

?????????? ??? ??????? ????????????

JULIANE KOKOTT

??? 21?? ?????????? 2016 (1)

?????? C?699/15

Commissioners for Her Majesty's Revenue & Customs

????

Brockenhurst College

[?????? ??? Court of Appeal (England & Wales) (Civil Division) (???????, ?????? ??? ??????,  
???????, ?????, ?????? ??????)  
??? ??? ?????? ?????????????? ??????]»

«??? – ??????? ??? ?? ????? 132, ?????????? 1, ??????? ?, ??? ??????? ??? –  
????????? ??? ????? ??????????? ?? ??? ?????????? – ?????????? ?????????? ??? ??????????  
????????? ??????????? ?? ??????? ?????? ??? ?????????? ????? ?????????? ?????? ??? ??????  
????????? ??? ??????????»

I – ????????

1. ??????????? ?????????? ??? ?? ?????????? ??????? ??? ?????? ?????? ?????? ?  
?????? ??? ?????????? ??? ?? ??? ?? ?????? 132, ?????????? 1, ??????? ?, ???  
?????? 2006/112/?? ??? ??????????, ??? 28?? ??????? 2006, ??????? ?? ?? ???  
?????? ??? ?????? ?????????? ??? (2)  
(?? ?????: ?????? ???). ?? ??????????, ?????? ?????????? ?? ??? ?????? ??? ??????  
????????? ??? ??????, ?????? ? ??????? ??? ?????? ?????? ?????? ??? ??????  
????????????? ??? ??????, ??? ??? ??? ??? ?????????? ?????? ??? ?? «?????  
?????????» ?? ?????? ?????? ?????? ??? ?????? ??? (?? ?????: ??????).

2. ? ?????? ??? ?? ?????????? ??? ?????????? ?? ??????? ?????? ?????? ?????????? ?? ??  
????? ?????????????? ?????????????? ?????????? ?????? ??? ?? ?????? ?????? ???  
?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?? ?????? ?????? ??? ?? ??? (?.?. ????  
132, ?????????? 1, ??????? ?? ??? ??, ??? ?????? ???). ??????, ?????? ??? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????  
????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???, ??  
????????? ??? ?????????? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????? ?????????? ?????????? ? ?????????? (? ???? ??? ?????????? ??????????) ???? ?????? ????  
?????? ?????????????????? ??? ?????? ?????????????? ?????? ?????? (3)  
]. ?? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ? ?????????????? ??? ?????? (???)  
????????????? ?? ?????? ?? ??????) ?????????? ?????? ??? ?????? ??? ?????? ??????  
??????, ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????????????? ??? ?????? ????  
??? (??? ?????????????? ??? ?????? ??? ?????? ?????? ??????????) (4)

.  
3. ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? «?????  
?????????» ?????? ?????????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ???  
«?????????» ??? ??? «?????????» ??? «Brockenhurst College» (???)  
????: ??????). ?? ?????? ?????? ?? ??????, ??? ??? ???????????, ??? ??????  
??? ?????? ?????? ????, ?? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ??????  
????????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ?????????? ??????????  
????????? ?????????? ??? ?????? ??? ?????? 132, ?????????? 1, ?????? ??, ??? ??????  
???. ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ?????????? ?? ??????????  
??? ?????? ??? ?????? ??????. ??? ??????????, ??? ??????, ??????  
????????? ?????? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??? ?????? ??  
????????? ??? ?????????????? ?? ?????????????? ??? ?? ?????????? ?? ?????? ?????????? ??'  
???? ?????? ??? ?????? (5)  
. ?? ?????? ?????????? ?????????? ??? ?????? ?????? ???????????. ?????????? ?, ?? ???  
????? ?????? ?? ?????? ?? -????? ?????? ?? ?????? ?????? ??? ??' ??????????  
????????? - ?????????? ?????????? ?????? ?????? ?????????? ??? ?????? ??????????  
????????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ??????  
????????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??????????  
????????? ?????? ??? ?????? ?????????? ???.

II – ?? ?????? ??????

? –?? ?????? ??? ??????

4. ? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ratione temporis ???  
??????, ????:

?) ? ??? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ??????????????  
??? ?????????? ??? ?????? ???, ??? ?????? ?? ?????? ?????? ?????? ?????? -?????  
????????? ??? ?????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49, ??? ????: ??? ?????) ???

