FALL 1997:
FINAL EXAMINATION
European Union Law

QUESTION 1

Pralindas, a small Irish company, has recently made inroads into the handmade chocolate market in Ireland. All Pralindas pralines are made in Ireland. Pralindas now wishes to expand into Europe using the marketing techniques which have served it so well in Ireland, but finds that it is faced with the following obstacles:

(A) In Belgium, there is a law that all chocolates sold as “pralines” must contain at least 10% cream. Pralindas pralines contain, on average, only 7% cream. The Belgian authorities cite public health and, in particular, concern over cholesterol levels, as justification for the law.

(B) In Germany, Pralindas cannot open its shops on Sundays, usually its busiest day, due to Sunday trading restrictions.

(C) In France, Pralindas finds that it is restricted to the extent to which it can compete with other chocolate shops as there is a law which imposes a minimum margin on the sale of imported praline chocolates. No such minimum margin rule is imposed on pralines made in France. This minimum margin law was introduced in response to complaints from small French praline producers that they were being prejudiced by the dumping of lower quality pralines on the French market.

Advise Pralindas of its position under European law as against (A) Belgium, (B) Germany and (C) France, citing relevant case law. Be sure to discuss all arguments which can be made in support of or in opposition to all plausible positions.

QUESTION 2

Francoise and her partner Michel are both French nationals. They moved to Dublin in November 1995, when Michel took up a position as the resident saxophonist in a new blues club. Francoise has a degree in fine arts but she does not work outside the home. She continues to develop her skills as an artist, but still refuses to sell any of her paintings as, she feels, this would debase her talents. In June 1996 Michel was fired by the club because of his ongoing heroin addiction. Since then he has not had regular work, although he has made some money playing on street corners frequented by tourists. Recently, Francoise sought free dental treatment from the state run dental clinic on the basis that she is Michel’s partner. While awaiting a reply from the clinic on
her application for treatment, she is visited by the immigration service who are threatening to deport both her and Michel.

ADVISE MICHEL AND FRANCOISE OF THEIR POSITIONS UNDER EUROPEAN LAW, CITING RELEVANT CASE LAW. BE SURE TO DISCUSS ALL ARGUMENTS WHICH CAN BE MADE IN SUPPORT OF OR IN OPPOSITION TO ALL PLAUSIBLE POSITIONS AS TO EACH OF THEM.

WHAT DIFFERENCE WOULD IT MAKE TO THE ANALYSIS IF FRANCOISE WERE MICHEL’S WIFE?

QUESTION 3

The Serafino Fertility Clinic in Madrid is one of the few facilities in Spain to offer in vitro fertilization to couples using donor sperm. Some of its sperm supplies are purchased from a clinic in Lisbon, Portugal. Recently, Serafino has received a letter from the Department of Health ordering it to discontinue the purchase of supplies from Lisbon. During an interview with a representative of the Minister of Health, Serafino directors are informed that the government regards commercial transactions in the area of human fertility as morally offensive and out of line with traditional Spanish medical practice. Moreover, the Department of Health fear the risk of HIV and hepatitis infection from imported sperm. Serafino has purchased sperm from Spanish donors in the past without incident, though the Department of health had been aware of these purchases.

Spanish law permits the purchase by fertility clinics of sperm produced in Spain. The law specifies the screening procedures which must be followed before donated or purchased sperm may be used. The screening procedures are identical in Spain and Portugal are virtually identical, except that the Portuguese are not required to test for Hepatitis F, a new variant, with respect to which Spain has now required screening. No one knows precisely the full extent of the harm which might be caused by hepatitis F.

ADVISE SERAFINO OF ITS POSITION UNDER EUROPEAN LAW, CITING RELEVANT CASE LAW. BE SURE TO DISCUSS ALL ARGUMENTS WHICH CAN BE MADE IN SUPPORT OF OR IN OPPOSITION TO ALL PLAUSIBLE POSITIONS.

WHAT DIFFERENCE TO THE ANALYSIS IF THE SCREENING PROCEDURES IN SPAIN AND PORTUGAL ARE IDENTICAL?

WHAT DIFFERENCE TO THE ANALYSIS IF, DESPITE THE FACT THAT THE SCREENING PROCEDURES IN SPAIN AND PORTUGAL ARE IDENTICAL, SPAIN REQUIRES ALL DONATED SPERM TO BE TESTED BY A PARTICULAR LABORATORY LOCATED IN BARCELONA?

