



SCHOOL OF BUSINESS AND SOCIAL SCIENCES
AARHUS UNIVERSITET

Summer exam 2021

Re-exam

Written exam (take-home): 460141E035 – International Business Law (HA/BSc)

Exam day: Wednesday 11 August 2021

Duration: 3 hours

Aid: All

All examination results will be announced on Stads Self Service no later than Wednesday 8 September 2021.

Contact person (academic staff): Graham butler – gb@law.au.dk

In case of errors or the like in the examination paper, contact Graham Butler by e-mail during the first hour of the exam. After the first hour, Graham Butler will upload an overall reply to all relevant inquiries on Blackboard.

Technical problems: Contact BSS IT, phone: 87150933 or e-mail: bss.it@au.dk

International Business Law

Spring 2021

Re-exam Paper – August 2021

Type

- 3-hour exam.
- On-site* written exam with upload of the exam paper in WISEflow, use of the internet allowed during the exam, own PC required.
- Please read full university policy on the examination format.

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* Subject to COVID-19. Students are advised to check with the Study Administration how the re-exam should be taken.

Note

- All students should read the exam guidelines and instructions carefully, and read the entire exam paper before writing their answers.
- Students must cite their sources throughout their answer paper appropriately and accurately.
- Students should include a full bibliography of academic literature, case law (where relevant), and all sources used as a reference in their answer paper.
- As far as practicable, students must be able to cite English-language literature. Only exceptionally should literature in other languages be referred to.
- The slides used by the lecturer should not be cited. Instead, primary material should be referred to (e.g., the book).
- Students may use a footnote/reference manager (e.g. EndNote, Mendeley, Zotero, etc.) to assist them in keeping track of their references.
- Students may use any citation method they use, as long as it is used consistently, and it is clear and unambiguous (Recommendations: OSCOLA, Chicago 17th).
- Students should make sure that they are answering their chosen questions as articulately as they can.
- Answer papers are anonymised, and graded by both an external examiner and an internal examiner.



Format

- There will be five questions in total on the examination paper.
- Of those five questions posed, students must answer a total of **three questions**. They must select their questions in the following way:
 - o Students must answer the single question from **Section A** (Question 1).
 - o Students must answer one question from **Section B** (Question 2 or 3).
 - o Students must answer one question from **Section C** (Question 4 or 5).
- In their answer paper, students should make clear which questions they are answering.

Technicalities

- The answer paper should have page numbers.
- The answer paper should be completed with the main text in the Times New Roman font, size 12, spaced 1.15, and justified.
- The same applies for the footnotes, except for the font size, which should be 10.



BESTSELLER *Bestseller* (officially, *Bestseller A/S*) is a clothing-company based in Brande, Denmark, that was founded in 1975. It has one of its major offices at the harbour in Aarhus, employing several hundred people. The company sells affordable fast-fashion goods for men, women, teenagers, and children through a portfolio of over 20 different brands. Whilst the '*Bestseller*' name is not very well-known in itself, the brands of clothing that it sells are widely known and recognisable, which includes *Vero Moda*, *Jack & Jones*, and *Name It*, amongst others. It also has a sizeable equity stake in non-clothing high-street stores, such as *Normal*.

Bestseller is an international business, with its clothes – goods – being sold around the world, from South America to India; from China to Canada; from Australia to the Middle East. That said, the vast majority of *Bestseller* sales are done in Europe in EU Member States. For example, of the 2,600 chain stores across its brands, a full 290, or 11% of them, are in Denmark alone. A majority of the other chain stores are located in other EU Member States.



VERO MODA® Whilst *Bestseller* has its headquarters in Denmark, the company has subsidiary firms located in other EU Member States. To illustrate with just a few examples, there is France, where it opened an office in 2005, and today, the subsidiary in France employs over 250 people directly. *Bestseller* continues to expand its sales network across the EU. In 2016, *Bestseller* opened a new office in Malaga, Spain. *Bestseller* had already had stores in Spain since 1997, but has made a concerted decision to introduce more of its brands in the Spanish market through the opening of a retail office.

Bestseller also has a fledging e-commerce business, where it is able to sell its clothes online to consumers

JACK & JONES

throughout the EU. Its e-commerce division is not based in Denmark, but rather, in The Netherlands, which has historically been one of *Bestseller*'s largest markets for traditional chain stores in the EU, with over 450 stores. *Bestseller*'s e-commerce division in The Netherlands manages *Bestseller*'s sales online with a workforce of 125 employees of 25 different nationalities. In total, across its headquarters and subsidiaries, *Bestseller* employs 17,000 people directly, of which 4,000, or 23% of these, are based in Denmark.

Normal

The COVID-19 pandemic that has affected business right around the world, has had an impact on the future direction of *Bestseller*. Its sales have historically taken place in-person at its chain stores, which have been heavily impacted. Thus, *Bestseller* is currently devising its medium-term strategy to ensure continued business success into the future.