?) ? ?????? ???,

???? ?? ?????????? ?????????? ??? ??? ?????? ?????? ??? ?? ?????????? ??????????????.

5. ?? ????? 131 ??? ?????? ??? (????? ????? 13A, ?????????? 1, ??? ?????? ??????),  
?????? ?? ???:

«?? ?????????? ??? ?????????? ??? ?????? 2 ??? 9 ?????????? ?? ??? ??????????  
????? ?????????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ????  
?? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ????  
???? ?????????? ??????????, ?????????? ??? ??????.

6. ?? ?????? 2 ??? ????? IX ??? ?????? ??? ?????????? ?? ??? 132,  
????????? 1 (????? ??? 13, ?, ?????????? 1, ??? ?????? ??????), ??? ?? ????

????? ????? ?????????????? ?????????? ??????? ????, ???????????, ??? ?? ???????? ???:  
«???? ?????????? ??? ??????? ? ???, ?? ?????? ? ?????????????????? ???????????, ???  
????????????? ???????????, ?????????? ? ?????????????????? ?????? ??? ?? ?????  
????????? ?? ?????? ??????? ??????? ??? ?????????????? ???????, ??? ??????????????????  
??? ??????????? ??????? ??????? ??? ?????????????? ?????? ??????? ??????? ? ???  
????????? ??? ?? ?????????????? ??????? ??? ?????????????? ?????? ??????? ?????????? ???:  
?????».

7.     ?? ?????? 134 ?? ??????? ?? (????? ?????? 13, A, ??????????? 2, ??? ????? ??????),  
?????? ?? ???:

?) ?????? ?? ?????????????? ?? ?? ??????????? ?? ?????? ?? ?????????????? ?? ??????,

?) ?????? ?????????????? ?????? ?? ?????????????? ??? ?????????? ??????????????  
????? ?? ??? ?????????????? ?????? ?? ?????????????? ??? ?????? ?? ?????? ??????????  
????????????? ?????????? ??? »

?-? ?????? ??????????

8. ????? ?? ??????????? ??, ?? ??????? ???????????, ?? ??????????? ??, ?? ??????? 132 ??  
?????? ??, ?? ??????????? ??, ?? ??????? ??, ?? ??????? ??, ?? ??????? ??, ?? ??????? ??, ?? ??  
?????? ??, ?? Value Added Tax Act 1994 (?????? ??, ?? 1994 ??, ??, ??). ? ??????? ??,  
?????? ??, ?? ??????????? ??, ?? ??, ?? ??????? ??, ?? ??????????? ??, ?? ??????????? ??, ?? 9 ??,  
??, ??, ??.

9. ???????, ??? ?????? 1 ??? 4 ??? ????? 6 ??? ???????? ?? ??? ?????????????? 9 ???  
Value Added Tax Act 1994 (????? ?? 1994 ??? ??? ??), ????????, ??????? ?????????? ??  
??????????, ?? ????:

«1. ? ??????? ? ? ??????? ?????????????? ???? ?????????????? ?????????????? ?????????????? ??????????????

(a) ??????????????

[...]

(c) ?????????????????? ??????????????.

[...]

4. ?????????????? ?????? ??? ?? ??????? ?????????? (????????????? ??? ??????????  
????????????? ??????????), ?? ?????? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ???  
????????? 1 (????? ??????) ??? ? ??? ?????????? ??? ?????????? ?????????? ??? ??????????  
????? ????, ??????

(a) ?? ?????? ? ?? ?????????? ?????????????? ??? ?????? ?????? ??? ??????,  
 ?????????/?????? ? ?????????????? (????? ??????????) ??? ?????????? ??? ?????? ?????????? ???

(b) ? ?????? ????, ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????????? ???

? ??????? ? ?????????? ??? ? ?????????? ??? ???? ???? , ?????????????? ??? ????  
????????? ????.»

10. ? ??????? ??? «????????? ??? ???? ?????? ??????» ?????????? ??? ???? 1 ???  
?????? 6 ??? ???? ?????? ?? ???? ?????????? 9. ??? ???? ???? ?????? ??? ?? ????  
????????? , ??? ?????????? ?? ???? ?????? ??? ???? ???? ???? «????????? ???  
????????? ??????» ??? ??? ?????? ???.

III – ? ??????? ??? ?????? ????

