The British have, for some time, been worrying about auto safety. They are particularly concerned because many people in Britain, a nation of beer drinkers, drink and drive. Indeed, these problems were hotly debated prior to the general elections in which the Labour Party won a bare majority of the seats in Parliament. The Labour party had campaigned on a pledge of "doing something" about auto safety for British consumers.

And they do. Within 180 days of the installation of the new government, Parliament passes the following legislation:

1. From the effective day of the regulation, all autos manufactured or sold in Britain must be equipped with front seat driver and passenger air bags. In addition, all passenger cars must also be equipped with door air bags.
   
   A. Cars not equipped with these devices will be subject to an excise tax of £2,000 for cars with a sales price of less than £10,000, and £1,000 for cars with a sales price of more than £10,000. The money collected will be placed in a special fund for the payment of the health care costs of auto accident victims. The only other money in this fund is collected from auto accident tort feasors (pursuant to an English law which permits the Court to assess general "health costs" payable to the State, against the party at fault in a traffic accident).

   B. Additionally all cars must be labelled to indicate compliance with the law. Failure to properly label such cars will result in a payment of £500 and create a presumption of liability as against the consumer for any direct and consequential damages suffered as a result of the failure to install the safety devices.

2. Beer and wine may only be sold in taverns or in state run liquor stores. The alcoholic content of all beverages must appear on each bottle in which such beverages are sold.

3. The sale of all beer with an alcohol content of more than 15% by volume will be subject to an excise tax of 50% of the sales price of the beer. No tax is assessed against wine.
4. All labels in Britain must be in English.

5. All fines and excise taxes must be paid by the importer, although British law permits such importers to recover such payments from the manufacturer.

**Some interesting facts:** Most European auto manufacturers have been installing front passenger air bags in their cars intended for export to the United States for years. No European auto manufacturers have ever offered such air bags on cars intended for the British market, except for Volvo, a Swedish manufacturer. British auto manufacturers have installed air bags on their sports cars and luxury cars for years, but have never offered them on other cars. Only Volvo has manufactured cars with side impact air bags, and Volvo has marketed cars in Britain substantially in compliance with the new law for the past four years. Cars intended for Britain are manufactured in special runs because the steering wheel is on the "wrong" side of the car. Most non-luxury cars sold in Britain are manufactured in Germany, France, and Italy. British manufacturers account for 70% of the sales of luxury cars. Moreover, British beer traditionally has contained less than 15% alcohol by volume. Irish beer, which has been making significant inroads in Britain, has an alcohol content of 16.5% by volume. German and Dutch beer is produced for export with a variety of alcohol content, primarily in order to satisfy the various sales requirements in the U.S. market. Traditionally, they have exported higher alcohol by volume beers to Britain, but could substitute lower alcohol by volume beer. The British barely drink French beer (a contradiction in terms!) but do drink quantities of French, German, Spanish and Italian wine. Unlike beer which is drunk freely in taverns and on all occasions and at all times, wine is consumed in Britain only during meals, and then sparingly. It is commonly believed in Britain that wine has nutritive qualities (it is a health food, so to speak) and it is not uncommon to see mothers giving wine to their young children. The French have, however, begun an advertising campaign in Britain (featuring the Swedish beach ball team) to convince the British to consume wine in copious quantities. Britain produces no wine. Most beer and wine producers have, as a marketing device, traditionally labelled their beer in the language of the country of origin. They believed this would add a certain marketing appeal by emphasizing the foreign (and exotic) nature of the product. No labels have yet been manufactured in English.

Unless otherwise advised below, assume that the European Union has never implemented any Union-wide standards for car airbags in cars or regulating the alcoholic content of beer. Assume further, though, that the European Parliament has for some time, at the urging of the British and Swedish members, been pushing the Commission and Council to adopt the measures ultimately adopted first in Britain with no success.

**Question 1**
Domenico Scarlotti, an Italian national, is the owner of a British business, the sole purpose of which is to import, for distribution to retailers, Fiats from Italy. Fiats have engines and seats but do not have airbags. They are very cheap, selling “fully loaded” for less than £5,000. They also do not come with labels of any kind. As a result of the new law, an excise tax liability of £250,000 has been imposed on him (including fines for failing to comply with the labelling requirements). He does not pay and the Crown has attempted to collect the tax by seeking to sell his house. He brings an action in court, seeking to bar the sale of his house on the basis that the excise tax is unlawful as applied to him.

1. On what basis can he assert this defense? Discuss all arguments he would make as well as the arguments the Crown would make in defense of the excise tax scheme.

