

Caroline Bradley

SPRING SEMESTER 2007

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. 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. In *Yusuf* (excerpted in Materials Packet 3) the Court of First Instance stated that although the CFI did not have jurisdiction to review the lawfulness of a Security Council resolution “according to the standard of protection of fundamental rights as recognised by the Community legal order,” (para. 272) :

“...the Court is empowered to check, indirectly, the lawfulness of the resolutions of the Security Council... with regard to jus cogens, understood as a body of higher rules of public international law binding on all subjects of international law, including the bodies of the United Nations, and from which no derogation is possible.” (para 277).

Critically assess the ECJ’s and CFI’s approach to their role as EU institutions. In your answer you may focus only on the issue of validity of resolutions of the Security Council or analyze the ECJ’s and CFI’s jurisprudence more generally. If a court in an EU Member State were to claim the power to check whether acts of the EU institutions infringed jus cogens, how would you expect the ECJ and CFI to react?

2. “[A]ccording to article [249] of the..Treaty the binding nature of a Directive, which constitutes the basis for the possibility of relying on the Directive before a national court, exists only in relation to ' each member state to which it is addressed '. It follows that a Directive may not of itself impose obligations on an individual and that a provision of a Directive may not be relied upon as such against such a person.” (*Marshall v Southampton and South-West Hampshire Area Health Authority*, para. 48, Materials Packet 1).

Discuss.

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SECTION B: 60%

Arcadia, Ruritania, Urbania, and Exurbia are Member States of the European Union (EU).

Arcadia's economy is based on agriculture, and it is a relatively poor Member State of the EU. Arcadia has one of the highest rates of adult illiteracy in the EU. But stories are important to Arcadians and Arcadia has a long-established story-telling culture. The Arcadian Story-Tellers Association (ASTA) is one of the most prestigious organizations in Arcadia and receives financial support from the Government of Arcadia to help it to further its mission of keeping the Arcadian story-telling tradition alive. ASTA organizes annual story-telling competitions where traditional Arcadian food and drink are served, and where the participants dress in traditional Arcadian clothing. Recently ASTA has been filming the competitions and recording the films to DVDs and has begun to raise money to fund its activities from sales of the DVDs. One segment of the competition is now dedicated to the showing of DVDs which storytellers produce themselves. Some of the younger Arcadian storytellers like to have the opportunity to use special effects on the DVDs which they could not use in a live performance.

One ancient Arcadian legend tells of a young boy who is raised by wolves and develops special powers which he uses for the good of the poor and disadvantaged. For centuries, Arcadian citizens have told stories about how Wolfboy helped them when they were in trouble. Another ancient Arcadian legend tells of Swampman, a fearsome creature who periodically comes out of the swamps of Ruritania and Northern Arcadia bringing dangerous diseases which kill people and animals. Because of the fear of Swampman instilled in them in childhood, Arcadian citizens will not buy Ruritanian produce.

Bob is an award-winning Urbanian writer who collects ancient legends from around the world. After a visit to Arcadia he wrote a book about Wolfboy which has become a best seller in Urbania, and has been translated into many EU languages and is selling well in Ruritania and Exurbia. Bob has entered into a contract with Carol, who is based in Exurbia, for Carol to manufacture and distribute Wolfboy figurines and clothing and other items throughout the EU, on the basis that Bob will receive 25% of the profits.

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Carol believes that Arcadia could be a very profitable market for the Wolfboy items, because so far no-one in Arcadia has developed Wolfboy themed products like hers. Carol has contacted a number of stores in Arcadia to try to arrange for the distribution of her Wolfboy items. However, all of the stores she has contacted have said that they are bound by the terms of the Arcadian Cultural Items Act (ACIA) which requires all Arcadian Cultural Items to be sold in Government-owned Arcadian Culture Stores (ACS). An Arcadian Cultural Item is defined in the statute as “Any item of traditional Arcadian Culture”. When Carol consults a lawyer in Arcadia the lawyer informs her that the Arcadian Courts interpret the statute to mean that any item which is manufactured in Arcadia or outside Arcadia and which is designed to reflect Arcadian culture or Arcadian cultural values must be sold only in Arcadian Culture Stores. The Arcadian Culture Stores do not stock any items manufactured outside Arcadia. The lawyer also states that (unlike other governmental agencies in Arcadia) the Arcadian Culture Stores are absolutely immune from suit. When Bob’s publisher investigates the possible sale of Bob’s Wolfman book in Arcadia he is told the same story. The books would also be considered to be Arcadian Cultural Items by the Arcadian Courts.

Bob thought that he might be able to overcome some of the prejudice against foreign products if he could appear at the ASTA competition. Unfortunately he was not well enough to travel at the time but he submitted a DVD of his telling of the Wolfman story (in Arcadian) for the DVD segment of the competition. ASTA wrote back to Bob informing him that his DVD was not eligible for showing at the competition because it did not faithfully reflect Arcadian cultural values and because ASTA had established as a matter of policy that it would only accept DVD submissions from Arcadian citizens. ASTA’s letter states that Bob is entitled to appeal to an ASTA appeal tribunal within four days and that after that time the decision is final and may not be appealed to any court or tribunal in Arcadia. Bob does not receive the letter until after this four day period has expired.

Bob begins suit in the Arcadian High Court against ASTA, arguing that ASTA’s decision violated European Community law and that to treat the determination as final is also invalid under European Community law. What arguments should Bob and his lawyer make in this lawsuit?

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Bob and Carol also want to challenge the Arcadian rules which make it impossible for them to sell the Wolfboy items in Arcadia by arguing that the rules (or at least the accepted interpretation of the rules) are in conflict with European Community law. How should they go about this (whom should they sue and what arguments should they make)?

If the Arcadian Courts deny Bob and Carol any remedy do they have any other redress under European Community law?

Do the facts of this hypothetical raise any other issues of European Community law?