Fur activists have been busy in England. With the election of Tony Blair last year, representatives of these activist groups induced the new Labor government to pass the following Act:

AN ACT

- Whereas certain nations identified in the Annex to this Act permit the hunting and killing of animals listed on international endangered species schedules for the sartorial use of their furs;

- Whereas certain nations identified in the Annex to this Act permit the killing of animals in an inhumane manner for the sartorial use of their fur;

- Whereas the people of the United Kingdom ought to be protected against purchasing without their knowledge or consent fur produced in this manner or from endangered species;

- Whereas such purchase may significantly affect the mental and emotional health of the people of this Realm;

- Whereas the health of people who work in fur processing plants is severely affected whether or not such people live or work in Britain, and it is the intent of the Government of this Realm to protect the health and welfare of fur processing workers.

NOW THEREFORE, BE IT ENACTED THUS:

1. Any item offered for sale within the United Kingdom or manufactured within the United Kingdom described in Paragraph 2 shall have displayed prominently on such item the information described in Paragraph 3.

2. The items subject to Paragraph 1 include any and all items which contain or which have attached thereto or which otherwise contain as a component thereof the skin or fur of any animal.
3. The information required to be displayed pursuant to Paragraph 1 hereof shall include the following:

A. Identification of the skin or fur used and whether such skin or fur came from an animal identified as endangered under this Act.

B. The name of the country where the animal whose skin or fur is identified in “A” was obtained (country of origin) and if that country is listed in the Annex to this Act.

C. The name of the country where the skin or fur was processed (country of manufacture) and if that country is listed in the Annex to this Act.

D. A statement indicating whether the animal, whose skin or fur forms part of the item, was farmed.

E. The method by which the animal was slaughtered.

The Annex identified the following countries — France, Sweden, Canada, Russia, Japan, Indonesia, Iran, Greece, Peru, and Brazil — as nations permitting the hunting and killing of endangered species and the inhumane slaughtering of animals for the sartorial use of their fur.

The Commission has been studying the feasibility of implementing standards for the slaughter of animals to be used for fur or food. They have also been considering a ban on the selling of any animal part of animals on endangered species lists. They have even considered limiting the sale of fur and meat within the EU to animals farmed and not hunted. All of these deliberations have been acrimonious and nothing definitive has been produced because of French, Swedish, and Greek opposition to federal legislation of any kind.
Two months before the passage of the British Act, a movie was released in Britain entitled “Leopard Lobotomy.” The movie purported to recount the real life experiences of the Duchess of Faadeeda who became mentally ill when she discovered that her leopard fur (trimmed with Persian Lamb) had been produced from an endangered species (the leopard) using brutal methods to relieve the animals of their skin (especially the Persian Lamb). There is currently a lively debate on the existence of “Leopard Lobotomy Syndrome” in the European psychiatric community. Most professors of psychiatry still hesitate to affirm the existence of “Leopard Lobotomy Syndrome.” However, since the release of the movie, several people have also come out with their own “Leopard Lobotomy Syndrome” stories.

Lastly, a month before the British legislation was enacted, the Commission came out with a report, “Death by Fur”, in which Commission experts concluded that workers in fur processing plants (including but not limited to tanneries) have a greatly increased chance of contracting cataracts and skin cancer. The medical research community is extremely divided, with two powerful and prestigious groups taking opposite sides on the conclusions reached in the report. Currently, animal fur processing plants (including tanneries) are located in Russia, Brazil, France, and Greece. There are no fur processing plants in the United Kingdom.

Cheveaux d’Animaux is a French company which farms, hunts and processes animals for sale of their skin and fur on a worldwide basis. About 30% of its business is in Great Britain. Their processing plants are in France and Greece. They maintain fur farms in France, Brazil and Indonesia. They provide furs and skins for the wholesale and retail trade. They have no employees in the United Kingdom.

**QUESTION 1**

Assume that one week after the passage of the Act, British authorities move to enforce the Act. In a series of highly publicized raids, the authorities seize all non-complying fur coats from major London department stores. They also confiscate all non-conforming fur coats passing through British customs. Among the furs seized were those of Cheveaux d’Animaux. The purchasers of the seized furs have claimed that Cheveaux d’Animaux has breached its contracts with them and have sued Cheveaux d’Animaux in British courts for damages and specific performance (that is, seeking the delivery of fur coats complying with the Act).

**Part A:**

**Can you raise as a defense to the suit in the United Kingdom the argument that the Act violates European Union law?** Be sure to describe all arguments.
Part B:

(i) Does the Act violate European Union law? Be sure to describe all arguments and defenses that any of the parties could make.

(ii) If the Act violates European Union law, can you propose any modifications to the Act which would satisfy the requirements of EU law?

Part C:

(i) Could you compel the trial court to refer the question of EC law to the European Court of Justice?

(ii) Would your answer change if you were seeking to compel a referral from the Court of Appeal?

(iii) The House of Lords?

