

# Exam papers - JUR5440 - EC Substantive Law

## Spring 2006

Please answer questions 1,2 AND 3 (all questions!)

### Question 1

1.(A) Goodie is a small Belgium firm which manufactures a range of pre-cooked frozen dishes packaged in individual portions and sold to consumers. It also sells the same dishes in bulk to restaurants. In 2004 Goodie decides to expand into the French market. However, it quickly discovers that under French law all frozen food must be clearly labelled in the French language, giving the manufacturer of the product and a detailed analysis of its contents. Goodie produces special packaging and labels to comply with this law, but claims that the cost of doing this has made it very difficult to compete effectively with similar French products.

Goodie obtains an order for samples from a French supermarket. However, following an inspection on importation into France, Goodie is informed by one French health authorities that it cannot sell one of its frozen desserts in France as it contains a preservative prohibited under French law. The preservative is permitted under a directive based on Article 95 EC Treaty which came into force on 1 January 2002.

Goodie also attempts to negotiate a contract to supply Rapide, a chain of fast food restaurants in Nice. However, it is informed by a letter from the Managing Director that it is the policy of the Rapide chain to purchase only French-produced food, "because it is of superior quality."

Advise Goodie of its rights under Articles 28-30 EC Treaty.

AND

1(B) "Intellectual property rights, by their very nature, are exclusive and territorial. Thus they are obstacles to the free movement of goods within the EEA" Discuss critically how the ECJ has reconciled the free movement of goods rules with the expressed derogation in Article 30 EC Treaty allowing the protection of intellectual property rights.

OR

1(C) "The ECJ ruling in Keck and Mithouard was backward but realistic step to take given the wide definition of "restriction" adopted by the Court in Dassonville." Discuss critically supporting your analysis with relevant case law.

### Question 2

2.(A) In 2003 Pierre, a French national, moved to Norway and started a job with the civil service. His wife Candy, an American national, moved to Norway with him. Pierre and Candy separated in 2005 and have not lived together since then. She has remained in Norway.

Pierre has unsuccessfully applied for promotion. He has been told that all posts above his |current grade are reserved for Norwegian nationals.

Pierre is the head of the Norwegian section of "Liberation". At the time Pierre joined "Liberation" it described itself as a non-violent European-wide pressure group dedicated to campaigning for the release of prisoners of conscience. Last month bombs were placed outside a number of foreign embassies in

Berlin. A statement sent to news agencies signed "Liberation" admitted responsibility for the bombs. The Norwegian Government immediately issued a statement condemning the activities of "Liberation".

Pierre has been told that he will be deported for his involvement with the group.

Advise: (a) Pierre, as to the validity of his rejection for promotion and whether he can be deported for his involvement with "Liberation";

AND (b) Candy, as to how her rights under Community law are affected now that she is separated from Pierre. Will her rights remain the same if she and Pierre divorce or Pierre is deported?

AND

2(B) "Judicial activism or, in other words, the liberal interpretation by the European Court of Justice, has led to some surprising judgments in the area of access to education.

Discuss citing relevant ECJ case law.

**Question 3**

3. "Article 23 EC Treaty states that the 'Community shall be based upon a customs union which shall cover all trade in goods and which shall involve..... third countries.'" Discuss how this goal has been achieved?

Enclosure