

JUR5440/1440 – EC Substantive Law

Spring 2011

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

1) Advise Burger Ltd, Barbela and Mannekenpis SA on the compatibility with EU Law of the practices they have experienced.

(A) Burger Ltd is a UK company which exports large quantities of beef and beef products to various EEA Member States, including Norway, one of the largest importers of British beef. The Norwegian authorities announce that they have reason to believe that British beef is at risk it has been infected with 'mad cow disease'. Other Member States continue to import British beef and the UK Government's scientists reassure the EU that there is no evidence that the beef is infected with the disease. Some Norwegian scientists disagree with the findings and advise the Norwegian authorities that a risk of infection cannot be ruled out. The Norwegian authorities subsequently decide to subject the UK beef imports to random inspection at the Norwegian frontier and impose a charge on Burger Ltd to cover the cost of these inspections. The beef has already been subject to an inspection in the UK and been certified as satisfactory. Random health inspections are also carried out in Norway on domestic beef;

(B) Barbela is an Italian manufacturer of French language 'spoken word' tapes ie tape recordings, in French, of novels. In Italy these are intended primarily for students of French. Barbela wishes to begin exporting its tapes into France. It has been advised that French law provides that novels cannot be sold on tape for 18 months after their first publication in order to encourage literacy and promote the value of the written word. For the same reason, when the tapes are sold, they are subject to a minimum price fixed above the price of the novel.

(C) The Belgian brewery 'Mannekenpis SA' has recently developed a new strong beer, *Atomium*, which has an alcohol content of 8 per cent. *Atomium* beer is sold in very characteristic yellow bottles. The new beer proves very successful in Belgium, UK and The Netherlands, and therefore, Mannekenpis SA decides to penetrate the German market. When the Belgian company tries to launch *Atomium* in Germany, it is confronted by a series of issues which it fears will affect the successful marketing of the beer. First, in Germany strong beers can only be sold in outlets that acquire a newly introduced special licence. The German Government argues that this measure is simply part of its wider strategy to tackle serious problem of alcohol abuse in Germany, particularly amongst the youth population. As a result *Atomium* cannot be sold in supermarkets, since they are prevented under the terms of the law from obtaining these new licences for the sale of strong beers. Secondly the beer manufacturers in Germany are unhappy with the competition posed by Belgian beers and spirits. In the last five years there have been frequent reports of attacks on trucks bringing the Belgium beer into Germany, resulting in the destruction of the load. However, German authorities have refrained from taking any action to put an end to these practices.

2. ANSWER **BOTH** (A) AND (B)

(A) 'Access to education for migrants is an important element to ensuring that the free movement persons principle is secured in the EU.'

Discuss critically, citing relevant case law, how the addition of the concept of 'EU citizenship' has enhanced the right to education and to free movement of persons.

(B) To what extent does the EU's external commercial policy complement the achievement of the internal market? Discuss critically how the exclusive competence to negotiate commercial agreements with third countries protects and enhances the concept of an integrated EU market.

3. ANSWER **ALL** PARTS

(A) In 2004 Maria, a Spanish national married Muhammad, a Pakistani national. Their only child, Manuel was born in 2008. In 2009 the family moved to Austria where Maria and Muhammad secured work. Maria worked in a Bar in the evening as a part-time waitress. However, one year later, Maria was charged with causing grievous bodily harm following a fight in the Bar. She was subsequently convicted and given an 18 month prison sentence. When passing the sentence the judge recommended that she be deported on release. Whilst Maria was in prison, Muhammad gave up work to look after Manuel but was told after 3 months that he had to leave the country.

Advise Maria and Muhammad as to their rights, if any, under EU law.

(B) A French firm of architects wishes to extend its business activities to Belgium. It decides to set up a branch office in Belgium. The firm brings to you the following problems:

- i. Under Belgian law architects doing work in Belgium must maintain an office there.
- ii. In Belgium, architects are permitted to file tax returns and similar fiscal documents only if all the partners in the firm are Belgian.
- iii. The firm intends to place Francine in charge of their Belgium office, but under Belgian law all heads of architect firms must have a University degree. Francine has never been to University, but, having passed the French professional examinations and completed the required period of training, she has obtained the requisite professional certificate and is enrolled as a practising architect in the France.

Advise the firm as to how EU law may assist them.

Recommended time for each question

1. **1.5 hours**
2. **1 hour**
3. **1.5 hours**