

My second - problem base question (eu law)



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EU Law In the provided case study a hazardous chemical escaped from Brownings Ltd. The chemical was sprinkled over a field of cabbages owned by Arthur, who underwent more than £100, 000 damaged to the crop. Brownings Ltd. deny negligence, and it is very unlikely that Arthur will not be able to recover damages under English Law.

One has to study this case in two dimensions. First dimension is that if 00/1271/EC Directive would have been implemented in the UK by 1 January 2002. Under this Directive anyone storing or manufacturing hazardous material is strictly liable to compensate those affected by their escape, irrespective of fault. Arthur would have been compensated for the damage of £100, 000 of the cabbages field.

Other dimension is the present situation that 00/1271/EC Directive has not been implemented yet. Brownings Ltd. should put up this situation as an accident that results in damage to Arthur's fields as well as the premises of Brownings Ltd. By putting the case in such manner will prevent Brownings Ltd. to pay compensation to Arthur. Under this situation both parties has to move towards the insurance organizations for the damages incurred to them. By means of regard to the straight effect of directives, the European court of justice has detained in Marshall v. Southampton AHA that orders can only be imposed against the State since art 249 EC Treaty conveys that a instruction is obligatory upon each Member State to whom it is dealt; it does not present that it trusses persons. Consequently until United Kingdom actually applies the directive it would be iniquitous to permit it to be imposed against non-governmental bodies.

Arthur is looking for implementing the Directive in opposition to Brownings. As it is provided in the case study that Brownings is a limited organization

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that have possession of a large chemical works. If one applies the three Foster criteria that are provision of a government service; under the control of the State; and having exceptional powers; to it, as Brownings obviously is not providing a state service, so due to this reason it would not be an emanation of the State. Though the European court of justice in Kampelmann has recommended that the Foster criteria may not be cumulative, and therefore offered one of the three criteria is fulfilled, the body will be an emanation of the State. Conversely, this fraction of the judgment may well be wrong, and it is completely practicable that the three criteria are cumulative. Yet if they are not cumulative, it is doubtful that Brownings would gratify any of the three criteria and consequently the Directive could not be imposed directly against them.