

**“Continent, city, country, society:
The choice is never wide and never free¹.”**

European unity is predicated on the basis that once economic unity is established it will lead to further integration in both the social and political spheres of the Community. The Treaty of Rome 1957 sought to create an area without internal frontiers; fundamental to its creation would be the abolition of all customs duties and quantitative restrictions that stood in the way of free trade and the free movement of goods within the EC. It is the removal of all quantitative restrictions or measures having equivalent effect that concerned article 28 (ex article 30) EC. The eradication of such rules is of fundamental importance to the creation of a free common market within the EU. The EU for diplomatic reasons and for fear of encroaching too much upon the principle of subsidiarity established under article 30 (ex article 36) EC a list of possible justifications for derogation from the objective set down by article 28.

“Article 36 [now 30] operates as an interim protection pending the completion of the common market. It permits states to resist the impetus towards free trade in order to maintain and protect certain interests of particular sensitivity and importance. The subsequent introduction of harmonisation legislation in the relevant area in principle removes the availability of justification under Article 36 [now 30] and constitutes the next step towards a common market regulated by common rules.²”

These objective justifications though they appear extensive, have been interpreted narrowly as to allow an expansive definition to each of the 6 classifications of justifications would invariably defeat the purposes of article 28 and flounder attempts to achieve economic harmonization. The ECJ explained this in *Campus Oil*³ where it confirmed:

“the purpose of article 36 [now 30] . . . is not to reserve certain matters to the exclusive jurisdiction of the member states; it merely allows national legislation to derogate from the principle of free movement of goods to the extent to which this is and remains justified in order to achieve the objectives set out in the article.⁴”

¹ Elizabeth Bishop, the poem Questions of Travel (1951) line 64 & 65

² Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 417-418

³ *Campus Oil v Minister for Industry and Energy* [1984] ECR 2727

⁴ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 394

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Application

Article 30 EC gives the express list of justifications which a rule must come under if it derogates from the principle of article 28. The list is exhaustive and the ECJ have shown they are unwilling to extend the list on a number of occasions. If a rule that openly discriminates against importers is unable to be objectively justified by the State then the rule fails and must fall. The burden of proof which is quite high rests upon the party claiming that the rule can be objectively justified as stated in *Leendert van Bennekom*⁵.

Article 30 (ex article 36) EC provides that:

The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and the life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial or commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

There are 6 express heads under which an objective justification can be made. There also exists a two stem test, firstly that the rule falls under one of the 6 headings but also that the rule must not be disproportionate or arbitrarily discriminative these principles contained in the second sentence of article 30 are necessary prerequisites a member state would have to comply with to succeed. Horspool remarks that;

*“The question whether a measure can be justified is separate from the question as to whether it amounts to arbitrary discrimination against intra-community trade: under article 30 EC, the first sentence, the justification has been made out; the second sentence is concerned with the effects of the measure under consideration to ensure that the justification invoked is not misused.”*⁶

The principle of proportionality exists to stop article 30 being *misused*⁷ or abused in some way therefore if a rule be justified by the first sentence but offends the second then it is struck down. These justifications are only invocable in the most narrow of circumstances and never where the *“European Commission has completed a programme of harmonisation of trading rules in any particular field.”*⁸ Weatherill & Beaumont also note that there is a strict requirement that the action under which one applies corresponds to the particular circumstance of the case in question. *“The detail of a rule may deprive it of the*

⁵ (C227/82) [1983] ECR 3883 The Court stated that “. . . it is for the national authorities to demonstrate in each case that their rules are necessary to give effective protection to the interests referred to in article 36.”

⁶ Horspool, *European Union Law*, 3rd ed (2003; Butterworths Lexis Nexis) Chapter 12 & 13 para 13.8 p.304

⁷ Melkunie (C97/83) [1984] ECR

⁸ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 417

protection of Article 36 [now 30] even though its broad objective falls within one of the heads of justification.⁹

Public Morality

Morality cannot as a concept have a standard definition, it means something different to everyone and likewise it is different for every country¹⁰. Therefore the ECJ have avoided any attempt at defining this justification and instead decide each case before it on its own merits. The Courts have however been instructive of what will not fall into this exception.

