

TOTAL TIME: 3 HOURS

SPECIAL INSTRUCTIONS

This is an open resource examination. During the examination, you may consult any non-human resource. You may NOT, of course, communicate with any other person, in any manner, relating in any way to this exam.

In answering any essay questions regarding dispute resolution, you should discuss all legal issues reasonably raised by the facts (in other words, all reasonable legal theories of recovery, as well as all reasonable defenses that might be raised by the other party) even though, were this a real case, you might determine that one issue is likely to be determinative. In analyzing any competing arguments arising under a particular issue, you should analyze each argument as it is made rather than simply listing all of the arguments for one party, followed by all of the arguments for the opposing party. Where there is more than one reasonable conclusion with respect to a particular issue, you should discuss the alternatives, choose one, and explain your choice. Please provide statutory citations whenever appropriate to support your analysis.

You should assume that all letters or faxes are signed by the sender unless otherwise stated and that all other referenced "writings" are signed by each party to such writings.

In two places in Essay Question 1, you will find a [*brief italicized explanation in brackets*], each of which provides information that we did not cover in class and with which some of you might not be familiar. You should accept the information in brackets as true for purposes of this exam.

You may use the exam time any way you wish, but the allotted time for each essay question or the multiple choice questions, as a whole, reflects the proportional grading weight I will give that particular portion of the exam.

(End of instructions – **DO NOT TURN PAGE UNTIL INSTRUCTED TO DO SO**)

Essay Question 1 (60 minutes)

Lone Star Boots Company (Lone Star or **LS**) is a Texas manufacturer of cowboy boots. Jacques' Fabulous Footwear (Jacque or **J**) is a French distributor of high fashion shoes. Exotic cowboy boots have suddenly become the rage in France, and Jacques contacts Lone Star about purchasing 3,000 pairs of alligator boots. Lone Star sends a fax to Jacques offering 3,000 pairs of specially made alligator boots at 100 per pair, CIF Marseilles, France, to be delivered in 2 shipments of 1,500 pairs each, to depart the Port of Houston on or before September 1 and September 20, respectively. Jacques replies with a fax accepting all of Lone Star's terms and adding a term requiring arbitration of any dispute arising out of the parties' agreement in Paris, France, under the ICC Rules. Lone Star immediately begins producing the boots for Jacques.

On August 20, Lone Star delivers the first 1,500 pairs of boots to Swift Ship Lines (Swift or **S**) in a sealed container and receives a negotiable bill of lading stating under the description of packages and goods: "Container #1234 XYZ: 1,500 pairs boots, shipper's description and count, received for loading—Port of Houston." Lone Star fills in the full \$150,000 declared value in the blank space provided for such a declaration on the bill of lading form. Swift then places the container in a holding area on the docks. The container is loaded on the Swift I ship on August 31, and the ship departs Houston on September 1. Lone Star forwards the bill of lading, along with a draft and other necessary documents, through the Bank of Texas to the Bank of Paris, which, at the request of Jacques (there was no letter of credit), pays the draft in exchange for the documents. The Bank of Paris then charges Jacques' account and forwards the documents, which Jacques uses to obtain possession of the container from Swift at the Port of Marseilles. Unfortunately, when Jacques receives the container, the seal is missing, and the container is empty. Meanwhile, back across the Atlantic . . .

Lone Star attempts to deliver the second shipment of boots to Swift on September 15, but Swift refuses to accept them. There is a hurricane brewing in the Gulf of Mexico, and it appears to be heading directly towards Houston. Lone Star's driver reports in to her office for instructions and is told by the Lone Star manager to wait out the storm—after all, hurricanes always veer off course at the last minute. Unfortunately, the hurricane scores a direct hit on the container full of cowboy boots (the driver, however, had the good sense to flee before that), and the shipment is a total loss.

Lone Star promptly telephones Jacques to explain that the second shipment has been lost to the hurricane. Lone Star also explains that it's been a bad hurricane season in Florida, thus scaring all of the alligators into hiding, and Lone Star will not be able to complete the second shipment—unless it is willing to pay twice the usual price for hides available, which it is not. Aghast at this new news, Jacques then describes his receipt of the empty first container. Lone Star replies that this is "strictly between Jacques and Swift, because Lone Star completed its obligations." His anger rising, Jacques explains that he will suffer huge losses (\$250,000 for each shipment) as a result of his inability to deliver any of the promised cowboy boots to his own customers. Jacques ends the conversation with a threat of legal action to be commenced with the ICC in Paris.

