Examination Period 3: 2017/18

LAW200518N

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.

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

Answer one question from this section.

Question 1

“There are...[two] approaches that can be (and have been) used to fill the lacuna created by the absence of general horizontal direct effect [of directives]: (i) a broad approach to what is an emanation of the State; (ii) taking the principle of ‘interpretation conforme’ [harmonious interpretation] to its limits....From the perspective of giving effective protection to individual rights, the present situation is less than satisfactory. It creates complexity.....and uncertainty .....” (C-413/15 Farrell v Whitty etc ECLI:EU:C:2017:745: AG Sharpston, para 150)

To what extent do you agree with the above statement in light of the case law on direct and indirect effect?

Question 2

“...for so long as EU law is accepted and applied by the national courts of a Member State, it operates as a form of law which is in that sense superior to all domestic law.” (R (on the application of Miller and Another) v The Secretary of State for Exiting the European Union [2016] EWHC 2768 (Admin) [38] (Thomas LJ))

To what extent have the courts from the United Kingdom, France and Germany, accepted the superiority of European Union (EU) law created by the Court of Justice (CJ)?

Question 3

Critically evaluate the extent to which the Court of Justice’s (CJ) case law on State Liability shows State Liability to be a ‘perfect and complete mechanism’ for the protection of an individual’s European Union (EU) law rights.
Section B

Answer one question from this section.

Question 4

Discuss the accuracy or not of the following hypothetical ruling from the Court of Justice (CJ) in light of the case law on preliminary references.

“The preliminary reference procedure functions as the keystone of the European Union’s (EU) judicial system. The procedure is founded on a relationship between the national courts and the CJ. This is a relationship of equals, but the procedure is controlled by national courts. National courts have complete discretion not only on what questions to send the CJ, but also as to whether a reference request is sent to the CJ for it to answer. In deciding whether to send such questions, national courts consider various factors, including the importance of the issue to the case and also the wishes of the parties to it. The CJ must answer any questions referred to it (which it has always done), with national courts deciding finally whether to follow the CJ’s answer or not, when the answer is eventually provided.”

Question 5

Consider the following hypothetical situation.

In March 2018 faced with a glut of wizards’ and witches’ wands within the European Union (EU) market, the EU enacts a regulation which suspends the importation of and the granting of import licences for all wizards’ and witches’ wands into the EU.

Lupin Ltd is a United Kingdom (UK) importer of wizards’ and witches’ wands. One of its consignments of wands is in transit to the EU when the EU introduces its regulation in March 2018.

Umbridge GmbH is one of the largest, most well-known companies importing all types of wands into the EU. Its business is severely affected as a result of the EU’s regulation.

Snape Ltd is one of four companies whose application for a licence to import wizards’ and witches’ wands is pending when the EU introduces its regulation in March 2018. As a result of being refused a licence, it is unable to perform a contract for the supply of wands to the Ministry of Magic.

Advise Lupin Ltd, Umbridge GmbH and Snape Ltd as to their chances of successfully meeting the locus standi requirements under Art 263(4) TFEU (Art 230(4) EC: Art 173(4) EEC) to challenge the EU’s regulation.
Question 6

In January 2012 the European Union (EU) enacts a directive requiring Member States to take all necessary measures to protect and conserve certain named animal species and their natural habitats. Included in this list is the Wetland Pikachu, found only in the flood plains around the river Enen in Neneshire in the United Kingdom (UK). The directive is to be implemented by Member States by January 2014.

Due to an ever increasing population in Neneshire and shortages in housing in this county, Neneshire County Council (NCC) has been building many new housing estates and roads on the flood plains around the river Enen since July 2013 and continues to do so. The UK government thus faces lots of opposition from NCC to the proposed legislation designed to implement the directive from 2012. This opposition and the fact that the government has a small majority in Parliament, so making the passing of legislation very difficult, combined with the fact that the Parliamentary debating chambers are being renovated from 2013 to 2014 so Parliament rarely meets, means that the UK government is not able to implement the directive on time. Due to the government’s busy legislative programme and other overwhelming internal political difficulties that the government has to deal with, the UK government is still not able to implement the directive after January 2014.

The European Commission (Commission) receives a complaint from Ash in January 2015 that the UK has still not implemented the directive and that as a result of this and the action of NCC, the Wetland Pikachu population is in a severe decline. The Commission holds a lengthy informal meeting with the UK government on this matter in March 2015. In July 2015 the Commission writes briefly to the UK government stating that in the Commission’s opinion the UK is in breach of its EU law obligations. The Commission provides the UK with a month to respond to it with an explanation. The UK replies on time, but the Commission is not satisfied with the UK’s reply, so it refers the UK to the Court of Justice (CJ) in October 2015. In January 2016 the CJ, considering the Commission’s actions and the UK’s explanation for its position, declares that the UK is in breach of EU law and needs to comply as soon as possible.

By March 2018, the UK government has still not implemented the directive from 2012 or complied with the CJ’s ruling from 2016. NCC is still building houses on the flood plains around the river Enen and the Wetland Pikachu population is still in decline. The Commission therefore refers the UK government again to the CJ demanding that as the UK is still in breach of EU law, then the CJ imposes both a large lump sum fine and a large daily penalty payment fine on the UK. The CJ holds that the UK is still in breach of EU law and imposes both fines. Though both fines are large in amount, the CJ reduces the amount of the fines from what the Commission initially proposed because of the economic crisis that the UK is currently facing and the fact that this is the first time that the UK has been brought back in front of the CJ due to non-compliance with EU law.

Discuss the legal issues arising in this hypothetical situation.