In the case of *Rv Henn and Darby*¹¹ the defendants were prosecuted for a number of offences including the illegal importation from Rotterdam of obscene and pornographic materials. In the Court of Appeal in England Lord Chief Justice Widgery refused to view article 28 as a defence for *Henn and Darby* saying that article 28 concerned quantitative restrictions whereas the current case concerned a total ban. The House of Lords decided to refer the matter to the ECJ under the article 234 procedure under the direction of Diplock LJ. The ECJ rejected Lord Widgery's judgment and stated that the "*narrow literal interpretation is perfectly illogical, for a total ban is simply the lowest possible numerical ceiling.*¹²"

The Court instead in upholding the rule as objectively justified focused primarily on the fact that the total ban operated internally as well.

*"If the regime that applies is equivalent in effect, vis a vis both domestic products and imports, the State can succeed in arguing that its measure is not arbitrarily discriminatory or a disguised restriction on trade between member states.*¹³"

The question of what constituted public morality was raised again in the UK, 7 years later in the case of *Conegate v Customs and Excise Commissioners*¹⁴. The decision reached in *Conegate* has sometimes been referred to as a '*contrary decision*¹⁵' to that reached in *Henn and Darby* though the case was again concerned the seizure of pornography and was a similar fact case to *Henn and Darby* there was one distinct difference that set them apart. The convictions fell and seizure were returned as it was shown that within the national territory of the UK the ban did not operate as it did to the

⁹ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 394

¹⁰ R v Henn and Darby (C34/79) [1979] ECR 3795 @ para 15 "In principle, it is for each member state to determine in accordance with its own scale of values and in the form selected by it the requirements of public morality in its own territory. In any event, it cannot be disputed that the statutory provisions applied by the United Kingdom in regard to the importation of articles having an indecent or obscene character come within the powers reserved by member states by the first sentence of Article 36 [now 30]"

¹¹ R v Henn and Darby (C34/79) [1979] ECR 3795

¹² Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 396

¹³ Kennedy, Cahill & Power, *Law Society of Ireland: European Law*, 2nd ed (2002; OUP) Chapter 16 para 16.1.1.3.1 p.239

¹⁴ (C121/85) [1986] ECR 1007

¹⁵ Kennedy, Cahill & Power, *Law Society of Ireland: European Law*, 2nd ed (2002; OUP) Chapter 16 para 16.1.3 p.238

importing states and therefore it failed under the second sentence for being arbitrarily discriminatory and a disguised restriction on trade. ECJ concluded at paragraph 20:

“therefore it must be stated that a Member State may not rely on grounds of public morality within the meaning of article 36 [now 30] of the treaty in order to prohibit the importation of certain goods on the grounds that they are indecent or obscene, where the same goods may be manufactured freely on its territory and marketed on its territory subject only to an absolute prohibition on their transmission by post, a restriction on their public display and, in certain regions, a system of licensing of premises for sale of those goods to customers 18 and over.¹⁶”

And at paragraph 18 it confirmed that, *“such restrictions cannot however be regarded as equivalent in substance to the prohibition on manufacture and marketing.¹⁷”*

According to Weatherill & Beaumont the principle appears to be that:

“The state, while retaining the power to select elements of morality it judges worthy of protection, remains within the ambit of Article 36 [now 30] justification only if it applies its rules without reference to the origin of the offending products. This means that different standards of morality apply in different member states, but that within one single state equal treatment of all goods is the rule.¹⁸”

Public Policy

The Court have been *‘wholly unreceptive¹⁹’* to applications made by member states under this head where it is treated as a catch all category of justification. The Court refused to include national laws backed by sanctions²⁰ and consumer protection²¹ as forming part of public policy, speaking of the latter it is established that *“public policy does not include the state’s concern to protect the economic interests of its consumers²².”* The basis of any justifications must not be purely economic²³.

