

JUR5440/1440 – EC Substantive Law

Spring 2009

Please answer ALL QUESTIONS. Also note that in Question 3 you have a choice of answering either part (a) OR part (b). Equal marks for each question will be awarded

1 (a) Toytoy is a Scottish firm which manufactures childrens' toys. It decides to expand and to export its products to other Member States of the EU. However, it runs into the following difficulties:

(i) In Austria, an attempt by Toytoy to advertise its toys in a children's magazine is met with refusal on the grounds that such advertisements are altogether prohibited under Austrian law.

(ii) In Germany, a decision has been taken to impose sanctions on all companies which market products that are coloured by paint which contains a toxic substance banned by German law.

(iii) In Denmark, Toytoy is informed that it may not market its line in wooden farm animals as they resemble too closely a similar product of craftsmanship of the Jutland region, the tradition of which the Danish Government is anxious to preserve.

Advise Toytoy who wishes to know whether it can challenge these national measures under the EC Treaty rules on free movement of goods.

AND

(b) Stein imports into Norway products made of plastic PVC. He has now been informed that the imported products will be subject to a new tax measure adopted by the Norwegian Parliament. This is a tax on all products sold in Norway containing a significant quantity of plastic PVC. The tax has been threatened for two years and therefore there are now few products sold in Norway which have PVC in them. Can Alfred rely on EC law to refuse to pay the tax?

2. (a) Jane, a French citizen, has just been released from prison after serving a sentence for ten counts of shoplifting. She decides to start afresh in Denmark but, on her arrival at Copenhagen airport, she is refused entry to the country on the grounds of (i) her criminal record and (ii) the fact that she does not have a job to go to. Her American husband, Jack, is also refused entry despite the fact that he has already accepted employment with a Danish government agency. Jack is a well-known left-wing political agitator.

AND

(b) Hans is a German national who has never settled into a permanent job since his days of student protest. He went to Austria in late 2001 where he was able to obtain employment fairly quickly on a part-time and temporary basis as Father Christmas in a department store for 4 weeks before Christmas. In total he had worked 75 hours before the job finished on 24 December 2001. Hans had, however, already obtained a place on a retail sales management course and sought to claim grants, fees and additional income subsidies from the authorities. These claims were rejected despite his claims to be a worker as a result of his previous work in retail sales. The Austrian authorities, aware of his past student activities, have decided to deport him on the grounds that his presence in Austria is contrary to public policy.

Advise the parties of their rights and remedies (if any) as provided by EC law in the above circumstances.

3. Please answer EITHER

(a) The right of establishment and the right of cross-border provision of services are two fundamental freedoms in establishing the internal market. Discuss critically how these freedoms have been developed by legislative action and judgments from the European Court of Justice (ECJ).

OR

(b) "The concept of EU Citizenship, introduced by the Maastricht Treaty (and now Article 18 EC Treaty), has contributed to a Community right to education for all EU nationals."

Discuss critically citing relevant case law.

Recommended time for each question

15 MINUTES TO READ THE PAPER

1. 1 HOUR 15 MINUTES

2. 1 HOUR 15 MINUTES

3. 1 HOUR 15 MINUTES