

Caroline Bradley
Room G381
305 284 2082.
cbradley@law.miami.edu

Spring Semester 2009
Assistant: Adoraçion Carrillo.
305 284 4210

EUROPEAN COMMUNITY LAW

Wednesday & Friday at 11.00am in Room F 209

COURSE MATERIALS

Course materials will be available online at <http://blenderlaw.umlaw.net/eu-law/> .

The weblog will help to structure the course and class discussion and will link to useful resources. You should check the weblog a couple of times each week during the semester. The weblog and course materials together represent the materials for which you are responsible on the exam. As far as the weblog goes this means items posted directly to the blog (you are not required to click through to the links) including comments.

My aim in using my own materials rather than a commercial case book is to make the material we will study as accessible as possible. In addition we should be able to focus on more recent materials than those in the published case books, so the material should seem more immediate. Studying EC/EU law is a bit like studying all of federal law in the US - it is very complex. The core of the law of the EU deals with the relations between the EU institutions and between the institutions and the Member States. And the law also has implications for the rights of individual EU citizens.

Much of the EU's law deals with economic regulation including competition law and the administration of the common agricultural policy, and these are complex areas of law. In the course materials I have chosen to focus largely on food law in order to make the doctrinal material more manageable. But I am happy to spend some time on other areas of interest to the class. The materials are a work in progress and I would be very grateful for your feedback.

The European Union's Internet Site is at http://europa.eu/index_en.htm. This is an invaluable source of up to date information on developments in the European Union. You can find useful background and introductory information on this website. The EU's official documents site is at <http://eur-lex.europa.eu/en/index.htm>.

ASSESSMENT:

Your performance in this course will be assessed by means of:

1. A 4 page paper on a topic to be assigned by me and to be submitted to me on or before the Monday after Spring Break (Monday 23 March) (25%); **AND**
2. A three-hour, in-class, closed-book examination (75%).

The exam from Spring 2007 is attached to this handout.

ATTENDANCE

I will take attendance. You are entitled to three **unexplained** absences from class during the semester. This is not a policy which requires the Dean of Students' office to certify that your absence was "justified" in order for the absence to count as explained. In order to explain your absence you may visit the Dean of Students' office and fill out the form or you may send me an email. I reserve the right to lower the grade of anyone who misses more than three classes without informing me of the reason for their absence. If you miss a class please do ask me if you have any questions about the material you missed.

Consistent **and useful** participation in class may raise your grade. Class participation for this purpose includes useful participation in the weblog through posting of comments, links to relevant materials and questions.

Course Outline

1. Introduction to the EU

2. Food Supplements Directive Case Study

Legislative Powers of the EU and its Institutions

Challenging EU acts in EU and National Courts

Free Movement of Goods

3. Implications of Supremacy of Community Law

EUROPEAN COMMUNITY LAW

(FIRST YEAR ELECTIVE)

THREE HOURS.

This is a closed-book exam.

DO read the question 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.

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. The Ruritanian Produce Promoters Organization (RPPO) has begun an advertising campaign in Arcadia to encourage Arcadians to buy Ruritanian produce. Tim, the leader of the Ruritanian opposition party, argues frequently on television that the Arcadian Government should put a stop to RPPO's campaign.

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.

Continued....

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, although all of the stores she has contacted have expressed interest in the products, they have all 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.

There is a procedure in Arcadian law to apply to the Arcadian High Court for a definitive interpretation of Arcadian law.

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. Internal mail within Arcadia is almost always delivered the day after it is posted.

Continued....

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?

Bob and Carol also want to challenge the Arcadian rules which make it impossible for them to sell the Wolfboy items and books 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?