11. ?????????? ??? ??????? ??? ???? ?????? ?????? ?????????? ?? ?????????? ???  
????????? ?????? ?????? ?????? (????? ???? ?????????? ??? ?????????? ??? ??  
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ???).).

12. ??? ???? ???? ?????????? ??? ???? ?????? ?????????? , ?? ?????????? ??? ???? ??????????????  
????????????? ??? ?????? ?????????? ?????????? ?? ?????????? , ?????????????? ???  
????????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? , ??? ????  
????????????? ???.

13. ?????????? ?? ?????????? ??? ???? ?????? ?????????? ?? ?????? ?????????? ??? ????  
????????? ?????????? ?? ?????????? ?????????? ?? ?????????? ?????????? , ??? ????  
????????? ?????????? ?????? . ?? ?????????? ??? ?????????? ?????????? , ??? ????  
????????? ??? ?????????? ??? , ??? ??? ?????? ?????????? ?????????? ??? ?????????? ???  
????????? . ????? ?????? (????? ???? ?????) ?????????? ??? , ?????????? ???  
????????? ??? ?????????? , ??? ?????????? , ??? 80 % ??? ?????? ??? ?????????? ???.

14. ?????????? , ??? ?????? ??? ?????????? ?????? , ?????????? ?? ?????????? ???  
??? ?????? ??? ?????????? ?? ?????????? ??? , ?? ?????? –??? ???? ???? ?????? ??? ??  
???? ?????????? – ?????????? ?????? ??? ?????????? ?????????? ??? ?? ??? ,  
????? ?????? ?????? ??????.

15. ?? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ???  
????????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???  
????? ?????? ?????? ?????? . ??? ??? ?????? ?????? ??? , ?? ?????? ?????? ?????? ???  
?? ?? ?????? ?????? ??????.

16. ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? . ?? ?????? ???  
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ?????? ?????? . ?? ?????? ?????? ?????? ??? ?????? ?????? ???  
????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ??? ?????? ?????? ??????.

17. ??? ?????? ?? ?????????? ?????? , ?? ?????? ?????? ?????? ??? ?????? ??????????  
?? ?????????? (????? ???? ?????? 30–40 ?????) ?? ??? ?????? ?????? ?????????? ???  
????? ??? ??? ?????? ?????? ?????? ?????? , ??? ?? ?????? ?????? ?? ?????????? ???  
?? ?????? ?????? ?????? . ?? ?????? ?????? ?????? , ? ?????? ?????? ?????? ??????.

18. ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????.

19. ?????? , ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? , ??? ??? ??????

???? ? ?????????????? ?????? ??????? ?????? ??? ?????? ?????????????? ??? ?????????????? ?  
????? ??????? ??? ?????? ?????????????? ?? ?????? ?????????? ??? ??????????.

20. ??? ?????????????? ?? ?????????? ? ?????????????? ?????? ?????????? ?????????? ?????????? ?  
??? ?????????? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?  
??? ?????????? ?? ?????? ??? ?????????? ??? ??????????.

21. ? ?????????? ?????? ??? ?????????????? ?? ?????? ??? ?????????? . ??? ?????????? ?  
????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? . ??? ?  
??? ?????? ?????????? ??????????, ??? ?????? ? ?????????? ?????? ?????????? ?????????? ??? ?  
????????? ?????? ?????????? ??? ?????? ??? ?? ?????????? . ??? ??? ?????? ??? ?????????? ??? ?  
????????? ??????????, ??? ?????? ??? ?????????? ??? ?????? ?????? . ?????? ?????? ??? ?????????? ???  
????????? ??????????, ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? .  
????????? ??? ?? ?????? ??????????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???.

22. ??? ?????????????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ? ?????????? ?  
????????? ?????? ??? ?? ????????, ??? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ??????????  
?????????????, ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??  
?????????.

23. ?? ?????? ??? ?? 5?? ?????????? 2012, ?? First-tier Tribunal (?????????????)  
????????? ??????, ??? ?????? ?????) ?????????? ??? ?? ?????????? ?????????? ???  
????????? ??? ?????????? ??? ?? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ??  
??, ??? ?????? ??? ?????? 132, ?????????? 1, ?????????? ??, ??? ?????? ??? ?????? ???, ?? ??????????  
?? ?????????? ??? ?? ??? ?????????? ?????? ??????.

24. ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Commissioners for Her Majesty's Revenue &  
Customs [????????? ??? ?????? ???, ??? ?????? ?????? (??? ???: Commissioners)],  
?? Upper Tribunal (Tax and Chancery Chamber) (????????? ?????????? ??????????, ????  
????????? ??? ?????????? ??? ?????? ?????? ?????), ?? ?????? ??? 30?? ?????????? 2014,  
????????? ??? ?????? ??? First-tier Tribunal (????????????? ?????????? ??????????).  
????????? ?????? ?????? ??? ?????? ??? Commissioners, ?? Court of Appeal of  
England and Wales (Civil Division) (????????, ??? ?????? ??? ?????? ?????? ???, ??? ??????  
????????) ?????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??????????  
????? ?????????? ??? ??????.

#### IV – ? ?????????? ?????? ??? ??????????

25. ?????? ???, ?? ?????????? ??? ?????? Court of Appeal (England & Wales) (Civil  
Division) (??????, ??? ?????? ??? ?????? ?????? ?????) ?????? ??? ??????????, ??? 24  
????????? 2015, ?????? ??? ?????? 267 ??? ?? ?????????? ?????????? ??????????:

«1. ??? ??? ?????? ??? ?????? 132, ?????????? 1, ?????????? ??, ??? ?????? ???, ???  
?? ?????????? ?????????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? (?? ???? ??? ?????? ?? ?????? ??? ?????????? ??? ??  
????????? ??????????) “????? ??????????” ?? ??? ?????? ?????? ?????????? ??? ??  
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????????? ??? ??  
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???;  
????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???;

2. ??? ??? ?????????? ??? ?? ???? ?????? ?????????? ??? ?????????? ?????????? ???  
????????? ??? ?? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? ??? ?? ??????????  
«????? ??????????» ?? ??? ?????? ?????????? ??????????:

?) ??? ?????? ?? ?????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ??? ??  
????? ??? ?????? ?????? ?????????? ??? ?? ??? ?? ?????????? ??? ?????????? ???;

?) ??? ?????? ?? ?????? ??? ?????? ???? ?????? ?????????? ??? ?????????? ???  
????????? ??? ?? ?????? ?? ??????????, ??? ?????????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ???  
????????? ??? ?????? ?????????? ??????????;

?) ??? ?????? ?? ?????? ???, ??? ?? ?????? ??? ?????? ?????????? ??? ?? ??????  
????????? (????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????), ??  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????  
????? ??????;

?) ??? ?????? ?? ?????? ???, ??? ?? ?????? ??? ?????? ?????????? ??? ?? ??????  
??? ?????????? ??????????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????? ??? ?????????? ?????????? ??? ?????? ?????????? ??????????;

?) ?? ?????? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??????????;»

26. ??? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????????? ?? ??????????  
?????????, ??? ??? ? ??????. ??? ??' ?????????? ?????? ??? 10? ?????????? 2016  
?????????, ?? ?????? ?? ??????????;

V – ?????? ????????

? – ??? ??? ?????? ??????????

27. ?? ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????, ???' ??????, ??  
????????? ??? ?? ?????? ?????? ??? ?????????? ??? «????? ??????????» ?????? ???  
????? 132, ?????????? 1, ??????? ??, ??? ?????? ????. ??????????, ?????? ??  
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????????? ?????????? ??? ?????? 132, ?????????? 1, ??????? ??, ???  
????? ????. ?? ?????? ??? ??????????, ??? ?? ?????? ??????????, ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????????? ???  
????????? ??? ?? ?????? ??? ?????????? ???.

28. ??? ??? ??? ?????????? ?? ?????????? ?????? ?? ?? ?????? 13, ?, ?????????? 1,  
????????? ??, ??? ?????? ??????, ? ?????? ??? (??? ?????? 132, ?????????? 1, ?????????? ??)  
??? ?????????? ??? ?????? ??? «????? ??????????» ?? ??? ?????????? ??????  
????????? (6)  
. ??????????, ??? ?? ?????? ?? ?????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ???  
??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ?? «???  
????? ??? ?????? ?? ??? ???, ?? ?????? ? ?????????????? ??????????, ???  
????????? ?????????? ?????????? ???.

1. ??? ??????, ?????????? ?????? ??? ?????? ?????????? ??????