Part D:

Assume the following: Cheveaux d'Animaux and its British customers each entered into a standard industry agreement for the wholesale purchase of fur. Such standard agreements obligate the parties to arbitrate all disputes arising under or in connection with the agreement in accordance with the rules of the American Arbitration Association (a private group based in New York City). The agreement also provides the British substantive law applies to the interpretation of the agreement. Arbitration decisions may only be reviewed by a court for fraud or arbitrator conduct exceeding her authority under the arbitration clause.

(i) Could you compel the arbitrator to refer the question of European Union law to the Court of Justice?

(ii) Is referral available at any other stage of the proceedings?

(iii) Would your answer change if the arbitration agreement provided that arbitration would be conducted under the rules of the British Arbitration Act which empowers British courts to appoint a magistrate to arbitrate disputes in accordance with British rules of procedure?

Part E:

Is the question, “Does the Act violate European Union Law”, sufficient to support a referral to the European Court of Justice?
Part F:

Assume that the Act violates European Union law. Can Cheveaux d'Animaux recover damages, and if so, against whom? Please be sure to describe all arguments and defenses.

Part G:

Assume that instead of requiring labelling, the Act imposed a tax on the sale of fur in Britain of animals on endangered species lists or animals inhumanely slaughtered. The tax is to be paid upon the first purchase of such fur within Britain. Assume that 95% of such sales involve goods imported from France and Brazil.

(i) Does the Act now violate European Union law? Be sure to describe all arguments and defenses that any of the parties could make and propose any modifications to the Act which would satisfy the requirements of EU law.

Part H:

Assume that the Act provides that its provisions are applicable only to furs or skins slaughtered or processed within the United Kingdom.

(i) Does the Act now violate European Union law? Be sure to describe all arguments and defenses that any of the parties could make and propose any modifications to the Act which would satisfy the requirements of EU law.

QUESTION 2

Assume that in 1990, the European Union enacted Directive 90/333, “On Humane Slaughter of Animals”, which requires the Member States to adopt legislation ensuring the animal slaughter be conducted in the manner specified in the directive. The directive provided six alternative methods of humane slaughter and also permitted ritual slaughter in accordance with religious tradition. Member States were given until December 31, 1994 to transpose the directive. Neither France nor Greece has ever transposed the directive. Britain transposed the directive in the form of the Act described in the “General Facts” section of this exam. In addition to the provisions of the Act described above, assume that the Act provided that only one of the six alternative methods described in the directive would be lawful in Britain and prohibited all other methods — finding as a legislative fact that all other methods of slaughter were “inhumane.”

Part A:
Assume the directive was enacted under a treaty provision requiring EU Parliamentary consultation. The directive, however, stated no legislative basis supporting the passage of the directive. Instead, the directive states only that the directive is enacted “pursuant to the authority granted to Community institutions under the Community treaties.” Also, Parliament was never consulted prior to the passage of the directive, but after the directive was enacted, Parliament passed a resolution approving the directive.

(i) Can France successfully challenge the directive, and if so, on what basis?

(ii) Can Cheveaux d'Animaux challenge the directive, and if so, on what basis?

Part B:

For this Part B, assume Directive 90/333 provides that it is unlawful to purchase skins of animals slaughtered other than pursuant to one of the six methods described. Cheveaux d'Animaux refuses to honor a contract it entered into with Hellenic Skins, a Greek corporation, for the purchase of rabbit fur because the rabbits were not slaughtered in conformity with the Directive provisions. Hellenic Skins sues for breach of contract in Paris. Cheveaux d'Animaux defends on the basis of Directive 90/333.

(i) May Cheveaux d'Animaux raise this defense?

(ii) Would your answer change if the government of Greece owned Hellenic Skins, and if so, how?

Part C:

On what grounds, if any, may Britain's transposition of the directive be challenged?

QUESTION 3

Lapetite Chou, the president of Cheveaux d'Animaux, has decided to move much of the operations of the company to London. She would continue to live in France, but commute to England. Most of her income comes from her work with Cheveaux d'Animaux.

Part A:

Britain taxes non-residents on their income earned in Britain at a rate 2% higher than the rate it imposes on residents and citizens. This results from the fact that non-
residents may not take a “resident tax credit” otherwise available under British tax law. Lapetite thinks this is not only unfair but unlawful. Do you agree? Support your answer.

Part B:

Assume that Lapetite Chou has been living in a committed relationship with Fifi LaFoo, a citizen of the United States. Since 1994 France has provided for registration of domestic partnerships irrespective of the sex of the partners, and Lapetite and Fifi were among the first to register. Britain recognizes only marriages between people of the opposite sex. If Lapetite moves to Britain:

(i) May Britain deny Fifi residency in Britain?

(ii) May Britain deny Fifi benefits? For this question assume that Britain provides benefits only to people of the opposite sex who live together, whether or not married.

Part C:

Lapetite moves to Britain. She is fired six months after arriving in Britain. She is currently unemployed. Can Britain expel her? Support your answer.