

JUS5440/JUR1440– EU Substantive Law

Spring 2012

JUR1440 – EU Substantive Law – Bachelor level

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

1. Belle is a French company who make perfume. The company is encountering the following difficulties with exporting their products:

- a. The German government requires that all imported perfumes be tested to check the level of concentration, in order to ensure that bottles labelled as perfume are not in fact cologne, which has a lower level of concentration.
- b. The UK government requires perfume to be packed in square bottles and cologne in round bottles, in order to help consumers distinguish between the two products.
- c. The Spanish government has banned the sale of perfumes that are not based on organic products. They justify this measure on environmental grounds.
- d. The Italian government charges a levy of €3 per bottle of perfume imported into Italy.

Advise Belle as to the legality of each of these policies.

2. Kristof, a polish qualified nurse, decided to relocate to Scotland after completing his studies and obtaining his professional qualification in Warsaw.. He is accompanied by Maria, his Canadian partner. They decide to go to Glasgow, as they have been advised that there is a shortage of nurses there. Kristof soon finds a job in a local hospital.. Maria opens a small shop where she sells Polish and Canadian traditional food. Four months later, Kristof is suspended from his job in the hospital when he is accused of malpractice by a female patient. Although the complaint is withdrawn, Kristof's employers ask him to leave. Apparently they believe that the incident shows that there is too great a cultural difference between them. Three months later, Kristof has still not found employment. The UK Department of Justice allows him leave to stay for a further six months. Maria, who has just discovered she is pregnant, is served by the Justice Department with an order instructing her to leave. This is because she is no longer with Kristof, having left him as a result of the alleged incident with the female patient.

Advise Maria and Kristof as to any remedies that may be available to them under EU Law. In your answer refer to relevant primary and/or secondary legislative measures and case law from the Court of Justice of the European Union.

3. "The concept of EU Citizenship, set out in Article 21 TFEU, has been used effectively by the Court of Justice of the European Union to widen the scope of the concept of 'free movement of persons.'"

Discuss critically citing relevant case law.

Recommended time for each question

1. 45 minutes
2. 45 minutes
3. 30 minutes

JUS5440 – EU Substantive Law – Master level

PLEASE ANSWER 3 QUESTIONS

1. Belle is a French company who makes perfume. The company is encountering the following difficulties with exporting their products:

- a. The Italian government charges a levy of €3 per bottle of perfume imported into Italy.
- b. The Austrian government taxes perfume at a rate of 10 % and cologne at a rate of 2 %. There are no domestic producers of perfume but there is a production of cologne in Austria.
- c. The German government requires that all imported perfumes be tested to check the level of concentration, in order to ensure that bottles labelled as perfume are not in fact cologne, which has a lower level of concentration. The inspections cost €1 per 100 litres and the German government charges Belle €2 per 100 litres for the inspections.

Advise Belle as to the legality of each of these policies.

2. 'Vuvuzela Ltd' is a French manufacturer of toys for young children which have become extremely popular in continental Europe. Its most successful toy is the 'Mini-Stars Football World', a game for children between the ages of 3 and 6. It is made of soft plastic and has colourful figures and original light-and-sound effects.

'Vuvuzela Ltd' is keen to start selling its products in the UK and Ireland. However, preliminary studies of these markets reveal some important concerns:

- (a) The UK government recently introduced a law banning toys that contain small parts of 2 inches or less, as these are considered a dangerous choking hazard. The 'Mini-Stars Football World' game does not meet this requirement.
- (b) Recent, separate studies in Ireland have shown that children under the age of 6 are particularly inactive and unhealthy and that they are highly influenced by the adverts they see on television. As a result, the Irish government has decided to introduce some restrictions on toy advertising. In particular, it has decided to ban the advertising of toys for children under the age of 6 on television between the hours of 9 am and 6 pm.

Advise 'Vuvuzela Ltd' on the compatibility of each of these UK and Irish practices with EU law.

3. "The concept of EU Citizenship, set out in Article 21 TFEU, has been used effectively by the Court of Justice of the European Union to widen the scope of the concept of 'free movement of persons.'"

Discuss critically citing relevant case law.

4. ABC Ltd is the owner of patents in the UK, France and Belgium for a new drug which quickly relieves the symptoms of the common cold. In the UK, ABC Ltd manufactures and markets the drug under the registered trademark "COMCOLD" but in France and Belgium it markets the same drug under the registered trademark "COMFROID."

Advise ABC Ltd on whether they can take legal action against Anne, Pierre and Jean in the following circumstances.

- (a) Anne, a Belgian chemist, starts manufacturing and selling the drug in Belgium;
- (b) Pierre imports into France drugs placed on the Belgian market by ABC Ltd and sells the drugs on the French market at 20% below ABC Ltd's price.
- (c) Jean imports the drug in bulk from suppliers in the UK, repackages them in smaller amounts and sells them on the French market under the trade mark "COMFROID."

5. Critically analyse the impact of the ECJ's judgment in joined cases C-297 and 268/91 Keck and Mithouard [1995] on the scope of Article 34 TFEU. Discuss the merits of the decision with reference to the subsequent case law.

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