The case of *Cullet v Centre Leclerc* concerned minimum price fixing within France which favoured French producers over importers who could not offer a competitive price. The question was whether such price fixing could be seen as a hindrance to cross frontier trading. The French government argued that this price fixing secured home producers and to remove it *“would carry a risk of fermenting unrest, perhaps involving violence.”* The public policy was therefore made with the preservation of law and order in mind.

¹⁶ Ibid @ paragraph 20

¹⁷ Ibid @ paragraph 18

¹⁸ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p.398

¹⁹ Ibid p. 399

²⁰ Karl Prantl (C16/83) [1984] ECR 1299

²¹ Kohl v Ringelahn (C177/83) [1984] ECR 3651

²² Ibid p. 399

²³ In the case of *Leclerc v Au Ble Vert* (C229/83) [1985] ECR 1 the ECJ reiterated the rationale for their restrictive interpretation to Article 30 *“since it derogates from a fundamental rule of the Treaty, article 36 [now 30] must be interpreted strictly and cannot be extended to objectives not expressly listed therein.”*

The case of *Cullet v Centre Leclerc*²⁴ already mentioned under public policy was also argued under public security. The analysis of Advocate-General van Themaat was based primarily on the security justification whereas the ECJ focused more on the public policy argument. AG van Themaat believed the French submission was deeply wrong in principle and to allow it “*would come close to undermining the whole idea of the common market . . . Civil disobedience would be encouraged by acceding to the French submissions.*”²⁵ He maintained that the French “*should instead prepare to take effective internal measures to combat any illegal action that might disrupt public order.*”²⁶ It was as AG van Themaat saw it; part of France’s Community obligations to “*offer proper protection to imports and importers from illegal action by its own nationals.*”²⁷

The ECJ decided instead not to follow the AG line of reasoning in coming to the same conclusion and instead held it was the belief based on the facts that the France police were competent enough to ensure the preservation of ‘*ordre public*’.

Weatherill has made some interesting observations of why the ECJ decided not to reject the argument in principle as the AG did and what the repercussions would have been had they adopted his decision.

*“The Advocate-General’s path holds attractions. There is much to be said in principle for the view that internal disorder should not be a ground for unilateral action to restrict imports. Otherwise, governments will be susceptible to domestic political pressures and potentially extreme action by private lobbies with an interest in the imposition of protection barriers. The maintenance of free trade under Community law would be better ensured by locating the responsibility for sanctioning such national measures within Community, not national, structures. However, the Advocate-General’s approach would come very close to wiping out public policy as a justification under Article 36 [now 30] altogether.”*²⁸

Public Security

In the *Campus Oil* case like in the case of *Cullet v Centre Leclerc*, Public policy was argued in conjunction with public security. Ireland imposed a restriction on importers of oil, that made it law to have a percentage of their import sourced from the only state sponsored oil refinery in Co. Cork. This was because a small amount of sales was necessary to keep the refinery operational in case of an international emergency which affected the supply of oil²⁹. Therefore this was seen by the Irish government as a precautionary security measure. The ECJ allowed the Irish State to retain their rule despite its restrictive effects, mainly due to the existence of a regulatory gap of Community law on the issue of energy supplies.

²⁴ (C231/83) [1985] ECR 305

²⁵ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 401

²⁶ *Ibid* p. 401

²⁷ *Ibid* p. 401

²⁸ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 401-2

²⁹ “The State was invoking it in order to justify a regime which would ensure that a certain minimum level of strategic petroleum supplies was present on the national territory in the event of an interruption of international oil supplies.” Kennedy, Cahill & Power, *Law Society of Ireland: European Law*, 2nd ed (2002; OUP) Chapter 16 para 16.1.1.3 p.240

“As in all Article 36 [now 30] cases, the Court in Campus Oil was forced to balance the demands of free trade against national claims to legitimate protection. The security of the state’s energy supply is an area of peculiar sensitivity. . . The Court held that existing Community measures failed to offer unconditional assurances that an adequate supply would be maintained. National measures justified under Article 36 [now 30] could not be ruled out. The Court here exhibits understandable diffidence when confronted by the regulatory gap in Community energy policy.³⁰”

It is important to note that *Campus Oil* is one of the only cases to succeed under this head and that is mainly to the ECJ recognition of the value of energy and self sufficiency for the maintenance of State security and autonomy.

