

INTERNATIONAL COMMERCIAL ARBITRATION
PROFESSOR STRONG
SPRING 2024

EXAM NUMBER _____

INSTRUCTIONS

- You are bound by the Honor Code and may not give or receive assistance with the exam.
- The exam is **modified closed book**. You may use any hard copy (printed) material that you bring with you into the exam. If you are expected to parse any particular legal authorities, those will be provided to you along with the examination papers. The provision of particular authorities should not be taken to mean that those are the only authorities you can or should consider in your responses.
- You may only bring your laptop, a pen, and something to drink into the exam unless you have an approved accommodation. You may **not** have any electronic devices, including cell phones and smart watches.
 - **If you bring anything other than the above permitted items into the exam room, you will automatically receive a grade of “F” on the exam.**
- Please write your exam number legibly on this cover page of the exam booklet in the space provided at the top right-hand corner.
- After the exam, you must return the exam.
 - **If you fail to turn in all pages of your examination, or if you remove the exam from the examination room at any time, you will receive a grade of “F.”**
 - Do not unstaple the exam or separate the pages.
- The entire exam is worth 50 points and includes three questions, not including subparts. Point allocations are listed next to each question and/or subpart.
 - Question 1:
 - Worth 30 of 50 points (may include subparts)
 - Suggested time: 120 minutes
 - Question 2:
 - Worth 10 of 50 points (may include subparts)
 - Suggested time: 30 minutes
 - Question 3:
 - Worth 10 of 50 points (may include subparts)
 - Suggested time: 30 minutes
- In writing your answers:
 - Type your answer in EBB unless software or hardware problems require you to hand-write your responses.
 - If you must hand-write your answer:
 - Use a bluebook;
 - Write on only one side of the page; and
 - Write on every other line.
 - You may use any abbreviated terms indicated in the questions or any terms you have explicitly defined.
 - Provide supporting authority (cases, statutes, treaties, soft law and/or commentary) as part of your arguments.

- You **do not need** to provide full Bluebooked citations and **do not need** to use footnotes. Short-form authorities in the body of the text are fine and are preferred.
- When referring to cases, you can provide both parties' names (e.g., Wiley E. Coyote v. Acme Co.), one party's name (e.g., Coyote or Acme), or a brief reference to the facts so long as the reference is clear (e.g., "the case where Coyote gets squashed" may be enough; however, if there are two similar cases, you may need to say whether Coyote was squashed by a box or a train).
- When referring to authorities other than case law, provide enough information so that the authority can be clearly identified.
- Write concisely, precisely, and clearly.
 - There are no word or page limits suggested here, but long, rambling answers tend not to work to your benefit, since they are not as professional or persuasive as tightly drafted prose. Conversely, extremely short answers – particularly those that jump straight to a conclusion without showing your support or reasoning – tend not to win maximum points.
 - What you leave out is as important as what you put in. Avoid irrelevant discussions, since those will not win you any points, even if the points made are true as a matter of law.

Good luck!

****Honor Code Pledge: I acknowledge that in this, as in all other law school activities, I am bound by the Emory Law School Code of Professional Conduct.****

Signed (exam number **ONLY**, not your name)

Question 1 (30 points in total, with point divisions indicated next to each subpart)

You are outside counsel for Pet Paraphernalia, a pet-goods company based in Poughkeepsie, New York. Dreaming Dogs is a manufacturer of luxury dog beds and is based in Dubai in the United Arab Emirates. Pet Paraphernalia has a twenty-year contract with Dreaming Dogs dated June 8, 2008, whereby Dreaming Dogs must supply 10,000 dog beds to Pet Paraphernalia per year.

Your client, Pet Paraphernalia, believes that the quality of Dreaming Dogs' merchandise has slipped in recent months and has issued a demand for arbitration, seeking to terminate the contract and obtain damages. The arbitration agreement in the substantive contract between the parties reads as follows:

The parties hereby agree to submit any and all disputes arising out of or in connection with this contract to binding arbitration. Proceedings shall be governed by the Singapore International Arbitration Centre (SIAC) Arbitration Rules. The tribunal shall consist of three arbitrators, with two selected by the parties and the chair selected by the party-appointed arbitrators. The arbitration shall be seated in New York, New York. The law governing the substantive dispute shall be the law of Singapore.