Lone Star consults its lawyer, who confidently (though not necessarily correctly) advises Lone Star that: (1) the arbitration provision is not binding, because it is was a material addition to Lone Star's offer; and (2) Lone Star can definitely avoid any liability for the second shipment under UCC 2-613, a unique provision under UCC Article 2 dealing with a casualty to identified goods [*this provision is not in your statutory supplement, but you may assume that Lone Star's lawyer is correct—but only if UCC Article 2 governs the transaction*]. The lawyer is sure that UCC Article 2 (as adopted in Texas) will govern the transaction, as long as any dispute is heard in a Texas court. The lawyer further explains that he thinks liability for the first shipment might be somewhat unclear, so Lone Star should immediately file a declaratory judgment action in Texas State Court [*a declaratory judgment action is a procedural device that allows a potential defendant to file first—asking the court to declare the parties' respective rights and obligations under the contract*], which he is sure will “do right by Lone Star” as a local Texas business. Lone Star follows his advice and brings an action in Texas State Court.

When Jacques receives the summons and complaint from the Texas State Court, he decides that he needs some U.S. legal advice. He finds you through your website, where you purport to be an international business lawyer licensed to practice in Texas. Jacques asks for your thorough and thoughtful analysis with respect to three specific questions: (1) Can you get Jacques out of this Texas court and into arbitration in Paris under the ICC Rules? (2) Irrespective of where the dispute is heard, against whom and how much (round numbers only) might Jacques be able to recover for the lost first shipment (the empty container—and you can assume that the marine insurance does not cover containers found unsealed and empty), and might he have any difficulties in doing so if he ends up in arbitration? (3) Can Jacques recover damages from Lone Star as a result of Lone Star's failure to deliver the second shipment?

END OF ESSAY QUESTION 1

Essay Question 2 (60 minutes)

In considering this question, you should focus on the materials we covered in class this semester. One might assert that the goal of transnational law (the law applicable to transactions connected to more than one nation state) is: (1) to provide for greater prosperity for the world as a whole; and (2) to provide such prosperity for a greater proportion of the world's people. You are welcome to adopt this position, or you may substitute our own position as to the goal of transnational law. Based on the goal you adopt, which legal doctrines (you may consider national and/or international, and you may consider positive law and/or normative rules) have been the most effective in advancing this goal, and which have been the least effective in advancing this goal (I am not looking for any specific number of either, just what you can reasonably discuss in the time allotted). Lastly, where do you see the greatest potential for the development of new legal doctrine likely to advance this goal.

END OF ESSAY QUESTION 2

Essay Question 3 (60 minutes)

Robo-Dolls, Inc. (Robo or **R**) is a New Hampshire manufacturer of dolls possessing the ability to walk, talk, and even learn. The dolls are quite expensive, at \$995 each, but have been the rage amongst the "well-to-do" set across the United States. After two fabulous sales years, Robo is concerned that its sales in this high-end niche market in the U.S. are likely to begin flattening out, and it would like to begin to tap markets outside the U.S.—particularly high-end markets in Europe and Asia. Robo also would like to see its profits improve—perhaps by moving its manufacturing for some or all of its markets (including, perhaps, the U.S. market) into less developed countries with very low labor costs (parts of the dolls are quite labor intensive).

The dolls contain very sophisticated, and patented, computer processors that control the doll's movements and even allow it to learn. In order to provide for the necessary processing power and fit it inside of a doll, Robo has developed a special formula for making the chips themselves (go with me on this one—it's a secret formula, like Coca Cola). Lastly, Robo has registered "Robo-Dolls" as a trademark.

Advise Robo as to the pros/cons and risks/rewards of various methods it might consider in: (1) expanding its market beyond U.S. borders; and (2) reducing its production costs by manufacturing the dolls outside of the U.S.

END OF ESSAY QUESTION 3