Questions

Section A

Question 1

— The goods that *Bestseller* sells under its brand names – clothes – are usually manufactured in countries outside of the European Union. However, once the goods enter the EU, and the customs matters have been settled, it is ordinarily the case that the clothes will benefit from ‘free circulation’ in the European Union, in line with Article 29 TFEU.

However, when the goods are first brought into the EU, given *Bestseller*’s retail and online sales networks throughout the EU, it is usually the case that the goods in question will seek onward movement into other EU Member States from the EU Member State the clothes were first imported from.

— Article 30 TFEU concerns how customs duties – a fiscal measure – are to be regulated on the movement of goods between Member States. Simultaneously, Article 110 TFEU concerns how internal taxation – another fiscal measures – are to be regulated on the movement of goods between Member States.

Given your knowledge of the free movement of goods – taking account of the rules concerning both fiscal measures – from a legal perspective, explain the legal regime governing the free movement of goods in the EU, taking account of these ‘border’ measures, and ‘beyond the border’ measures of a fiscal nature. In your answer, ensure that you use and cite the relevant provisions of the EU Treaties concerning fiscal measures, the applicable case law of the Court of Justice of the European Union, and any applicable academic literature to support your answer.

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Section B

Question 2

Bestseller has both physical stores and online sales done through its subsidiaries all around the EU. However, its main offices are in Denmark. Naturally, with the majority of its sales done outside Denmark, the headquarters will be intermittently interested in moving the payments it has received from its customers, back to Denmark, through capital movements.

— A company established and domiciled in Denmark, seeking to move capital from its subsidiaries in other EU Member States, without EU law, does not automatically entitle it to an ‘exit’ right from its subsidiaries in other EU Member States, nor automatically entitle it to an ‘entry’ right to its headquartered company in Denmark. Rather, such rights are only made possible through the free movement of capital and payments provisions in the EU Treaties.

— *Bestseller* engages in extensive cross-border capital movements, and EU internal market law makes it possible for *Bestseller* to engage in extensive cross-border payments and capital movements with relative ease, and unhindered by national rules that might seek to hinder its cross-border capital activities.

Given your knowledge of the legal aspects of the free movement of capital, detail and analyse the legal regime governing this freedom. In your answer paper, make sure you refer to the applicable provisions of the EU Treaties, any other EU laws such as secondary law, the relevant case law of the Court of Justice of the European Union, and applicable academic literature to support your answer.

Question 3

— *Bestseller* is currently considering its medium-term strategy on how it continues to be a fast fashion company in a highly-competitive segment of the clothes market. For this, it has decided to relocate 4 employees from each of its regional offices in other EU Member States to its headquarters in Denmark, for the next two years, to assist in devising the strategy.

The workforce of *Bestseller* is multinational, and owing to extensive free movement of workers right that are set down in the EU Treaties, workers and employers have extensive rights to be able to live and work throughout the EU. For *Bestseller*, this is particularly advantageous, as when it employs workers of EU nationality, it has to give little thought to national rules concerning such matters.

Given your knowledge of the free movement of workers in the EU, explain and analyse the main provision of EU law within this freedom. In your answer paper, make sure you refer to the relevant case law of the Court of Justice of the European Union, and applicable academic literature to support your answer on how the free movement of workers is interpreted.



Section C

Question 4

Whilst *Bestseller* has chain stores in most EU Member States, including having division offices in a number of them, *Bestseller* does not have chain stores in every EU Member State. Given the products that it sells are typically clothes, the company's typical strategy has been to engage in slow expansion of its chain store network.

Given the COVID-19 pandemic has resulted in many prime retail locations becoming vacant in many Member States, *Bestseller* now sees an opportunity to open new chain stores in Member States where it did not previously have a physical presence, so when public health guidelines permit, and normality begins to return, it will have a new customer base.

In order to enter new EU Member States, the management of *Bestseller* needs to be reminded of the market freedoms that EU law affords them, namely, the freedom of establishment. Drawing upon your knowledge of the freedom of establishment – which allows companies to establish themselves in other EU Member States within the EU's internal market – detail, analyse, and discuss the legal aspects of this freedom. Specifically, in your answer, make reference to the applicable provisions of the EU Treaties, the arising case law of the Court of Justice of the European Union, and relevant academic literature.

Question 5

The main EU market freedoms that concern *Bestseller*'s operations are the free movement of goods, free movement of workers, freedom of establishment, and free movement of capital. However, that does not mean that the free movement of services is not applicable to *Bestseller*.

Whilst clothes are ordinarily purchased, there is a growing trend within the fashion industry that sees people renting or hiring clothes for particular events and occasions, instead of purchasing the clothes. As a matter of EU law, this means a distinction has to be drawn between the selling of clothes (goods), and the renting/hiring of clothes (services).

Bestseller has yet to enter into the services side of the fashion industry, but it is considering this new trend, and whether it would fit the type of clothes that the company ordinarily retails. Given your knowledge of the free movement of services in EU law, analyse the applicable provisions concerning services as a matter of both EU primary and secondary law. In your answer, make sure you reference any case law of the Court of Justice of the European Union and relevant academic literature to support your answer.