The Protection of Health and Life of Humans, Animals and Plants.

The *Commission v UK*³¹ concerned the implementation of an import ban for the alleged protection of public health. The ban was on poultry produce from all member states except Denmark and Ireland consisting of both eggs and meat. It did so in the hope that this would not only protect public health but would contain Newcastle disease that affects poultry. The ECJ were sceptical of the true intentions of the UK legislation due to its seasonal timing at Christmas when turkey sales are at their highest and also that the implementation followed a number of lobby groups asserting pressure on the UK in the media to balance the decline of English poultry sales and the increasing import figures for the same produce from France. The ECJ held at paragraph 40 & 41:

“These facts are sufficient to establish the 1981 measures constitute a disguised restriction on imports of poultry products from other member states, in particular France, unless it can be shown that, for reasons of animal health, the only possibility open to the UK was to apply the strict measures which are at issue in this case . . . It follows from the information given to the Court during the proceedings that they are less stringent measures for attaining the same result . . . it is possible to preserve the highest standard of freedom from Newcastle disease without completely blocking imports from countries where vaccine is still in use³².”

This finding by the ECJ demonstrates the intuitiveness and level of scrutiny that the Court administers to cases attempting to objectively justify rules forming a barrier to the free movement of goods.

The Protection of National Treasures possessing Artistic, Historic or Archaeological value

The case of *Commission v Italy*³³ concerned the removal artefacts from Italy, a country whose national treasures were somewhat depleted due following the two world wars.

³⁰ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 403-4

³¹ (C40/82) [1982] ECR 2793

³² *Ibid* *Commission v UK* paragraph 40 & 41

³³ (C7/68) [1968] ECR 423

The main argument made by the Italian government was that “*cultural artefacts were not to be considered goods in the economic sense at all and that therefore controls over the export of art treasures were wholly outside the scope of the economic objectives of the Treaty*”³⁴. This argument failed before the ECJ. They maintained that since the artefacts and treasures were tangible assets that had a monetary value they were entitled to apply the normal rules for free movement of goods.

Very little other case law exists on the issue but Weatherill & Beaumont are keen to stress that it is likely the interpretation of this derogation would be no different to any other head that is it would be narrowly construed, despite the vague and undefined concept of what amounts to a “*national treasure*”? Weatherill & Beaumont attempt to answer this question by analogy.

*“In the absence of litigation on the point one can only speculate on the interpretation that the Court would be prepared to attach to this head. By analogy with the Courts approach to public morality, one might suppose there exists some latitude for member states to make their own determination of what constitutes national treasure and that ideas may legitimately differ state by state. . . None the less, drawing an analogy from the notion of public policy, Community law doubtless imposes an outer limit to the scope of justification. It would be incumbent on a member state to demonstrate why the item in question possesses such importance that it goes beyond mere high artistic quality and impinges on the cultural or historical heritage of the nation. High value, an economic matter, is insufficient.”*³⁵

The Protection of Industrial and Commercial Property

Little case law exists under this head which includes patents, trade marks and copyrights as these are covered in more specific terms under EC Competition laws and “*the issues extend beyond articles 28 – 30.*”³⁶

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As mentioned earlier Article 30 was seen as a type of interim measure that would one day be unnecessary as a free market would be established. By 1992 however free trade only existed in theory and under the Single European Act the impetus for making article 30 actions redundant was set. Now according to Article 100b of the SEA a Council decision is required to make the objective justifications inapplicable. Member states have however continued to operate protectionist policies and openly discriminated against importers produce, and therefore “*pending Council action, the incomplete nature of the internal market will continue to provide a potential basis for valid justification of member state measures for some time to come*”³⁷.