Question 1(1) (worth 10 points)

Pet Paraphernalia names its arbitrator – Professor Yixuan Cheng, a Singaporean-qualified lawyer – in its demand for arbitration. Dreaming Dogs immediately challenges the appointment of Professor Cheng on the grounds that:

- (a) Professor Cheng taught International Business Transactions at your law school fifteen years ago. There were five students in her class the year you took it, and your final grade was an A. Professor Cheng left your law school the following year and is now on the faculty at a different university. You have occasionally seen Professor Cheng at professional events in the last decade and a half and have said hello when you meet.
- (b) Professor Cheng has posted pictures on Facebook of her dog lying in a Pet Paraphernalia-produced bed with the comment, "Fido loves his bed!"

Setting aside the question of where the challenge will be heard, will either of the two challenges to Professor Cheng prevail? Consider all relevant authorities in your answer and outline any assumptions you are making. Some potentially relevant authorities have been provided.

Question 1(2) (worth 20 points)

Assume only for the purposes of this subpart that SIAC hears the challenge and allows Professor Cheng to remain on the panel. Sixteen days after the decision is handed

down, Dreaming Dogs names its own arbitrator. However, the day before Dreaming Dogs makes its appointment – i.e., on the fifteenth day after the decision on Professor Cheng was rendered – the President of the SIAC Court of Arbitration appoints an arbitrator on behalf of Dreaming Dogs as well as the third member of the arbitral tribunal.

Dreaming Dogs raises two objections to SIAC’s appointment of the two arbitrators. First, Dreaming Dogs claims that the SIAC rules referenced in the arbitration agreement give Dreaming Dogs twenty-one days to name its arbitrator, starting from the day the challenge to Professor Cheng was decided. Second, Dreaming Dogs claims that the arbitration agreement indicates that the third arbitrator is to be chosen by the two party-appointed arbitrators, not by SIAC.

Dreaming Dogs raises these procedural concerns at the time the two arbitrators are appointed. The objections are not upheld, and Dreaming Dogs defends the substantive claims in the arbitration and loses. After the award is rendered, Dreaming Dogs seeks to vacate the award in the U.S. District Court of the Southern District of New York, relying on its two objections to SIAC’s appointment of the two arbitrators.

How will the court rule on Dreaming Dog’s attempt to vacate the award? Consider all relevant authorities in your answer and outline any assumptions you are making. Some potentially relevant authorities have been provided.

Question 2 (10 points)

Your client – Xylophone Productions – is based in Country X. Country X has an excellent arbitration law, with a very detailed list of default provisions regarding all aspects of arbitration. However, Country X is prone to extreme seasonal flooding, which makes it an unattractive geographic location for arbitral hearings.

Your client is negotiating a deal with ABC Music, whereby Xylophone Productions will sell a large number of xylophones to ABC Music for distribution in Country A, where ABC Music is located. ABC Music is pushing hard to have the London Court of International Arbitration (LCIA) Arbitration Rules apply to any arbitral proceedings that might arise between the parties. Although ABC Music likes the arbitration law of Country X, it wants to have the arbitration seated in London to avoid the possibility of having an arbitration flooded out in Country X. London is halfway between Country A and Country X.

Xylophone Productions has suggested the parties’ conflicting desires could be resolved by agreeing to have the arbitration governed by both the LCIA Arbitration Rules and the arbitration law of Country X.

Your task is to:

- (1) Advise your client as to the wisdom and feasibility of applying both the LCIA Arbitration Rules and the arbitration law of Country X to any arbitral procedures that might arise between the parties and indicate what optimally should be done, citing to relevant legal authorities; and

- (2) Regardless of what your advice in (1) may be, draft an enforceable arbitration agreement giving effect to your client's suggestion, using precise wording rather than general points that should be included.

Question 3 (10 points)

How should your oral and written advocacy differ when presenting to (a) an all-common law tribunal, (b) an all-civil law tribunal and (c) a mixed common law-civil law tribunal? When answering this question, you can refer to a variety of authorities and examples, including but not limited to commentators and the video of the Abyei Arbitration at the Permanent Court of Arbitration.