

EKSAMEN I JURIDISKE VALGEMNER

VÅR 2016

Date: Friday, May 20th

Time: Kl. 10:00 – 14:00

JUS5440 – EU Substantive Law (Master students)

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

PLEASE ANSWER ONLY 3 QUESTIONS

1 GoGo is a Swedish manufacturer of pro-biotic health drinks. It sells its products throughout the European Union but its biggest markets are in Germany, Denmark and Norway. It believes that a number of actions recently undertaken in Denmark, Germany and Norway are contrary to EU rules relating to the free movement of goods.

First, a large state-authorized 'Buy German products' rally was recently staged in Germany causing huge disruption to traffic on major trunk roads for a prolonged period. During this time GoGo was unable to transport its goods by lorry from Denmark into Germany.

Second, in Denmark, a junior civil servant with responsibility for public health has recently spoken to a number of national media outlets questioning the health benefits of pro-biotic drinks. This apparently followed huge press attention given to two cases earlier in the year which directly linked the consumption of these products by teenagers with severe adverse health reactions. Legislation has just been passed in Denmark prohibiting the sale of pro-biotic drinks from outlets other than pharmacies and requiring that all pro-biotic drinks contain a label indicating that they should only be consumed following consultation with a pharmacist.

GoGo has also just learned that the Norwegian Environmental Protection Agency has launched a nationwide and high profile campaign encouraging consumers to collectively 'force change on packaging manufacturers' by essentially only purchasing goods that have a minimum of packaging and/or that are packaged using recycled materials and that are themselves recyclable. GoGo's packaging is neither made from recycled materials nor recyclable.



Advise GoGo as to whether any of these measures are contrary to the provisions of the Treaty in the Functioning of the European Union (TFEU) on the free movement of goods.

2. 'There is now sufficient evidence from the case law of the Court of Justice of the European Union (CJEU) to suggest that EU citizenship is far more than the sum of individual rights found elsewhere in the Treaty'.

Discuss with reference to CJEU case law.

3. 'The list of derogations to the free movement of goods rules set out in Article 36 TFEU concerns public rights except for the protection of industrial and commercial property.'

Discuss critically, citing relevant case law, the extent to which Article 36 protects the free movement of goods protected by intellectual property rights.

4. Hans is a Danish national who is qualified as a doctor in Denmark. Hans operates his own fertility clinic in Denmark. One of the services offered by Hans is to enable his patients to choose the sex of their baby. As required by Danish law, Hans holds a licence to provide fertility treatment. There are no other restrictions under Danish law on the provision of fertility treatment.

Hans' business is doing very well so he has decided to expand into other Member States. He is considering offering fertility treatment on an ad hoc basis in Sweden and to establish a clinic in Germany. He has been advised of the following provisions of law in those countries which are making him hesitate whether to go ahead with his business expansion plans.

(i) In Sweden a doctor may only offer fertility treatment if qualified in Sweden and holds a certificate of competence issued by the Swedish Ministry of Health.

(ii) In Germany doctors are prohibited from allowing patients to choose the sex of their baby. Giving patients the choice is considered offensive on moral grounds. Furthermore, the availability of fertility treatment may be advertised only in specified medical journals.

Advise Hans whether, under EU law, he will be subject to these provisions, should he decide to go ahead with his expansion plans.

5. 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.

JUR1440– EU Substantive Law (Bachelor students)

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

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Advise GoGo as to whether any of these measures are contrary to the provisions of the Treaty in the Functioning of the European Union (TFEU) on the free movement of goods.

2. Hans is a Danish national who is qualified as a doctor in Denmark. Hans operates his own fertility clinic in Denmark. One of the services offered by Hans is to enable his patients to choose the sex of their baby. As required by Danish law, Hans holds a licence to provide fertility treatment. There are no other restrictions under Danish law on the provision of fertility treatment

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(ii) In Germany doctors are prohibited from allowing patients to choose the sex of their baby. Giving patients the choice is considered offensive on moral grounds.

Advise Hans whether, under EU law, he will be subject to these provisions, should he decide to go ahead with his expansion plans.

3. Select **ONE** of the areas below and critically discuss its scope and meaning under EU Law.

- (a) 'measures having equivalent effect' to a customs duty
- (b) a 'selling arrangement'
- (c) EU citizenship
- (d) the rights of migrants to education in the host state

Recommended time for each question

- 1. 90 minutes**
- 2. 90 minutes**
- 3. 60 minutes**

The result of the exams will be announced Friday 10th June, at 15.00 hours. You can check the results in the StudWeb, or by contacting the Information Centre, phone 22 85 95 00. After the exam results are announced, candidates have the right to be informed of the grounds for the result as long as a request is made within one week of the announcement. The names and contact information of the examiners can be found on the Faculty's website, or by contacting the Information Centre. The deadline for appeal is three weeks after the announcement of the results.

Oslo, 20.05.2016