Summer Examinations 2016

LAW200516N

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 from Section A and one from Section B.
- All questions are equally weighted.
- Begin each question in a separate answer book; label each answer book clearly with the number of the question you are answering.

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Section A

Answer one question from this section.

1. “It is settled case-law that, by virtue of the principle of primacy of EU law, which is an essential feature of the EU legal order ......rules of national law, even of a constitutional order, cannot be allowed to undermine the effectiveness of EU law on the territory of that State.” (C-399/11 Melloni v Ministerio Fiscal ECLI: EU: C: 2013: 107, para 59).

Critically discuss the accuracy, or otherwise, of the above statement in the light of the case law of the Court of Justice and of the courts of three Member States.

2. Compare and contrast the development of the concepts of direct and indirect effect as means to ensure the effective protection of an individual’s European Union law rights.

Section A continues overleaf
3. Consider the following (hypothetical) situation:

In January 2013, concerned by the increasing incidence of gum disease proven to result from the chemicals used in the production of ‘teeth whitening’ toothpastes, the European Union (EU) introduces the Gum Protection Directive 2013. This requires all Member States to take the necessary steps to ban the sale of all ‘teeth whitening’ toothpastes and to set up a fund to pay compensation to any individual whose gums develop disease as a result of the individual’s use of ‘teeth whitening’ toothpaste. The issue of confining compensation just to situations where “serious gum disease” develops was discussed as the Directive passed through its legislative process, but was rejected. The Gum Protection Directive 2013 is to be implemented by Member States within 18 months.

In July 2014 the United Kingdom (UK) Parliament introduces legislation to implement the Gum Protection Directive 2013. The UK’s legislation bans the sale of all ‘teeth whitening’ toothpastes from the January 2015 and states that any individual who develops serious gum disease as a result of using ‘teeth whitening’ toothpastes will be able to claim compensation from January 2015, when the UK’s compensation fund will start to operate.

In December 2014 Jürgen visits the dentist. Jürgen, who uses ‘teeth whitening’ toothpaste, is told that he has gum disease. Jürgen believes that he has developed his gum disease as a result of the UK’s failure to implement correctly its EU law obligations under the Gum Protection Directive 2013. Jürgen applies for, but is refused compensation. Moreover, when Jürgen brings a state liability action before the UK Supreme Court, that court denies the existence of the concept of state liability and refuses to refer any question on the interpretation of the new Gum Protection Directive 2013 to the Court of Justice. The Supreme Court states that the UK’s implementation of the Directive is correct.

Advise Jürgen.

End of Section A
Section B continues overleaf
Section B

Answer one question from this section.

4. “The effectiveness of the infringement proceedings is considerably hampered in that they merely result in a declaratory judgment so that Member States will not necessarily discharge their duty under Article 260(1) TFEU to remove the infringement. Even the threat of pecuniary penalties, for the imposition of which the Commission can apply, does not guarantee compliance.” (T Lock, ‘Is private enforcement of EU law through state liability a myth? An assessment 20 years after Francovich’ [2012] CMLRev 1675, 1677).

Critically discuss the accuracy, or otherwise, of the above assessment.

5. “In that regard, it should be observed that....Article 267 TFEU establishes a procedure for direct cooperation between the Court and the courts of the Member States .... In that procedure, which is based on a clear separation of functions between the national courts and the Court, any assessment of the facts of the case is a matter for the national court, which must determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court......, whilst the Court is empowered to give rulings on the interpretation or the validity of an EU provision only on the basis of the facts which the national court puts before it. It must also be borne in mind that it is settled case law of the Court that a judgment in which the latter gives a preliminary ruling is binding on the national court, as regards the interpretation or the validity of the acts of the EU institutions in question......” (C-62/14 Gauweiler and Others v Deutscher Bundestag ECLI: EU: C: 2015: 400, paras 15-16).

Critically discuss the above statement in the light of the case law of the Court of Justice and national courts relating to the preliminary reference procedure.
6. Consider the following (hypothetical) situation:

At the beginning of March 2015, due to the glut in the number of lightsabers on the European Union (EU) market, the EU issues a regulation that suspends both the importation of lightsabers from non EU countries into the EU and the granting of licences to import such products, as well as suspending the manufacture of lightsabers within the EU itself.

Vader GmbH is a German company importing lightsabers into the EU. One of its consignments of lightsabers is in transit from China to the EU when the EU issues its regulation in March 2015.

Skywalker Ltd is a UK company. It is one of four companies whose application for a licence to import lightsabers into the EU is pending when the EU’s regulation is introduced in March 2015. As a result of this regulation, Skywalker Ltd is denied its importation licence and therefore it is unable to meet its contractual obligations to Yoda Ltd for the supply of lightsabers.

Rtoo - Dtoo Ltd is one of the largest and best known companies in the EU that manufactures lightsabers. As a result of the EU’s regulation it is unable to manufacture this product and its business suffers dramatically as a result.

Advise Vader GmbH, Skywalker Ltd and Rtoo-Dtoo Ltd as to their chances of successfully meeting the *locus standi* requirements under an action for annulment to challenge the EU’s regulation.