2. What can you do if the courts in Britain rule against him, and on what authority can he do it?

3. As the importer of Fiats into Britain, would he have to wait until the Crown seeks to collect an excise fee from him in order to contest this tax scheme? If not what other means are available to him to challenge this legislation generally, or as specifically applied to him, and how and before whom would he go about it?

4. Assume that the importer pays the excise tax and then sues the manufacturer in Italy. The contract between the importer and manufacturer requires that all disputes between them be submitted to an arbitrator. Italian law permits limited judicial review of arbitration decisions for defects in procedure or basic defects in the arbitral decision (limited to breaches of fundamental constitutional rights). Can the parties seek a referral to the Court of Justice during arbitration? On judicial review of the arbitral decision?

**Question 2**

Assume that you are the assistant to the Queen of the Netherlands, a great beer drinker with an interest in the Heinekin Breweries. Assume further that, rather than impose an excise tax described above, British law banned the importation and sale of autos not equipped with air bags and banned the importation and sale of beer with an alcohol content exceeding 15% by volume.

1. Her Majesty has asked you to write her a memo explaining all of the means available for challenging this British scheme and the arguments that could be advanced in support of and in defense of the British scheme.
2. Would it make a difference to any part of your argument if scientific studies: (i) were inconclusive about the value of air bags for minors, and that currently there is a raging dispute as to whether anti-lock brakes or air bags are a more effective safety device and (ii) showed that the salmonella bacteria tends to live longer and multiply faster in mediums with higher alcohol content?

Question 3

Assume that after careful consideration, the Council, by unanimous vote and in consultation with Parliament, adopts a directive in 1994, which requires all autos sold in the European Union to be equipped with front seat driver and passenger airbags complying with the technical requirements set forth in the directive. The directive must be implemented by February 1, 1997. The directive recited that it was enacted under authority of art. 235, but was otherwise silent.

1. You are a Member of Parliament. You are miffed that the Council merely consulted you, especially since you would have insisted on the inclusion of the requirement of a labelling requirement for consumer protection and of the addition of side impact air bags. Other provisions, such as art. 129 and art. 129a provide other procedures. Is there any basis on which the European Parliament can challenge the directive? Discuss all procedural and substantive arguments which might be made in support and against such a challenge.

2. You are the importer described in Question 1. Assume that Britain has never implemented the directive (and also that whatever defects there existed in the directive have been cured). Could you use the directive to defend against the imposition of the excise tax in the national courts of Britain on April 22, 1996? On April 22, 1997? With respect to each: why or why not?

Question 4

Assume that it turns out that the British beer regulatory scheme was determined to contravene the Community Treaties as interpreted by the European Court of Justice (but don't take this as a clue about the right answer to the other problems!). You are a German brewer. As a result of the British law you were required to divert lower alcohol content beer already allocated to the American market to Britain in order to comply with the law. As a result shipments were delayed to the U.S. and Britain causing shortages and a loss of market share. Moreover, the higher alcohol beer had to be disposed of in Turkey, where beer sales are brisk but the profit margin much lower. Your importer accepted shipment but many of his customers refused on the grounds that their contracts called for a particular type of beer and that delivery of the lower
alcohol content beer constituted a breach of contract. In the ensuing lawsuits (in which
you were impleaded by the importer), the courts held that the contract had not been
breached because of the intervening legislation, but that the importer (and you) were
liable to the tavern owners and liquor stores for damages caused by the shipping
delays.

Can you prevail if you sue the British government to recover the damages
you suffered as a result of the beer laws which were determined to contravene
the Treaties? Discuss all arguments for and against.

Question 5

It turns out that the importer in Question 1, Domenico Scarlotti, was an
Italian national. He and his wife and children had lived in Britain for ten years. All had
been issued 2 year residency permits, which had been renewed 3 times. The current
residency permits expire on May 1, 1996. The importer's children, ages 19, and 22,
attended state run British colleges, and his wife did not have employment outside the
house. Unfortunately, the stress of the excise tax on the importer's business put a
substantial strain on the marriage. At the end of March, 1996, the couple separated and
Mr. Scarlotti returned to Italy, leaving his wife and children in England. The couple is
currently working out the financial terms of a separation agreement (devout Catholics,
it is not clear that they will ever divorce).

1. Assume that Britain refuses to renew the residency permits of Mrs.
Scarlotti. Can Mrs. Scarlotti successfully challenge this decision? Discuss all
arguments for and against. Would it make a difference if Mrs. Scarlotti became
the part-time Secretary of the English-American Friendship Society?

2. Assume that the British refuse to renew the residency permits of
the children, and that Mrs. Scarlotti returns to Italy to rejoin her husband. On
what basis may the children challenge the decision? Discuss all arguments.