WHAT DIFFERENCE WOULD IT MAKE TO THE ANALYSIS IF THE INSTITUTIONS OF THE COMMUNITY HAD PROMULGATED A STANDARD FOR THE SCREENING OF SPERM?
**QUESTION 4**

In 1990, the E.C. Council unanimously adopted Directives 45/90 and 46/91. Directive 45/90 provided that: (a) member states must enact legislation to permit the creation of professional corporations (that is, corporations in which the sole shareholder is a professional (i.e. doctor, lawyer, actor) and the sole business of the corporation is the provision of the services of the shareholder to third parties). Directive 46/90 provided that member states would use cooperate in setting standards for the equitable tax treatment of the income of such professional corporations. Directive 45/90 set forth about 60 pages of necessary provisions which must be enacted as part of any professional corporation law. Both directives further provided that the directives must be implemented no later than December 31, 1995.

On February 1, 1996, Antonio Banderas, a citizen of Spain, attempts to form a professional corporation. The Spanish authorities refuse the filing of the appropriate forms, remarking that Spain has yet to implement the directive. The registrar warns Banderas, in a letter, that under Spanish law, Spain does not recognize the existence of professional corporations, whatever the place of their incorporation. As a result, Banderas has to change the country of his residence to Germany (which has implemented the directive) and forms his professional corporation under German law on March 1, 1996. Unfortunately, as he is now a resident of Germany with a part year residence in Spain, and because neither Spain nor Germany has sought to coordinate their tax policies, he has had to pay an additional tax to Spain of 500,000 pesetas and DM250,000 to the German authorities. Moreover, on April 1, 1996 Banderas is sued personally, in the Spanish courts, for breach of a contract to provide his services as an actor to a French film company for the shooting of the remake of the Cage aux Folles. Banderas defends the suit on the grounds that the film company must sue the professional corporation and not him personally. The film company has responded that Spain has yet to enact any legislation recognizing professional corporations and that, therefore, Banderas’ response is ineffective.

**Advise Banderas on the availability of the defense (i.e. that the film company was required to sue the professional corporation) under European law, citing relevant case law. Be sure to discuss all arguments which can be made in support of or in opposition to all plausible positions.**

**Can Banderas require the Spanish Trial Court to refer the issue of European law to the European Court of Justice?**

**On what basis may the Spanish High Court refuse to refer the issue to the European Court of Justice.**
IF DIRECTIVE 45/90 IS NOT DIRECTLY EFFECTIVE, MAY BANDERAS SEEK RECOVERY OF HIS DAMAGES FROM ANY OTHER SOURCE. BE SURE TO DISCUSS ALL ARGUMENTS WHICH CAN BE MADE IN SUPPORT OF OR IN OPPOSITION TO ALL PLAUSIBLE POSITIONS.

IS DIRECTIVE 46/90 DIRECTLY EFFECTIVE AGAINST SPAIN AND GERMANY, AND AGAINST WHOM AND ON WHAT BASIS MAY BANDERAS RECOVER FOR DAMAGES SUFFERED AS A RESULT OF THE FAILURE TO IMPLEMENT THIS DIRECTIVE?

QUESTION 5

On April 1, 1997, Italy and IBM-Italia, Inc., entered into a joint venture agreement for the manufacture of IBM mainframe computers in Italy. The mainframes would be assembled in Italy using parts manufactured in the United States. The computers would then be sold by IBM-Italia, the Italian subsidiary of IBM, Inc. On June 1, 1997 the Council passed, by unanimous vote, a regulation which required all member states to recognize as foreign goods, all products assembled within the European Union from components, the majority of which came from outside the E.U. Pursuant to agreements entered into on or before June 1, 1997. The regulation did not set forth either the facts on which this regulation was based or the provision of the E.C. Treaty providing authority for the adoption of the regulation.

ADVISE IBM-ITALIA ON ITS POSITION UNDER EUROPEAN LAW; MAY IBM-ITALIA SEEK TO CHALLENGE THE REGULATION, AND IF SO, ON WHAT BASIS? WOULD IT MAKE A DIFFERENCE IF THE JUNE 1, 1997 REGULATION IN FACT APPLIED ONLY TO TWO AGREEMENTS (THERE BEING NO OTHER AGREEMENTS OF THE TYPES DESCRIBED IN THE REGULATION ENTERED INTO BEFORE JUNE 1, 1997)? CITE ALL RELEVANT CASE LAW AND BE SURE TO DISCUSS ALL ARGUMENTS WHICH CAN BE MADE IN SUPPORT OF OR IN OPPOSITION TO ALL PLAUSIBLE POSITIONS.