

Caroline Bradley

SPRING SEMESTER 2006

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. A number of European political leaders have recently criticized the European Court of Justice (ECJ). For example, Wolfgang Schäussel, the Austrian Chancellor, was reported to say that “the ECJ...has in the last couple of years systematically expanded European competencies, even in areas, where there is decidedly no [European] community law.” Critically assess the ECJ’s approach to interpreting the EC Treaty on the basis of the materials you studied during this semester. Do you consider that the ECJ behaves as an “activist” court in interpreting the Treaty? Would it be appropriate for the ECJ to behave as an activist court? Please give reasons for your views and illustrate your argument with examples.

2. The EC Treaty states in Article 3:

1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:...

(h) the approximation of the laws of Member States to the extent required for the functioning of the common market.

Article 95 of the Treaty states:

...The Council shall... adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market...

With examples from the materials we studied during the semester, discuss why, what, and how much approximation (or harmonization) of national laws is necessary for the functioning of the internal market. Your answer should address both (a) at least one example of how the EU’s institutions have justified a harmonization initiative and (b) whether you think the EU institutions go far enough or too far in trying to harmonize Member States’ laws.

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SECTION B: 60%

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

Two years ago the Arcadian Government delegated the power to regulate food to the Arcadian Food Authority (AFA), a governmental agency. The Arcadian Government was concerned about the poor health of the Arcadian population, which it blamed on bad eating habits. The AFA has broad authority to protect Arcadian consumers and has taken an extremely strict approach to regulating health claims made about food products. For example, the AFA's criteria for low fat and fat free foods and for low sugar and sugar free foods are more stringent than those of any other Member State in the EU.

In Ruritania the Food Standards Commission (FSC), a private body set up by Ruritanian food manufacturers, sets standards for food products, and generally takes a relaxed approach to nutrition and health claims about food products. The FSC takes the view that Ruritanian consumers should be able to make their own decisions about nutrition. Under Ruritanian law food manufacturers and distributors are allowed to make a wide range of claims about the health benefits of foods with almost no risk of legal liability.

Rurifoods (RF), a large Ruritanian food manufacturer which imports some food products into Arcadia, and would import more products if the AFA's rules were not so strict, is a member of the FSC. Rurifoods asked the FSC for help. The FSC's solution was to begin a massive advertising campaign in Ruritania urging Ruritanian consumers to boycott Arcadian food products because of unfair treatment of Ruritanian businesses in Arcadia. The campaign has been very successful. As well as not purchasing Arcadian food products, Ruritanian citizens have been defacing billboards advertising Arcadian food products and threatening managers of stores which stock Arcadian food products. Slinky, an Arcadian manufacturer of low sugar and low fat foods which used to be able to sell its products in Ruritania, has lost a lot of money as a result of this action.

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At the beginning of April 2006 the EU Council and the EU Parliament adopted a Common Position on a Proposed Regulation on Nutrition and Health Claims made on foods (i.e. the regulation has not yet been adopted). The proposed Regulation includes a number of specific criteria for particular health and nutrition claims, including claims that foods are low fat and fat free and low sugar and sugar free. The criteria in the proposed Regulation are less stringent than the Arcadian criteria established by the AFA.

The proposed Regulation also sets out procedures for the authorization of nutrition and health claims on the basis of generally accepted scientific data. Applicants will apply to national authorities which will forward the applications to the European Food Safety Authority (EFSA). After the EFSA issues an opinion about whether a particular claim should be permitted, the Commission will issue a Decision.

Art 3 of the proposed Regulation sets out general rules that nutrition and health claims shall not:

- (a) be false, ambiguous or misleading;
- (b) give rise to doubt about the safety and/or the nutritional adequacy of other foods;
- (c) encourage or condone excess consumption of a food;
- (d) state, suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general...
- (e) refer to changes in bodily functions which could give rise to or exploit fear in the consumer, either textually or through pictorial, graphic or symbolic representations.

The FSC and Rurifoods wish to challenge the proposed Regulation because they believe it is too restrictive. The AFA and Slinky wish to challenge the proposed Regulation because it does not go far enough.

Discuss the issues of European Community law raised by these facts.