

Exam # _____
Part I: Retain Exam and
Answer by College X
Part II: Return Exam and
Answer to Student X

UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

FINAL EXAMINATION

INTERNATIONAL BUSINESS TRANSACTIONS
(COURSE # 41621)

PROFESSOR WILLIAM S. DODGE

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SPRING SEMESTER 2008

WEDNESDAY, APRIL 30, 2008

TIME: THREE HOURS

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LIMITED OPEN NOTES EXAMINATION

INSTRUCTIONS

1. This is a limited open notes examination. You may bring with you and consult one 8½ by 11 sheet of notes (both sides) in print that can be read without magnification. You may not use or consult any other materials.
2. There are two parts to the exam. Part I consists of 30 multiple-choice questions. Each of these questions is worth two points, for a total of 60 points. Part II consists of two essay questions. Question II.A is worth 75 points, and Question II.B is worth 45 points. The allotted time for the examination is three hours. You may allocate your time as you wish, but I recommend that you spend one hour on the multiple-choice questions (two minutes for each question), one hour and 15 minutes on Question II.A, and 45 minutes on Question II.B.
3. Please read each multiple-choice question carefully, including the call of the question. Of the four answers provided, please choose the best one and mark your answer on the scantron score sheet. There is no penalty for guessing, so make sure to answer each question.
4. Please read the essay questions carefully, including the instructions at the end of each question. Within the limits of those instructions, discuss each issue reasonably raised by the facts, including issues that might be rendered moot by your resolution of another issue. Think about and organize your answers before starting to write.

Good luck!

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PART I
MULTIPLE-CHOICE QUESTIONS
(2 points each)

[Omitted]

PART II
ESSAY QUESTION A
(75 points)

Flatworld, Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois. Flatworld has developed technology for flat-panel televisions, which it manufactures at a facility outside of Chicago. In the United States, Flatworld has approximately 15% of the market for flat-panel televisions, but its export sales have so far been quite small. Its greatest share of any market outside the United States is in the United Kingdom, where it has 3% of the market.

Anglow Ltd. is an English corporation with its principal place of business in London, United Kingdom. Anglow has developed a different technology for flat-panel televisions, which it manufactures at a facility in Manchester, United Kingdom. Although Anglow's technology differs from Flatworld's, consumers cannot tell the difference between televisions made with each. Flatworld and Anglow are independent companies and are not subject to common ownership or control. Anglow has approximately 10% of the market for flat-panel televisions in the United Kingdom.

Flatworld holds a U.S. patent on its technology and U.S. trademark rights on the name "Flatworld." It holds similar patent and trademark rights in all the countries of the European Union. It has opened negotiations for licensing agreements with various companies in Europe, including Anglow, which it thinks may be better able to manufacture and sell Flatworld televisions in their respective markets. Flatworld is concerned, however, that parallel imports of Flatworld televisions made abroad might undercut its sales in the United States.

Flatworld's General Counsel Frances Flatstone has given you a draft licensing agreement and has asked you to suggest changes and additions to protect Flatworld's interests and to ensure that the licensing agreement is enforceable under European Union competition law. She has also asked you whether Flatworld would be able to prevent the parallel importation to the United States of Flatworld televisions made abroad.

Please advise Ms. Flatstone.

LICENSE AGREEMENT

This agreement is made this __ day of _____, 2008 by and between Flatworld, Inc., a Delaware corporation having its principal place of business at Chicago, Illinois (hereinafter "Licensor"), and Anglow Ltd., an English corporation having its principal place of business at London, United Kingdom (hereinafter "Licensee");

Whereas Licensor has obtained patents (hereinafter "the Patents") for flat-screen televisions (hereinafter "the Products") in the United States and the United Kingdom and possesses valuable secret knowledge, information, and data useful in manufacturing the Products (hereinafter "the Know-how");

Whereas Licensor has obtained trademark rights for the Flatworld name in the United States and the United Kingdom (hereinafter "the Trademark");

Now therefore in consideration of the mutual promises contained herein, Licensor and Licensee hereby agree as follows:

1. Grant. Licensor grants Licensee an exclusive license to practice the Patents and Know-how in the United Kingdom and to sell the Products in the United Kingdom under the Trademark. Licensee shall not sell the Products outside the United Kingdom.