³⁴ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 416

³⁵ *Ibid* p.416

³⁶ Kennedy, Cahill & Power, *Law Society of Ireland: European Law*, 2nd ed (2002; OUP) Chapter 16 para 16.1.3 p.238

³⁷ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 418

The Relevance of Mandatory Requirements

Mandatory requirements are the justifications available for the retention of indistinctly applicable rules in a member state. They apply to indistinctly applicable rules only. Indistinctly applicable rules in the most basic form are rules which do not expressly place an obstacle in the path of the free movement of goods but do so in their effect, therefore they appear to treat everyone equally however in practice they do not.

“The ECJ’s mandatory requirements justification theory allowing indistinctly applicable measures to be justified is predicated on the rationale that such measures are not designed to discriminate against foreign products, but rather pursue an objective that is compatible with EC objectives, in circumstances where the parameters of the measure employed to pursue such objective are proportionate rather than disproportionate.”³⁸

These are a judicial creation of the ECJ originating from the *Cassis de Dijon* case. The ECJ derives their authority from Article 28 itself. Their development has been criticised by some and praised by others however their relevance to Article 30 is that they both share some common characteristics. Similar principles of ‘proportionality’ and ‘alternative means’ apply to both and they are analogous in their effect, as they both are derogations of Article 28 but are not analogous in their origin or in their operation³⁹.

Oliver has wrote a number of times that he believes it would be *simpler and more logical* to treat all justifications together as deriving from Article 30, as they both are essentially derogations from the principle of Article 28⁴⁰. Weatherill & Beaumont criticise the development of the mandatory requirements for bringing uncertainty to the law in this area and believe they are inherently weak justifications being judicial creations whose development and consequences have been established through ECJ jurisprudence.

“ . . . where in the Treaty of Rome did the Court find authority for the Cassis principle? In particular, the phrase ‘necessary to satisfy mandatory requirements’, which forms the operative part of the judgment in Cassis explaining when states may lawfully maintain restrictive technical rules, was not to be found anywhere in the Treaty of Rome. . . what has happened to Article 36 [now 30], which the Court ignored in its judgment in Cassis?”

Despite these critiques the rationale for the relaxed and wider grounds given to save Cassis type rules is clear, it was part of a compromise for the intrusion on national

³⁸ Kennedy, Cahill & Power, *Law Society of Ireland: European Law*, 2nd ed (2002; OUP) Chapter 16 para 16.1.1.5.1 p.242

³⁹ “Yet caution is appropriate. The special characteristics of the Cassis line of authority, such as the principle of equivalence, deserve their own special consideration and terminology. Conceptual similarity should not lead one to overlook evidence of judicial refinement giving rise to important distinction distinguishing features, and in *Cassis* the Court has taken Article 30[now 28] into new territory.” Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 440

⁴⁰ “This author has long argued that it would be both simpler and more logical to treat the mandatory requirements as additions to the heads of justification in Article 30. . . if the Court were minded to make a small gesture in favour of logic and simplification to usher in the next millennium, what could be more appropriate than an express ruling that the mandatory requirements are to be treated as additions to the list of grounds of justification in Article 30?” Oliver, “Some further reflections on the scope of articles 28-30(ex 30-36) EC” (1999) C.M.L.R. p.p. 804- 806

competence in areas that were not anticipated when the treaty was drafted and “*was in part a reaction to the appallingly slow progress that was being made in securing free trade through harmonization*”⁴¹. Currall said Cassis represented a “*glimpse of such potential chaos that the fundamental necessity for speeding up harmonization would be appreciated*.”⁴² Bermann has been quoted as saying: “*Reliance on the mutual recognition of national standards at the expense of positive harmonization has a fashionable deregulatory flavour. In the long run, however, harmonization is apt to create a uniform regulatory environment and produce the full advantages of a single market*.”⁴³

Therefore the argument is circular, the lack of economic harmonization necessitates both their existence. The *Keck*⁴⁴ case more recently sought to clarify what *Cassis* did not. It decided “*that restrictions on selling arrangements would only fall under Article 28 in the first place if they discriminated against imports*”⁴⁵ and in so doing over ruled some of the case law decided under the *Cassis* judgment. *Keck* distinguished these ‘*selling arrangements*’ from the *Cassis* type rules.