29. ??????????, ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??  
????????? ?????? ??? «????? ??????????», ??? ?????? ?????? ??????

? ? ?????????? ?? ? ?????????? ??????? ?? ?????? ?? ???? ?????? ?????? ?????? (7)  
. ??????, ?? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?????? ?????? ?? ??????????  
?????????, ???? ?????? ?? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????  
????????? (8)  
. ?????? ?? ?????????? ?? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????  
????????? ??????????, ???? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? (?????) ??????.

30. ?? ?????????? ??? ?????? ??? ?????? ??? ???????????. ?? ???? ?? ?????? ??? ?????? 132,  
????????? 1, ????????, ??, ??? ??? ?????? 134 ?? ?????? ?? ?????? ?? ?????? ?????? ??  
?? ???? ?????? ?????????? ?????? ?????? ??' ?????? ?? ?????? ?????? ?????? ?????? ??  
????? ?????? ?? ?????? ?????? ??????. ?? ?? ?????????? ?????? ?????? ?????? ?????? ??  
????? ?????? ?? ?????? ?????? ?????? ?????? (?? ?????????? ?? ?????? ?????? ??  
«????????? ?????? ??????» ?? ?????? ?????? ?? ?????? ?????? ??) ??? ?? ?? ??????  
????????? per se ??? ?? ????. ? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??  
????????? ?? ??? ?? ?????????? ?????? ?? ?????? ?? ?????????? ?????? ?????? ??????????  
????????? ?? ??? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

31. ??????, ??? ?? ?????????? ??????????, ??? ?????? Horizon College (9)  
, ??? ?????? ???' 132, ?????????? 1, ????????, ??, ??? ?????? ??? ?? ?????? ???  
???? ?????????? ?????? ?????? ?????? ?????? ?????? (??? ?? ?? ?????? ??? ??????  
????? ?????? ??????). ??????, ??? ?????? Canterbury Hockey Club ??? Canterbury Ladies  
Hockey Club (10)  
????????? ???' ?????????? ?? ?????? ???' 132, ?????????? 1, ????????, ??, ???  
????? ???, ??? ?????? ??? ?? ?????? ?????? ?????? ??????, ?? ?????? ??? ?????? (???  
?? ?? ??????????).

32. ??????, ?? 132, ?????????? 1, ????????, ??, ?????????? ??? ?????? ?????? ??? ?  
«????? ??????????» ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ???, ???  
????????? (?????) ??????. ????????, ?????? ?????????? ??? ?????? ?? ??? ??????????????  
(?????) ??????, ?????????? (??' ??????) ??? ???? ??? ?????? ??? ?????? ?? ??? ?? ???  
????? ??????. ????????, ??? ?????? ?????? ??? ?????? ?? ??? ?????? ?? 134 ??  
????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
?? ??? ?????? ?????? ??????– ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? (?????)  
?????.

33. ?????? ?????????? ?? ?? ??? ?????????? ?? ?????? ?????? ?? «????? ??????????»  
???????, ??? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ??  
????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ??  
????????? ??????. ????????, ?????????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ??  
???? «????? ??????????» ?????? ?????? ?? ?????? ?????? «????? ??????????» ??????.  
????????? ??? ??? ?????? ?????? ?? ?????? ?????? ?? ?????? ??? ??????????.

2. ? ?????? ??? ?????????? ?????? ?????? ?????? ?????????? ?? «????????????? ??????????»

34. ? ?????? ??? ?????????? ??' 132, ?????????? 1, ????????, ??, ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??? ?? ???, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??  
(11)  
. ??? ?????? ? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??' ?????? ?????? ???,  
????? ?????? ?? ?????? ?????? ?? ?? ?????? ?????? ??? ? ?????? ?????? ??? ?????? ??????

??? ?????? ????, ?? ????, ????, ??????????? ????, ?? ???, ??????? ??????? (???. ???. ???. ????????????)  
??? ?????? IX, ??????? 2, ??? ??????? ???).