2. Improvements. During the term of this agreement, Licensor shall make available to Licensee any improvement related to the Products, which Licensor has acquired, at no cost to Licensee. Licensee shall assign to Licensor the entire right to any improvement related to the Products, which Licensee has developed, at no cost to Licensor.

3. Trademark. Licensee shall ensure that the Trademark is affixed to the Products it manufactures and sells under this agreement.

4. Marketing. Licensee shall be solely responsible for marketing the Products in the United Kingdom, provided, however, that the Products shall not be sold for more than Licensor's suggested retail price.

5. Royalty. Licensee shall pay Licensor a royalty of 33% of Licensee's net profits from sales of the Products in the United Kingdom.

6. Warranties. Licensor warrants and represents that it is the sole owner of the patent and trademark rights pertaining to the Products in the United States and the United Kingdom; that these rights are valid and in effect; that to Licensor's knowledge no claim has been made contesting the validity of any of these rights; and that Licensee's use of these rights will not infringe the rights of any third party.

7. Non-Contestation of Rights. Licensee shall not contest the validity of the Patents or Trademark or Licensor's property rights to the Know-how.

8. Term and Termination. This agreement shall continue until the expiration of Licensor's Patents in the United Kingdom, provided, however, that either party may terminate this agreement upon 30 days' written notice in the event that the other party breaches any term of this agreement.

9. Arbitration. All disputes arising out of this agreement shall be finally decided by arbitration conducted in Chicago, Illinois under the Rules of Arbitration of the International Chamber of Commerce.

10. Entire Agreement. This agreement constitutes the entire agreement of the parties.

PART II
ESSAY QUESTION B
(45 points)

Green Gas, Inc. is a Delaware corporation with its principal place of business in San Jose, California. Green Gas has developed a process for converting many kinds of plants into biofuel. Three years ago, Green Gas established a processing facility on the Caribbean island of Trinago to turn sugar cane into biofuel. The processing facility is owned by Green Gas Trinago Ltd., a wholly owned subsidiary of Green Gas, Inc., which is incorporated under the laws of Trinago. The facility cost approximately \$10 million to build, but has been operating quite profitably. Indeed, Green Gas recently rejected a competitor's offer to buy the facility for \$30 million. Most of the biofuel produced is exported to the United States, but a portion is sold to the government of Trinago.

Green Gas's process for converting sugar cane into biofuel uses a special enzyme that Green Gas produces in the United States and exports to Trinago. The enzyme must be used within a week of its production or it will degrade and become useless. Within the past year, customs officials in Trinago seem to have discovered this and have threatened to slow the shipments down in order to extort payments from Green Gas. Green Gas's CEO, Gary Green, has authorized his employees in Trinago to make such payments to Trinago customs officials as may be necessary to ensure that the enzyme arrives on time.

On April 1, 2008, Trinago held a general election in which the People's Party of Trinago (PPT) swept to power on a platform of resisting foreign investment. The leader of the PPT, Truman Thomas, was sworn in as prime minister on April 2. In his acceptance speech, Thomas denounced Green Gas as "the green monster from the north that steals our sugar to feed their cars." He announced that he was immediately suspending government payments to Green Gas Trinago Ltd. for biofuel already delivered. One week later, Trinago's parliament adopted a new law vesting "all right and title" to Green Gas Trinago Ltd. in the Trinago government, "which will hold it in trust for the people of Trinago."

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Gary Green has come to you seeking advice. You know that Green Gas has insured its investment in Green Gas Trinago Ltd. against expropriation with OPIC, that the United States has a bilateral investment treaty with Trinago identical to Chapter 11 of NAFTA, and that both the United States and Trinago are parties to the ICSID Convention. Green tells you that the government of Trinago owes Green Gas Trinago Ltd. \$200,000 for biofuel that has already been delivered. He also tells you he thinks that Green Gas Trinago Ltd. is worth more than \$30 million. He wants to know if Green Gas can recover either of these amounts in U.S. court, in arbitration under the bilateral investment treaty, or both. He also wants to know what Green Gas can recover under its OPIC policy. Finally, Green tells you about the payments that Green Gas has made to Trinago customs officials, which he fears will soon become public. He wants to know if any of these payments have violated U.S. law.