

EXAM

JUS5440 **Spring 2018**

Date: 2 May 2018

Time: 09:00 – 13:00

Information

This exam set contains 5 questions, of which only 3 is to be answered.

You may navigate between the questions by using the arrows bottom right, or the numbers on the bottom line.

PLEASE ANSWER ONLY THREE 3 QUESTIONS.

Question 1

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

- a. The Norwegian government requires that all imported perfumes undertake a test 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 10 NOK per 100 litres and the Norwegian government charges Lolita SA 200 NOK per 100 litres for the inspections.
- b. The Italian government charges a levy of €3 per bottle of perfume imported into Italy.
- c. 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 are domestic producers of cologne.

Advise Lolita SA as to the legality of each of these policies.

Question 2

Answer either question (A) or question (B)

(A) ‘The Court of Justice of EU (CJEU) faces a dilemma in interpreting the citizenship provisions in the Treaty on the Functioning of the EU (TFEU). While failure to interpret them expansively risks undermining EU citizenship, an expansive interpretation risks undermining, in unacceptable ways, the autonomy of the Member States.’



Discuss critically illustrating your answer with case law examples from the CJEU

OR

(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 CJEU has reconciled the free movement of goods rules with the expressed derogation in Article 36 TFEU allowing the protection of intellectual property rights.

Question 3

Jan is a Polish national who has been living in Acacia (a fictitious EU Member State) continuously for almost five years with his wife. He had been working as a construction worker, employed temporarily by different construction companies. In order to improve his opportunities in the labour market, he quit his job and enrolled at a college in the field of engineering. However, although the education was free, the cost of living was higher than he had expected, especially after his wife, a Ukrainian citizen, got pregnant and stopped working for health reasons. In such circumstances, Jan decided to apply for Income Support from the Acacian authorities.

His application for Income Support was refused as, under the relevant Acacian legislation, by quitting his job and having lost his income, in accordance with Acacian law, he lost his ‘right to reside in Acacia,’ the latter being a pre-condition for receiving Income Support.

Jan tried to find a new job, but the construction sector was under crisis and there were no jobs to be found. He has now been told that, if he does not find a job within the next few weeks, he will have to leave Acacia together with his wife and child who was born in Acacia a few weeks ago.

Relying on relevant legislative measures and CJEU case law, advise what rights Jan and his family may have under European Union law.

Question 4

Answer either question A or question B

(A) ‘Ensuring the freedom of cross border trade in services within the internal market is of paramount importance for its prosperity.’ Critically discuss some of the challenges that the EU faced and the extent to which they have been resolved by the adoption of the Services Directive.

OR

(B) A is a French accountant, established in France, who also offers services as an insurance broker. She wishes to expand geographically and offer her services in Belgium from her French premises. However, she has, faced certain restrictions in Belgium. She brings to you the following problems and asks for advice as to whether she

can rely on EU law to enable her to expand her business activities into Belgium. Please advise supporting your advice with relevant authority.

- a. The Belgian legislation does not allow an accountant to provide services as a real-estate agent or insurance broker, or to perform other financial activities.
- b. Under Belgian legislation, all providers of insurance services must have an office in Belgium so that advice is offered face to face.

The Belgian authorities have argued that the restrictions are lawful under both the TFEU and the Services Directive, and even if these national rules are ‘restrictions’ within the meaning of Article 56(1) TFEU, they can be justified on the grounds of public policy and/or protection of the consumer.

Question5

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.