“*It seems the point that the ECJ was making in Keck is that national rules which affect the selling (rather than the content or characteristic) of products fall outside the scope of Article 28 altogether. Hence, such measures cannot be challenged under Article 28, in which event the question of their attempted justification does not arise*.”⁴⁶

Therefore the *Keck* case was a bold statement by the ECJ of the limitations and boundaries of the mandatory rules which saw them abandon some requirements in its subsequent case law, it was a consolidation of the pre-existing law on the indistinctly applicable rules which does not concern article 30.

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⁴¹ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 443 “The concession that certain broader interests, such as consumer protection, may justify national rules of the *Cassis* type should be seen as an example of the Court cautiously cushioning the impact of a potentially alarming vigorous increase in the profile of Community obligations.”

⁴² Currall, “Some aspects of the relation between Articles 30-36 and Article 100 of the EEC Treaty, with a closer look at Optional Harmonization”, [1984] 4 YEL 169 p. 185

⁴³ Bermann, “The SEA: a new Constitution for the Community?” [1989] Col. J. Transnat. L 529 p. 540 n 44

⁴⁴ Criminal Proceedings against *Keck* (C267/91) [1993] E.C.R. I-6097 (ECJ)

⁴⁵ Oliver, “Some further reflections on the scope of articles 28-30(ex 30-36) EC” (1999) C.M.L.R. p.p. 805

⁴⁶ Kennedy, Cahill & Power, *Law Society of Ireland: European Law*, 2nd ed (2002; OUP) Chapter 16 16.1.1.6 p. 243-244 “The reason why the ECJ was happy to accept this position was because it pronounced that provided such indistinctly applicable measures apply to all traders (ie domestic and foreign) in law and in fact in the same manner and to the same extent, then such rules do not impede the access of domestic products to the market.”

**“There is a fatality about all good resolutions.
They are invariably made too soon.⁴⁷”**

Concluding Comments

It is only logical that any derogation from a fundamental principle be narrowly construed so as not to dilute the principle to the point where it no longer means anything. It should come as no surprise to member states that while the ECJ envisaged certain circumstances where a state could derogate and be objectively justified in so doing; it envisaged this in the most exceptional of cases. It is a fair and balanced approach taken by the Court to the interpretation of article 30 though some commentators would disagree.

Oliver maintains that because of the strict and rigid interpretation of Article 30 the Courts were forced to develop the dual justification of mandatory requirements available to indistinctly applicable rules. It is his belief that should the Court have taken a broader and more expansive view of the *public policy* justification so as to include consumer protection then maybe the mandatory requirements would not have been necessary.

Weatherill & Beaumont disagree with this suggestion of incorporation of certain mandatory requirements under the heads of Article 30 justifications,

“If there is a temptation to see the nebulous concept of ‘public policy’ as a catch all justification for national obstacles to the free movement of goods, then as a matter of Community law it must be resisted.⁴⁸”

Weatherill does however recognise a more flexible approach to public policy would have its advantages. *“One might object that this constitutes an improper judicial redrafting of the Treaty, but perhaps it could have been accomplished through a more flexible reading of Article 36 [now 30] reference to ‘public policy’”*. These suggestions aside it would seem that the ECJ took a deliberate narrow and strict interpretation of Article 30 and have so far been completely reluctant to allow an application under Article 30 that has not been subject to the highest level of scrutiny, therefore the current position is that:

“accordingly, it remains within the competence of a member states to adopt rules designed to protect the consumer even after the Community has acted in the field, provided only that any resulting obstacle to trade remains justified under Article 36 [now 30] or, in respect of the economic interests of consumers, under the mandatory requirements that may justify indistinctly applicable rules.⁴⁹”

⁴⁷ Oscar Wilde “Phrases and Philosophies for the Use of the Young”

⁴⁸ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 399

⁴⁹ Weatherill & Beaumont, *EC Law*, (1993; Penguin) Chapter 16 p. 422

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