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SPRING SEMESTER 2009

EUROPEAN COMMUNITY LAW

(FIRST YEAR ELECTIVE)

THREE HOURS.

This is a closed-book exam.

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

Please avoid substantial overlap in your answers, because, as a general rule, you will only get credit once for each piece of information you give me. For example, note that if you write “see above”, or “see answer to question x” in your second answer, your grade for the second answer will suffer.

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: 40%

ANSWER ONE QUESTION FROM THIS SECTION OF THE EXAM

1. "...[T]he task assigned to the Court of Justice under Article [234], the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals, confirms that the states have acknowledged that Community Law has an authority which can be invoked by their nationals before those courts and tribunals. The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of Member States, Community Law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the community." (From Van Gend en Loos, Case 26/62 (Judgment Feb. 5, 1963)).

Discuss.

2. Write a critique of any two cases we studied during this semester. (**NB:** Note the exam instructions on overlap).

SECTION B: 60%

Ruritania, Arcadia and Urbania are Member States of the EU. Towntoys (TT) and Countrytoys (CT) are toy manufacturers based in Ruritania. The Fun Warehouse (FW) owns a chain of toy stores in a number of EU Member States, including Arcadia and Urbania. Some of the products the Fun Warehouse sells are manufactured in the EU and others are manufactured outside the EU. Recently, there have been a number of worldwide scares about dangerous toys.

The Member States of the EU are all parties to the International Toy Safety Association Treaty and members of the International Toy Safety Association (ITSA). Until recently, ITSA has not been very active, but at the beginning of 2009 ITSA adopted two resolutions:

- ITSA Resolution Number 1 of 2009 banned the sale of unsafe toys (the resolution identifies a list of substances which may not be used in the manufacture of toys but also contains a broad ban on the sale of unsafe toys).
- ITSA Resolution Number 2 of 2009 contains a list of toy manufacturers whose toys are deemed to be unsafe. Towntoys appears on this list.

ITSA Resolutions are binding on ITSA's members. There is no provision in the ITSA Treaty for review of ITSA resolutions.

The EU immediately adopted a directive to give effect to the provisions of the ITSA resolutions. The directive includes ITSA's list of toy manufacturers whose toys are deemed to be unsafe, and provides that those manufacturers should not be allowed to sell toys in the EU until they have established the safety of the toys they manufacture. The directive does not specify any process for applying for a recognition of toy safety: it does not specify how toy manufacturers can apply for such a recognition nor which body has the discretion to determine toy safety. The directive includes the ITSA resolution's very broad ban on the sale of unsafe toys, without specifying any criteria for safety. However, the directive does state that Member States should provide a remedy in damages against the seller of unsafe toys which cause injury. The directive stated that Member States should implement the directive by the end of March 2009.

... continued

... Section B continued

QUESTIONS:

i. Towntoys is listed as an unsafe toy manufacturer under the ITSA resolution and the directive. The CEO of Towntoys thinks that its name was included on the list of unsafe manufacturers because the Chairman of ITSA has a grudge against him. Towntoys would like to challenge the ITSA resolution and the directive and, in particular, its inclusion on the list of manufacturers of unsafe toys.

Discuss how Towntoys can challenge the resolution and/or the directive in courts in the EU.

ii. A number of other Ruritanian toy manufacturers are also listed in the ITSA resolution as manufacturers of unsafe toys. The Fun Warehouse has just announced that it will not sell Ruritanian toys in any of its stores in Arcadia because it is uncertain whether Ruritanian toy manufacturing standards are adequate. Countrytoys has learned that the Fun Warehouse was instructed to make this announcement by the Arcadian Minister of the Economy. Countrytoys has sold its toys through Fun Warehouse stores in the past and would like to continue to do so.

Are there any rules of Community law that might help Countrytoys in these circumstances?

iii. Clara bought a toy in April in a Fun Warehouse store in Urbania. The toy injured her young son and she wants to know if she can obtain a remedy against Fun Warehouse. Urbania has not yet implemented the directive.

Discuss the rules of Community law which are relevant to the question whether Clara and her son can obtain a remedy with respect to this injury.