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Spring Semester 2012

EUROPEAN UNION LAW

Wednesday & Friday at 11.00am in Room A 216 B

I am happy to meet with you to answer questions about the course. The best way to reach me is by email.

COURSE MATERIALS

Course materials will be available online at <http://blenderlaw.umlaw.net/eu-law/>. The blog will help to structure the course and class discussion and will link to useful resources. You should check the blog a couple of times each week during the semester. The blog and course materials together represent the materials for which you are responsible on the exam. As far as the blog 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 be and seem more immediate. Studying EU law is a bit like studying all of federal law in the US - it is very complex, and of necessity we can only focus on some aspects of EU law. 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 choose 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>.

ATTENDANCE

I will take attendance. You are entitled to three **unexplained** absences from class during the semester. You may send me an email to explain an absence from class or contact the Dean of Students' office. 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. I also reserve the right to drop a student from class if he or she misses a substantial number of classes (whether or not those absences are explained). 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.

ASSESSMENT

First year students

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 19 March) (25%) **AND**
2. A three-hour, in-class, closed-book examination (75%).

Upper Class students

Either

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 19 March) (25%) **AND**
2. A three-hour, in-class, closed-book examination (75%).

Or

A 3 credit paper (30+ pages) on a topic of EU law to be approved by me early in the semester, and a draft of which should be submitted to me for review by early April.

The exam from Spring 2010 is attached to this handout (and it is also available from the class blog on the EU Materials for Spring 2012 page).

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Iris Morera, Coordinator, Disability Services at the Office of Disability Services for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is imorera@law.miami.edu. You may also visit the Disability Services website at www.law.miami.edu/disabilityservices.

Course Outline

- 1. Introduction to the EU**
- 2. Food Law** (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 EU Law**

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.

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... 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.

