Summer Examinations 2015

LAW200515N

Module Title: Law of the European Institutions
Level: Five
Time Allowed: Two hours

Instructions to students:

- Enter your student number not your name on all answer books.
- Answer two questions: one question from Section A and one question from Section B.
- All questions are equally weighted.
- Begin each question in a separate answer book; label each book clearly with the number of the question you are answering.

No. of Pages 4
No. of Questions 6
Section A

Answer one question from this section.

1. “While the ECJ made it clear from the outset that EU law has supremacy over national law in the event of a clash, it is nevertheless for each Member State to decide whether it accepts this supremacy, and whether to ground its acceptance on the ECJ’s communautaire reasoning, or in domestic constitutional principles, or in a mixture of the two.” (P Craig, ‘Constitutionalising Constitutional Law: HS2’, (2014) PL 373, 376)

To what extent is this an accurate assessment in the light of the case law of the Court of Justice and of the courts of three Member States.

2. As part of its continuing programme of social policy legislation to combat discrimination in employment, the European Union (EU) introduced, in January 2014, Directive 2014/03 which requires Member States to take all the necessary steps to prohibit discrimination on grounds of height in the working environment. Directive 2014/03 has an 18 month implementation period. By the end of July 2015, the United Kingdom’s (UK) government has still not correctly implemented Directive 2014/03. The UK’s Minister for Equalities believes, however, that the pre-existing UK law designed to combat discrimination on any ground, including that of disability, is sufficient to cover any issue that could arise under Directive 2014/03.

In October 2015 Filius, applies for a job at the Ministry of Magic, a national body responsible for overseeing the regulation and use of magic. He is refused the job on the grounds that he is too small. Later that same month, Olympe, applies for a job as a teacher at Hogwarts school for magic. She is refused the job on the grounds that she is too tall.

Advise Filius and Olympe as to any rights that they may have under EU law. In your advice, do not consider any potential issues relating to state liability.

3. To what extent is state liability more of an effective remedy on paper than in practice to protect European Union (EU) law rights?

End of Section A
Section B follows overleaf
Section B

Answer one question from this section.

4. Consider the accuracy or otherwise of the following hypothetical judgment of Lord Justice Buxomley, Court of Appeal, in the light of the case law relating to preliminary references.

"The nature of the preliminary reference procedure has always been one of cooperation between the national court and the Court of Justice (CJ). Whether a question is sent to the CJ, is an issue for the national court alone to decide on, depending on the usefulness of the answer to the question of European Union (EU) law to the parties in the case before the national judge.

This case before this court raises two main questions. One question concerns the interpretation and application of a recently enacted EU regulation. As the regulation is recent, there is no case law from the CJ explaining its meaning or application. The parties to the case seek the reference to confirm their understanding of this piece of EU law.

The second question, as an alternative, concerns the validity of the regulation. Both these questions are ones that can be asked of the CJ.

Although this court is not convinced of the usefulness of sending these questions, this court is obliged to make a reference to the CJ. That the facts in this case have not yet been decided and that the CJ is currently known to be overworked, does not stop the reference being sent.

Once the CJ returns the answer to these questions, it will be at this court’s discretion whether to follow the ruling of the CJ or not."

5. To what extent has the case law relating to non-privileged applicants bringing actions for annulment developed since the Court of Justice gave its ruling in Plaumann, case 25/62 [1963] ECR 95?
6. In January 2014, as part of its energy efficiency programme to reduce environmental impact, the European Union (EU) enacted Regulation 1/2014 which bans with immediate effect the use of high powered hairdryers, defined by Regulation 1/2014 as any hairdryer with wattage over 1,000. Traditionally professional hairdressers use hairdryers with wattage over 2,000 to produce a quick and most effective blow dry for their customers.

Due to a large amount of very heated opposition from the National Hairdressers Federation, who are fearful that Regulation 1/2014 will lead to the closure of many hairdressing salons, at a time when few people are visiting hairdressers anyway, the newly elected United Kingdom (UK) government decides to ban only the use of hairdryers with wattage over 1,500. The UK Parliament only finds the time to enact this legislation in January 2015. Before this date the government has a very busy work schedule. In addition, a series of severe and unpredicted power cuts mean that Parliament is unable to sit for many months.

In December 2015, the European Commission identifies that the UK, along with France and Italy, are still not in compliance with Regulation 1/2014. The European Commission writes immediately to the UK government stating the European Commission’s concerns about this matter and requesting that the UK government complies exactly with Regulation 1/2014 within eight weeks. Eight weeks later, not satisfied with the UK’s government’s response, the European Commission notifies the UK government that in the European Commission’s opinion the UK is still in breach of EU law and will be referred to the Court of Justice (CJ) within a further 10 weeks, whether the UK has complied with Regulation 1/2014 by that date or not. The European Commission reminds the UK government that the CJ always upholds the European Commission’s view as to a breach of EU law, as any defences that the UK government may raise will not be considered. Finally the European Commission informs the UK government that should the UK continue in its breach of EU law, the CJ now possesses the power to fine the UK government for its continuing breach, without a further action having to be brought before the CJ against the UK government. The European Commission warns the UK government that as such fines are calculated completely at the CJ’s discretion, the amounts that can be enforced against a state, like the UK, in such a circumstance as this, are very high indeed.

Advise the UK government on the legal issues arising.