Examination Period 3: 2016/17

LAW200517N

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 book clearly with the number of the question you are answering.

No. of Pages          5
No. of Questions       6
Section A

Answer one question from this section.

1. “So long as the 1972 [European Communities] Act remains in force, its effect is to constitute EU law an independent and overriding source of domestic law.” (R (Miller & Dos Santos) v Secretary of State for Exiting the European Union [2017] UKSC 5 [65] Lord Neuberger.)

To what extent is this view on EU law primacy shared, not only by other UK courts, but also by the courts of two other Member States and the Court of Justice of the European Union (CJEU)?

2. “Non-contractual liability of the State seems to be a safety net in cases where other devices (for the protection of European Community [now European Union] law rights) fail.” (S Prechal, ‘Member State Liability and Direct Effect – What’s the Difference After All? (2006) EBLR 299, 302)

Critically discuss the accuracy or otherwise of the above statement in the light of the case law relating to State liability.
3. Consider the following hypothetical situation:

In December 2014, as part of its health and safety legislation, the European Union (EU) introduces a Directive that prescribes the minimum temperature that all office workers can be required to work under, before they must be allowed to go home by their employer. The minimum temperature is prescribed to be 15 degrees Celsius. The Directive lays down a 24 month implementation period.

The United Kingdom (UK) decides not to introduce new legislation to implement the Directive’s objective, but instead amends an existing health and safety agreement that it has with all employers. This agreement is changed to set, under certain circumstances only, a minimum working temperature of 15 degrees Celsius. The UK’s Secretary of State for Employment believes that this change and the fact that the UK already has health and safety legislation in place prescribing the optimum working environment for office workers is sufficient to cover any issue that could arise under the Directive.

Olaf works part-time as a secretary for the local police authority and as a secretary for a local ice cream company. In January 2017, the temperature in Olaf’s office at both his places of employment is less than 15 degrees Celsius on a regular basis. At no time, however, is Olaf allowed to go home.

Olaf has recently become aware of the EU Directive from December 2014. He seeks your advice on whether he has any rights under EU law that he can enforce against both his two employers. In providing your advice, do not deal with any potential State liability issue.
Section B

Answer one question from this section.

4. In the light of the jurisprudence relating to preliminary references, to what extent has the preliminary reference procedure in its operation always matched the provisions set out in Art 267 TFEU (Art 234 EC: Art 164 EEC)?

5. ‘Though non privileged applicants have always been able to bring an action for annulment under European Union (EU) law, such an action remains a remedy more in theory than in practice for such individuals due primarily to issues with locus standi.’

To what extent is this an accurate assessment, or not, of actions for annulment, in the light of the case law from the Court of Justice of the European Union (CJEU)?
6. Consider the following hypothetical situation:

In January 2015, the European Union (EU) enacts a Regulation which prohibits the use of any pesticide in the growing of root vegetables. There is widespread opposition to this Regulation by members of the Root Vegetable Growers Union in the United Kingdom (UK), who claim that without the use of such pesticides their growers’ root vegetable crop yield will drop by 50%. This would severely affect a rural way of life and an industry already in crisis. The drop in crop yield will, it is also thought, increase the price of root vegetables by 100% and this has led to widespread opposition and, at times, serious riots in the countryside. The UK government does not take any steps to ensure that this Regulation is complied with due to this serious public disorder. The government has a very small majority in Parliament and a very busy work schedule. This Regulation has additionally led to widespread public opposition in other countries, notably France, where the government has also chosen to ignore the Regulation.

In January 2016, Harvey, an anti-pesticide campaigner, complains to the European Commission about the UK’s breach of its EU Treaty obligations. Within one week of receiving Harvey’s complaint, the European Commission notifies the UK government in writing that the UK is in breach of EU law and that the European Commission awaits an explanation for this breach. Four weeks later the European Commission contacts the UK again, stating in a very brief written explanation, why in its opinion, the UK is in breach of EU law. Four further weeks later, the UK is automatically referred by the European Commission to the Court of Justice of the European Union (CJEU), as the European Commission still believes that the UK is in breach of EU law. The CJ accepts without question the European Commission’s view that the UK is in breach of EU law and orders the UK to comply with its EU law obligations immediately. The CJ additionally warns the UK that if the UK does not comply with its judgment, then the European Commission can immediately impose on the UK a financial penalty, which can be either a lump sum or a penalty payment and which is calculated completely at the European Commission’s discretion.

Advise the UK government on the legal issues arising here.