35. ? ? ?????????? ???' ????? 132 ??? ??????? ??? ?????????? ??? ?????????? ??????. ?? ??  
??????, ?? ???????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?? ??????. ??  
????? ??? ?????????? ??? ?? (?? ??????????) ?????????? ??? ?????????? ?? ????. ??  
????????? ??? ?? ??????? ??? ?????????? ?????? ?????????? ?? ?????????? ?? ?????????? ???  
????, ?? ??????? ?? ??? ?????? ?????? ?????????? ??? ?????? ?? ?????? ??? ??????????, ??  
????????? ?? ??? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? «?????» ?? ??? ?? ??????  
????? ??? ?????????? ??? ?????? ?? ?????????? ???, ?????????? ?? ?????????? ??  
????? ?????????? ??? ?????????? (12)

36. ?????? ?????????????? ??? ? ?????? ??? ?????????? ???' ????? 132, ?????????? 1,  
????????? ?, ?? ??????? ??? ?????????????? ??? ?????? ?????? ?????????????? ???  
????????????? ??? ?????????? ??? (?? ??????????: ??? «????????????? ??????????»).  
?????????????, ??? ?????????????? ???????, ? ?????????? ?????????? ?????????????? ???  
????? ??? ?????? ??? ??????? ? ??????, ??? ??? ???????, ?????????? ??? ??????????  
??.

37. ?????????????????? ??? ??? ???? ?? ?????? ??????????????, ??? ????  
????????? ? ??????? ?????????? ??? ? ?????? ?????? ?? ?????????? ??? ???? (13)  
. ??? ??????? ????, ??????? ??????? ?? ?????????????? ? ?????????? ??????? ?? ??????  
????????????? ??? ?????? ?? ??????? ??? ?? ?????? «?????????» ????' ??????? ??  
????????????? ???????.

? ?????? ???? ??????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ??? «?». ?? ???????????  
????? ??? ?????? ?????? ?? ?????????? ?????????????? ?????? ??? ?????? ?????????? ??? ??  
????? ??? ?????? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ??  
??? ?????? ??????????, ??? ?? ?????? ?????? ?????????? ?????????? ?????? ??? ??  
????????????? ?? ?????? ??????.

B –??? ??? ??????? ???????????, ??????? ?? ??? ???

40. ?? ?? ?????????? ??? ?????? ??? (????????? ?? ??? ??) ??????? ??? ??????????  
????????? ?????? ???' ?????? ?? ?????????????? ?? ?????????? ?????????? ??????????????, ???  
??? ?????? ??? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ??? ?? ??? ??????????  
????? ?????????? ??? ??????.

41. ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ???, ??? ?? ??????????,  
?? ?????????? ??? ?????? ?? ?????????????? ???????????, ??? ??????, ??? ?? ??? ??????????  
?????????, ? ?????????? ?????? ?? ?????????????? ?????????? ??? ?????? ??? ??????????  
(15)

. ???????????, ?? ?????????? ?????? ???: «?????, ? ?????????? ??? ??? ??? ??????  
????? ?? ?????? ?????? ?? ??? ?????????????? ??? ?? ?????? ?????????? ?????? ???  
?? ?????? ?? ??? ?????? ?? ?????????? ??? ?????????????? ??????????????, ??????????????, ? ??????  
????? ?? ?????? ?????? ??? ?????? ?? ??? ?? ?????? ??? ?????????????? ??? ??  
????? ?? ?????? ?????? ?? ??? ?? ?????? 132 ?????? ?? ?????????????? ??? ?????? ??? ??  
????? ?? ?????????? ??? ?? ?????? ?? ?????????? ?? ?????????????? ???» (16)

42. ??? ?????? ???, ??? ?????? ?????? ?? ?????????? ?????????? ??? ?????????????? ???  
????? ?? ?????? ??? ?????? ??????. ???????, ?? ?????? ???, ??? ?? ???  
????? 134 ??? ?????? ???, ?? ?????? ?????????? ??? ?? ?????????? ??? ?????????????? ????. ???  
????? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????????? ???, ??????????, ???, ?  
????????????? ?? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??  
?????????????, ??? ?? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??  
??? ?? ?????????????? ??? ??????????, ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????????? ?? ?????? ??? (17)

43. ?????? ??? ?? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????  
????? ?????????????? ????. T????? ?????????? ?????? ?? ?????????? ??? ??????????????  
????? ??? ?????? ??? ?????????????? ??? ?? ??? ?????? ?????????? ???, ??? ?? ???  
????? Horizon College (18)

. ? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??????????, ?? ??????????  
??? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ?? ??????????  
????? ?? ?????????????? ??? ?????? ??? ?????????? ?????????? ??????????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????, ??? ??  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??  
?????, ??? ?????? ?????????? ??? ?????? ?. ?????? ?????? ??? ?????? ??? ?????? ??? ??  
?????????. ??? ?? ?????? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ???, ??????????  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

44. ??? ?? ?????? ??? ?????? ??? ?????????? ??? «????? ??????????» ??????, ?????? ??? ??  
????? ??? ?? ?????? ?????? «?????» ??????????, ??? ?? ?????? ??????????, ???  
????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ??????. ??? ?? ??? ??????  
????? ??? ?????? ??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??

