

THE LAW SOCIETY OF SCOTLAND INTRA UK TRANSFER TEST

PAPER III EUROPEAN UNION LAW AND INSTITUTIONS

1 May 2018

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 **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.**

PART A

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

Question 1

Over the last several months the government has been urged by some to ensure that, post-Brexit, the United Kingdom

- remain within the EU customs union
- remain within the EU internal market
- form a free trade agreement with the EU
- adopt an association based upon the Norway model.

What does each of these entail? How would each limit the post-Brexit commercial freedom of the United Kingdom? Is there any practical way in which 'the will of the [Scottish] people' could be accommodated, and Scotland maintains relations with the EU closer than the rest of the UK?

Question 2

- a) How effective is Article 258 TFEU in ensuring member state compliance with Treaty obligations? Can you suggest ways in which it could be improved?

and:

- b) Discuss the application of the EU Charter of Fundamental Rights and its relationship, in EU law, with the European Convention on Human Rights.

Question 3

"It is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of [Union] law."

- Case 45/76 *Comet BV v Produktschap voor Siergewassen* (1976)

Have national courts been able to accommodate the requirements of direct effect without difficulty? How far has the principle articulated in *Comet* of 'national procedural autonomy' been eroded by EU law?

Question 4

Council Regulation 1308/2013 (the 'Single CMO Regulation') authorises the Commission to ban the importation of various agricultural products into the Union if such imports 'cause disturbances' to the internal market. Under the Regulation the Commission is to exercise the power by regulation, but an import ban may not apply to fruit imported under a contract concluded prior to the date of the entry into force of the Commission regulation imposing the ban, unless that is absolutely necessary to prevent 'a serious disturbance' in the EU market.

In March the Commission adopted Delegated Regulation 2018/123 banning importation of apples. The preamble to Regulation 2018/123 states that there is a serious disturbance in the EU apple market resulting from oversupply and falling prices; but this is untrue, the product of sloppy work in D-G Agriculture, and in fact a poor season has produced inadequate supplies and rising prices. Regulation 2018/123 also provides that where apples are imported under contracts concluded before March the ban applies to only half the consignment(s) covered by the contract. There is no reason given in the Regulation for this 50 percent rule.

Russet Ltd imports Chilean apples into the UK under a contract concluded last year, and last week had 50 percent of its consignment seized by the Food Standards Agency at the Border Inspection Post at Peterhead on the basis of Regulation 2018/123. Pippin Ltd imported a consignment of Moroccan apples into the UK under a contract concluded the week after Regulation 2018/123 entered into force, and had the entire consignment seized at Peterhead. The fruit is perishable and in each case will become unmarketable by the time it is consigned to a destination outside the EU.

Russet and Pippin wish to challenge the validity of the Commission Regulation and to seek damages for the loss they are likely to sustain. They seek your advice as to which court they ought to turn, the arguments they should deploy and the likelihood of success.

END OF PART A

PART B

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

Question 5

- a) Veganz BV is a Belgian firm which produces vegetarian foodstuffs. One of its most popular in Belgium is its vegetarian sausages, made from soya and mycoproteins, and marketed there as *Belle Fermière Saucisses Végétariennes/Mooie Boerderij Vegetarische Worstjes*.

Seeking to expand into the French market, Veganz finds it cannot sell its vegetarian sausages there in their Belgian packaging, for French law restricts the sale of 'saucisses' to charcuterie which contains pork, beef or other meats.

Is the French law compatible with EU law?

and:

- b) The quality of Italian pasta is a function in large measure of it being made traditionally solely from durum wheat, the 'king of wheats'. In order to protect this vital component of Italian gastronomy from cheaper wheats, the Italian government adopted the *Decreto relativo al grano* (the 'wheat decree') which provides *inter alia*:

- i) pasta made from durum wheat blended with other wheats ('mixed wheat pasta', the latter comprising no more than 20 percent of the pasta) may be imported, produced and sold for human consumption, but is required to bear a label which reads: 'This product is not approved by the *Autorità Nazionale del Gusto*';
- ii) mixed wheat pasta must be displayed in shops in units separate from those in which 100 percent durum wheat pasta is displayed.

Are these measures compatible with EU law?

and:

- c) Michael Gove, UK Secretary of State for Environment, Food and Rural Affairs, says: "Post-Brexit we shall be able to stop the export of live calves to the continent to be reared in veal crates there, a practice which is prohibited in the UK. EU law prevents us from doing so now".

Is this true?

Question 6

Morag is a British national who has gone to France to seek work. Upon arrival in Toulouse she was short of money so applied to the *Caisse de la Sécurité Sociale* for a social assistance allowance payable to French residents on no or low incomes. Her application was refused. She returned a few days later, falsely claimed to be a resident, and was granted the allowance. Having worked for HM Inspector of Taxes in East Kilbride, she then applied for a post as a tax assessor with the *Bureau des Impôts* but was rejected on the grounds that she lacked the necessary training and, in any event, the post was reserved to French nationals. She then applied for a job as a waitress in a restaurant specialising in Occitan (the local region) dishes and famous for its local colour, but was rejected because she does not speak with a 'genuine Occitan accent'; French nationals from the north have also been rejected on this ground. After some months of further job-seeking she was short-listed for a job with a public relations firm, and is to be interviewed in three weeks. But this morning she was informed by the police (responsible to the *Ministère de l'Intérieur*) that she must leave France at once because (a) she made a false statement to secure a social benefit, and (b) after some months in France, she has failed to find a job. She is told she cannot return to France for at least six months.

Advise Morag as to whether she has been treated throughout in accordance with EU law.

Question 7

- a) There are three means by which an anticompetitive agreement or concerted practice may escape the prohibition of Article 101(1) TFEU:
- i) its effects are not 'appreciable';
 - ii) it falls within the reasoning of the Court of Justice set out in its judgment in *Wouters v Algemene Raad van de Nederlandse Orde van Advokaten* (2002); or
 - iii) it satisfies the tests set out in Article 101(3).

Discuss the circumstances in which each operates to take an agreement or concerted practice outside Article 101(1).

and:

- b) "Article 102 TFEU prohibits both exploitative and exclusionary abuse of market power."

Describe the various types of abuse which fall commonly within Article 102 and which of these two categories applies to each.

Question 8

Describe the enforcement powers of the European Commission under Regulation 1/2003 and Regulation 139/2004. Are they adequate to the task for which they were designed?

END OF PART B

END OF PAPER