

AGN:

Caroline Bradley

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EUROPEAN UNION LAW

Law 325 A and Law 325 B

THREE HOURS.

This is a closed-book exam.

ANSWER ALL OF SECTION A AND 1 QUESTION FROM SECTION B.

Please avoid substantial overlap in your answers. This means that in your answer to the section B question you should avoid relying significantly on cases and other materials that you need to discuss in detail in answering Section A.

DO read the questions carefully and think about your answers before beginning to write.

DO refer to treaty provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

You will get credit for following these instructions, and may be penalized for failing to do so.

SECTION A: 2/3 of total points for this exam

Ruritania, Arcadia and Urbania are Member States of the EU. The Governments of all of these Member States have recently issued public statements expressing their commitment to protecting the environment. One idea that environmental groups have persuaded the Governments of these three Member States to adopt involves encouraging consumers to pay attention to the environmental impact of the products they buy. The environmental groups suggested ways of addressing this issue. In particular they have argued that various products should carry labels which explain their environmental impact.

The three Member States have all enacted statutes which require disclosures about the environmental impact of food products. The Ruritanian legislature has enacted a statute which will require food products to carry “food miles” labels which show the transport emissions of the food product from the moment of production until it reaches the shelves in shops. The Arcadian statute also requires disclosure of other environmental impacts, including water and energy involved in growing, producing and supplying food. The Urbanian statute goes even further and requires disclosure about pesticides and fertilizers used in the production of foods, and about the carbon footprint of refrigeration and cooking with respect to foods which require refrigeration and/or are cooked before sale to customers.

In Arcadia the detailed rules which apply under the statute have been developed by the Arcadian Environmental Standards Agency (AESA). The Arcadian statute requires stores to ensure that food products they sell conform to AESA’s rules. AESA has the power to impose large fines on stores which sell food products without the proper labels.

Betterfoods produces gourmet meat pies in Ruritania, and it has been exporting its pies into Arcadia and Urbania with great success (and profit) for some time. Betterfoods has a contract to sell pies to a large chain of supermarkets in Arcadia. The supermarket chain has told Betterfoods that if it does not supply pies with the new labels then the supermarket chain will be unable to accept the pies. Betterfoods argued that failing to accept its pies would be a breach of contract, but the supermarket chain says that it has no choice. Although Betterfoods was aware that Arcadia was thinking of adopting new rules about environmental impact labeling it had not expected that the

new rules would be applied so quickly in Arcadia. Also AESA did not make the details of the rules it was planning to adopt public before adopting the rules. It will take some time and cost money for Betterfoods to acquire new labels which comply with the new Arcadian rules.

The labels which the Arcadian and Urbanian rules now require show that the environmental impact of Betterfoods' pies is higher than that of some local products. In both Arcadia and Urbania this is partly because the Betterfoods pies have to travel further than locally produced pies.

Whereas farmers in Ruritania produce meat (especially beef) and grow crops, Urbanian farming has tended to emphasize the production of crops (there is a large group of poultry farmers in Urbania however). Traditional Urbanian pie recipes tend to be recipes which do not include red meat, and under the Urbanian rules labels for meat products show them to be more environmentally harmful than non-meat (or chicken) food products. A vocal group of farmers in Urbania has established a new campaign to encourage Urbanian consumers to "Buy Local." The campaign has been very successful. Sales of chicken pies have soared as sales of Betterfoods' meat pies have fallen dramatically.

In Ruritania the owners of Betterfoods are worried that the problems they are having are caused by John's (John is the 59 year old Chief Executive Officer (CEO) of Betterfoods) inability to keep up with changing times. They tell John that his employment with Betterfoods is being terminated because he is "past it" and that they will need to find a new younger and more energetic CEO. John has heard that there are EU rules which prohibit age discrimination and he wants to sue his employer for damages for age discrimination. Ruritania has not implemented Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (some excerpts from this directive are set out below).

Discuss the issues of EU law raised by these facts.

Excerpts from Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Article 1 Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2 Concept of discrimination

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice....

Article 6 Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for

young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

SECTION B: 1/3 of total points for this exam

ANSWER ONE QUESTION FROM THIS SECTION OF THE EXAM. Illustrate your answer with examples.

1. In the Tobacco Advertising Case (EU Materials Part 1) the Court of Justice wrote:

83... the measures referred to in art [114] of the Treaty are intended to improve the conditions for the establishment and functioning of the internal market. To construe that article as meaning that it vests in the Community legislature a general power to regulate the internal market would not only be contrary to the express wording of the provisions cited above but would also be incompatible with the principle embodied in.. the ..Treaty...that the powers of the Community are limited to those specifically conferred on it.

84. Moreover, a measure adopted on the basis of art [114] of the Treaty must genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market. If a mere finding of disparities between national rules and of the abstract risk of obstacles to the exercise of fundamental freedoms or of distortions of competition liable to result therefrom were sufficient to justify the choice of art [114] as a legal basis, judicial review of compliance with the proper legal basis might be rendered nugatory. The court would then be prevented from discharging the function entrusted to it.. of ensuring that the law is observed in the interpretation and application of the Treaty.

Discuss.

2. Discuss the role of the national courts in interpreting and applying EU law.

3. Discuss the Court of Justice's approach to interpreting and applying EU law.