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SPRING SEMESTER 2010

# 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: 1/3 of total points for this exam**

### **ANSWER ONE QUESTION FROM THIS SECTION OF THE EXAM**

1. “[T]he law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.” (Costa v ENEL, Case 6/64, Materials Packet 2).

Discuss.

2. “[T]he obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness which it is for the Court to review in the framework of the complete system of legal remedies established by the Treaty... it must be emphasised that ... the review of lawfulness thus to be ensured by the Community judicature applies to the Community act intended to give effect to the international agreement at issue, and not to the latter as such... any judgment given by the Community judicature deciding that a Community measure intended to give effect to such a resolution is contrary to a higher rule of law in the Community legal order would not entail any challenge to the primacy of that resolution in international law.” (Kadi v Council & Commission, Court of Justice 2008, Materials Packet 5).

Discuss.

## **SECTION B: 2/3 of total points for this exam**

Ruritania, Arcadia and Urbania are Member States of the EU. As a result of the recent global financial crisis, all three countries are suffering from financial problems: many businesses have gone into bankruptcy and unemployment rates have risen. The Governments of the three countries would like to do whatever they can to protect their citizens from the effects of the crisis.

The Urbanian Government is particularly concerned about the plight of middle-aged workers who have lost their jobs during the crisis. Many Urbanian firms have chosen to deal with their economic troubles by dismissing older, more expensive, workers. The Urbanian Government is particularly concerned that unemployment of middle-aged workers will harm families and will reduce educational opportunities for children. Urbania has therefore recently enacted legislation to address the problem of unemployed middle-aged workers by setting up a new system of grants to encourage employers to hire or retain middle-aged workers (whether or not those workers have children). Access to a new retraining scheme is limited to workers over the age of 40. News articles suggest that employers have reacted to these developments by dismissing younger workers. Urbania has not implemented the Directive establishing a general framework for equal treatment in employment and occupation (excerpts from the Directive are set out below; the Directive should have been implemented by early December 2006 at the latest).

The economies of Ruritania and Arcadia are dominated by agriculture. The climates of the two countries are different. Ruritania tends to specialize in the production of crops which can tolerate cooler weather, whereas Arcadia has a warmer climate and produces large (expensive) olives and very high quality soft fruits, including peaches and nectarines.

The Ruritanian is the newspaper which has the largest circulation in Ruritania (and it also has a substantial circulation in Urbania) and it has a significant impact on popular opinion in Ruritania. It is owned by the family of the President of Ruritania, and the family exercises editorial control over the newspaper. The Ruritanian has recently published a series of articles advising citizens of Ruritania on how they can deal with the effects of the economic crisis.

**... continued**

**... Section B continued**

One of the articles advised consumers to reduce costs by avoiding luxury fruits and vegetables. In Ruritania, imported fruits and vegetables have traditionally been seen as luxury products, and since this article was published sales of Arcadian produce in Ruritania have fallen drastically. Ruritanian shops have cancelled orders for produce from Arcadian farmers.

Ruritanian produce is imported into Arcadia by truck and Arcadian farmers are carrying out protests at the border between Ruritania and Arcadia. If they cannot sell their produce in Ruritania, they do not see why Ruritanian farmers should be able to sell their produce in Arcadia. So far the protests have been mostly peaceful. But the Arcadian Government is concerned, and would like to be seen to be taking steps to protect its farmers. The Arcadian Government is considering imposing a charge on all sales of fruits and vegetables in Arcadia to finance a financial support scheme for Arcadian farmers suffering from hardship. The charge will also finance a scheme to market Arcadian produce outside Arcadia.

**EACH OF THE FOLLOWING QUESTIONS CARRIES 1/3 OF THE TOTAL POINTS FOR THIS EXAM:**

**A.** What issues of EU law are raised by the Urbanian legislation? Brianna is 30 years old and lives in Urbania. If her employer, who needs to cut costs, chooses to dismiss workers under 40 rather than workers over 40 in order to benefit from the new grant system, does EU law provide any remedy for Brianna ?

**B.** What issues of EU law are raised by the article in the Ruritanian and by the protests and the proposed financial support scheme and marketing scheme for Arcadian farmers? What remedies may be available to Arcadian and/or Ruritanian farmers under EU law?

## **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.