

END OF SECTION A

SECTION B

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

Question 3

Article 18 TFEU, articulating one of the most important principles affecting the rights of individuals, reads:

‘Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.’

And in 2019 Advocate-General Wahl said:

‘If it were possible to condense the entire body of EU law into a few commandments, the prohibition of discrimination, in particular discrimination based on *nationality*, would probably be one of the first.’

- Case C-591/19 *Austria v Germany*

Discuss

- a) how the principle of non-discrimination operates in EU law, and
- b) why the internal market requires more than a prohibition of discrimination in order to be effective.

Question 4

“The Treaty provisions on competition constitute a fundamental provision essential to the accomplishment of the tasks entrusted to the Community and, in particular, the functioning of the internal market.”

- Case C-126/97 *Eco Swiss China Time v Benetton International* (1999)

and:

“A fundamental objective of EU law is the effective enforcement of the competition rules in the European internal market.”

- Case C-469/15P *FSL Holdings and ors v Commission* (2016), per A-G Kokott

The competition rules consist of four ‘pillars’, the control of

- anticompetitive collaboration amongst undertakings
- abusive exploitation of market power
- mergers and acquisitions, and
- state aid.

Discuss how each operates, and how they contribute to the success of the internal market.

END OF SECTION B

END OF EXAMINATION