

Case C-453/99 Courage [2001]

Facts: Courage, a United Kingdom brewery, and Grand Met, merged their pubs and transferred them to IEL, owned by both companies in equal shares. An agreement concluded between Courage and IEL: all IEL tenants had to buy their beer exclusively from Courage at specified prices. The Commission published a notice stating its intention to grant an exemption under Article 85(3) of the Treaty to this standard form lease agreement. Courage brought an action for the recovery from Mr Crehan, who concluded two leases with IEL, of unpaid deliveries of beer. Mr Crehan contested the action contending that the beer tie was contrary to Article 85 of the Treaty. In connection with these proceedings, the Court of Appeal referred for a preliminary ruling whether the bar in English law for a party to an illegal agreement to claim damages from the other party was compatible with Community law.

Held: Community law gives rise to rights where these are expressly granted by the Treaty and also by virtue of obligations which the Treaty imposes in a clearly defined manner on individuals, Member States and Community institutions. Article 85(2) provides that any agreements prohibited pursuant to that article are to be automatically void, therefore they have no effect as between the contracting parties and cannot be set up against third parties. But its full effectiveness would be put at risk if individuals could not claim damages for loss caused to them by a contract liable to restrict or distort competition; therefore there should not be any absolute bar to such an action being brought by a party to that contract. In the absence of Community rules governing the matter, it is for the domestic legal systems to lay them down, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of these rights (principle of effectiveness). Community law does not prevent national courts either from ensuring that the protection of rights guaranteed by Community law does not entail the unjust enrichment of those who enjoy them or from denying a party who is found to bear significant responsibility for the distortion of competition the rights to obtain damages from the other contracting party. The national court should take into account the economic and legal context and the bargaining power and conduct of the two parties to the contract. It must ascertain whether the party who claims to have suffered loss found himself in a markedly weaker position than the other party, such as seriously to compromise his freedom to negotiate the contract and his capacity to avoid the loss or reduce its extent. A contract might prove to be contrary to Article 85(1) for the sole reason that it is part of a network of similar contracts which have a cumulative effect on competition.