???????????? ???? ???? ?????????? (????, ?? ????????????, ??? ???? ????????????) ???? ???? ????  
????????? ???? ?????????????? ??????????) (19)  
. ??????????, ? ?????????? ???? ??????? ???? ???? ?????? ?????????? ????????? «????» ?? ?????.  
????????? ???? ?????????? ???? ?????????? ???? ???? ?????? ?????? ????? ?????????? ??????????  
??? ?????????? ?????????? (20)  
. ?????????? ???? ?????????? ?????????? ?????? ?????????? ?? ??? ?????????????? ??????????????  
????????.

45. ?? ??????, ?? ??????????? ????? ?????????????????? ??? ????? ??? ??? ?? ?????  
?????????????. ?????? ? ??????? ??? ??? ?????? ??? ????? ?????????????? ??? ??????????????  
????????? ??? ??? ??????????? ??? ??????? ?????????????? ?? ??????????????, ??? ??????????  
????????? ?? ??????????? ? ?????? ??? ??? ?????? ?????????? ??? ?????????? ??? . ??? ?  
????? ??????????, ??? ?????????? ??????????, ?? ??? ????? ?????????? ??? ????? (???  
????????? ?????? ??????) ??? ?? ?????? ??? ?????????? (???/? ??? ?? ??????????  
?????????) ??? ??? ?????????? ?? ?????????? ?? ??????????/?????????.

VI – ???????

46. ?????????????? ?????? ??? ???????, ?????????? ??? ??????????? ?? ?????????? ???  
????????????? ?????????? ??? Court of Appeal (England & Wales) (Civil Division) (???????,  
??????? ??? ??????, ???????? ????, ???????? ??????) ?? ???:

1) ?????? ?????????????? ??????? ???? ?????? ??? ?????? 132, ?????????? 1, ???  
?????? ?? ???? ?????? ?????????? ??????, ? ?????????? ??? ?????? ?? ?????? ?????????? ???  
?? ?????? ?????????? ??? ?????? ?????? ?????????? ??????. ??? ?????????? ???  
????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
??? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???  
????????????? ?????????? ??????????.

1      ?????? ?? ?????????????: ? ??????????.

2 ?? 2006, L 347, ?. 1.

3 ??????? ??????? ??????? ??? ??????????: ??????? ??? 14?? ?????? 2007, Horizon College (C:434/05, EU:C:2007:343).

4      ????? ??????? ?? 20?? ??????? 2002, ??????? ?? ?????????? (C-287/00,  
EU:C:2002:388) ??????? ?? ???? ??????, ?????? ? ??????? ??????????????? ??  
?????????????? ?? ??? ??????????? ??????????????? ?? ??????????????? ?? ??????? ??

6 ?????????? ??? 20?? ??????? 2002, ???????? ??? ?????????? (C?287/00,  
EU:C:2002:388, ??? 46), ??? ??? 14?? ??????? 2007, Horizon College (C?434/05,  
EU:C:2007:343, ??? 27).

7 ?????????? ??? 14?? ??????? 2007, Horizon College (C?434/05, EU:C:2007:343, ?????? 28), ??? 6?? ?????????? 2003, Dornier (C?45/01, EU:C:2003:595, ??????? 34 ??? 35), ??? 1?? ??????????? 2005, ????? (C?394/04 ??? C?395/04, EU:C:2005:734, ??????? 17 ??? 18), ??? ??? 11?? ?????????? 2001, ???????? ??? ??????? (C?76/99, EU:C:2001:12, ??????? 27 ???.).

8 ?????????? ??? 22?? ?????????? 1998, Madgett ??? Baldwin (C?308/96 ??? C?94/97, EU:C:1998:496, ?????? 24 ??? 25), ??? 6?? ?????????? 2003, Dornier (C?45/01, EU:C:2003:595, ????? 34), ??? ??? 1?? ?????????? 2005, ????? (C?394/04 ??? C?395/04, EU:C:2005:734, ????? 19).

