Examination Period 3: 2018/19

LAW200519N

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<th>Module Title</th>
<th>Law of the European Institutions</th>
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<td>Level</td>
<td>Five</td>
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<td>Time Allowed</td>
<td>Two hours</td>
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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**.
- 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. Critically evaluate the effectiveness or otherwise of direct effect as a tool for the protection of European Union (EU) law rights.

2. Critically evaluate the effectiveness or otherwise of indirect effect as a tool for the protection of European Union (EU) law rights.

3. “The traditional problems and limitations with State liability as...a route to an effective remedy ... paints a dismal picture of the protection of ...individuals.” (James Marson and Katy Ferris, ‘The transposition and efficacy of EU rights. Indirect effect and a coming of age of State liability’ (2015) BLR 158, 163)

   Critically discuss the accuracy or otherwise of this statement on State liability.
Section B

Answer one question from this section.

4. “It should be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to 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. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling.” (C-621/18 Wightman and Others v Secretary of State for Exiting the European Union ECLI:EU:C:2018:999 para 26)

Critically discuss the accuracy or otherwise of the statements in the above quote in the light of the case law on preliminary references.

5. Consider the following hypothetical situation:

In March 2019, faced with a glut of unrefined coaxium within the European Union (EU) market, the EU enacts a regulation which suspends the importation of and the granting of import licences for all unrefined coaxium into the EU.

Wookie Ltd is a United Kingdom (UK) importer of unrefined coaxium. One of its consignments of unrefined coaxium is in transit to the EU when the EU introduces its regulation in March 2019.

Dryden Vos GmbH is one of the largest, most well-known companies importing unrefined coaxium into the EU. Its business is severely affected as a result of the EU’s regulation.

Enfys Nest Ltd is one of four companies whose application for a licence to import unrefined coaxium is pending when the EU introduces its regulation in March 2019. As a result of being refused a licence, it is unable to perform a contract for the supply of unrefined coaxium to Rebel Alliance.

Advise Wookie Ltd, Dryden Vos GmbH and Enfys Nest 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.
6. In January 2019, the UK Supreme Court applies an Act of Parliament, known to be inconsistent with European Union (EU) law, to decide a case, instead of the relevant EU law, that if applied would have led to a different result. Moreover, the Supreme Court did not make a preliminary reference to the Court of Justice of the European Union (CJEU) to ask for clarification of the EU law at issue before the Supreme Court decided the case.

Concerned that the European Commission may bring an enforcement action against it, due to the Supreme Court’s decision, the United Kingdom (UK) Government seeks the advice of the Attorney General on this matter. He advises as follows:

"The breach of EU law is significant here. However, it does not automatically follow that the European Commission (Commission) will bring an enforcement action against the UK. To date it has never acted in relation to a national court’s decision that breaches EU law. If the Commission does choose to act, it must provide an opportunity for the UK Government to explain the situation. The Commission must provide a detailed explanation of the case against the UK and set a time limit for the UK’s response. This time limit tends to be a month or so, but it is variable, depending on factors such as the Commission’s workload. If the UK’s explanation for its action does not satisfy the Commission, the Commission will then refer the breach of EU law immediately to the CJ. The CJ decides for itself if the breach of EU law exits or not. The CJ is receptive to any defence put forward by a State, whether it is political or internal difficulties, force majeure or reciprocity. The CJ will not look, however, at the process that the Commission has gone through to bring the action before the CJ, if the UK raises any issues about this.

If the CJ does rule that the UK is in breach of EU law, then the immediate consequence for the UK is not serious. The fining procedure, recently introduced into EU law, is something to be worried about more in theory than in practice. The Commission needs to bring a second fining action against the UK to lead to the possibility of a fine being imposed. This second action mirrors exactly the stages of the first enforcement action. If a fine is imposed on the UK, it will not be for a large amount. The Commission, which sets the fines, and the CJ that rubber stamps the amount of the fine, have both shown themselves reluctant to use this fining power to its fullest as a deterrent, with penalty payments still being favoured over lump sums. Even if a fine is imposed, and the UK chooses to ignore it, then there is nothing that the EU can do."

Discuss the accuracy or otherwise of this hypothetical legal opinion.