9 ??????? ??? 14?? ??????? 2007, Horizon College (C?434/05, EU:C:2007:343).

10 ??????? ??? 16?? ?????????? 2008, Canterbury Hockey Club ??? Canterbury Ladies Hockey Club (C?253/07, EU:C:2008:571).

11 ???. ?????????? ??? 20?? ??????? 2002, ???????? ??? ?????????? (C?287/00,  
EU:C:2002:388, ???? 47), ??? 28?? ?????????? 2013, MDDP (C?319/12, EU:C:2013:778, ????  
26)? ??., ????????????, ??? ??? ?????? 13, ?, ?????????? 1, ???????? ??, ??? ??????  
???????, ??????? ??? 11?? ?????????? 2001, ???????? ??? ?????? (C?76/99,  
EU:C:2001:12, ????? 23).

12 ?????????? ??? ?????? ?????? ??? ???????????, ??? ?????? ?????? ?????????? ?????????? ??????????  
?????? ??????????????? ?? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? per  
se ?????????? ?????????????? ??? ?????? ???????, ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ????  
??? ?????? ??? ?????? ?? ??? ?? ?????? ?? ??? ?????? ?????????? ??????????, ??????  
??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ??????.

13 ?????????? ??? 24?? ?????????? 1996, Elida Gibbs (C?317/94, EU:C:1996:400, ????? 19),  
??? 7?? ?????????? 2013, Tulic? ??? Plavo?in (C?249/12 ??? C?250/12, EU:C:2013:722, ?????  
34), ????? ??? ??????? ??? 9?? ?????????? 2011, Connoisseur Belgium (C?69/11, ??  
?????????????, EU:C:2011:825, ????? 21).

14 ?????????? ??? 7?? ?????????? 1999, Gregg (C?216/97, EU:C:1999:390, ???? 20),  
??? 16?? ?????????? 2008, Canterbury Hockey Club ??? Canterbury Ladies Hockey Club  
(C?253/07, EU:C:2008:571, ???? 30), ??? ??? 11?? ???????? 1998, Fischer (C?283/95,  
EU:C:1998:276, ???? 22).

15 ?????????? ??? 21?? ??????? 2013, PFC Clinic (C?91/12, EU:C:2013:198, ????? 23), ???  
10?? ??????? 2010, Future Health Technologies (C?86/09, EU:C:2010:334, ????? 30), ??? 14??  
?????? 2007, Horizon College (C?434/05, EU:C:2007:343, ????? 16), ??? 20?? ??????? 2002,  
????????? ??? ?????????? (C?287/00, EU:C:2002:388, ????? 47), ??? ??? 28?? ??????????  
2013, MDDP (C?319/12, EU:C:2013:778, ????? 25).

16 ?????????? ?? 21?? ??????? 2013. PFC Clinic (C?91/12. EU:C:2013:198. ????? 23). ???

10?? ??????? 2010, Future Health Technologies (C?86/09, EU:C:2010:334, ????? 30), ??? 14??  
?????? 2007, Horizon College (C?434/05, EU:C:2007:343, ????? 16), ??? 20?? ??????? 2002,  
???????? ?? ?? ???????? (C?287/00, EU:C:2002:388, ????? 47), ??? ??? 28?? ??????????  
2013, MDDP (C?319/12, EU:C:2013:778, ????? 25).

17     ?????? ?? 20?? ??????? 2002, ??????? ?? ?????????? (C?287/00, EU:C:2002:388,  
????? 48).

18     ?????? ?? 14?? ??????? 2007, Horizon College (C?434/05, EU:C:2007:343).

19     ????? ?? ????????, ?? ????????????, ?? ?????? ?????? ?? ?????????? ?? ?  
????????????? ?????????? ?????? ?????? ?????? ??? ?????????? ?????????????? ??????  
????????? ?? ??? ??? ?????? ??????????.

20     ????????????? ??? ?????? ??????, ??????????? ?? ?????????? ?????? ?? ??????????  
?? ??? ??????? ??? 20?? ??????? 2002, ??????? ??? ?????????? (C?287/00,  
EU:C:2002:388).