

Exam # _____
Return Exam and Answer
to Student _____ X

UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

FINAL EXAMINATION
INTERNATIONAL BUSINESS TRANSACTIONS
(COURSE # 41611)

PROFESSOR WILLIAM S. DODGE

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FALL SEMESTER 2005

THURSDAY, DECEMBER 8, 2005

TIME: TWO AND ONE-HALF (2-½) HOURS

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OPEN BOOK EXAMINATION

(Instructions on Next Page)

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INSTRUCTIONS

1. This is an open book examination. You may consult the course book, supplemental materials, your notes, and any other materials you wish. You should bring with you the course book and supplemental materials because one or more of the questions may require you to refer to them.
2. The allotted time for the examination is two and a half hours. There are four questions. Question one is worth 60 points; question two is worth 30 points; question three is worth 30 points; and question four is worth 30 points. I recommend that you spend one hour on question one and 30 minutes on each of the other questions.
3. Read each question carefully, including the instructions contained in the question. Within the limits of those instructions, please discuss each issue reasonably raised by the facts, including issues that might be rendered moot by your resolution of another issue.
4. Think about and organize your answers before starting to write.
5. Please write as neatly as you can.

Good luck!

(Examination Begins on Next Page)

QUESTION ONE
(60 points)

My-Pod, Inc., is a Delaware corporation with its principal place of business in Cupertino, California. My-Pod makes personal music players that can hold up to 10,000 songs, which it currently markets in the United States and the European Union. My-Pod holds product and process patents for the player in the United States, as well as U.S. trademark rights for the name "My-Pod." It holds similar rights in the European Union.

My-Pod is interested in penetrating the Latin American market for personal music players, and has entered negotiations for a licensing agreement with Mi-Musica, S.A., a Guatadoran corporation with its principal place of business in Estancia, Guatador. Guatador is a member of the Andean Community, and My-Pod is hoping that Mi-Musica will be able to market the My-Pod players it manufactures not only in Guatador and other Andean Community countries, but throughout Latin America. However, My-Pod is also concerned that parallel imports of Guatadoran-made players might undercut its sales in the United States and the European Union.

My-Pod's general counsel, Peggy Poddle, has given you the following draft licensing agreement. She has asked you to suggest changes and additions to ensure compliance with Andean Community law and to protect My-Pod's interests. She has also asked you whether My-Pod would be able to prevent parallel imports of Guatadoran-made players into the United States and the European Union.

Please advise Ms. Poddle.

LICENSE AGREEMENT

This agreement is made this ___ day of _____, 2005 by and between My-Pod, Inc., a Delaware corporation having its principal place of business at Cupertino, California (hereinafter "Licensor"), and Mi-Musica, S.A., a Guatadoran corporation having its principal place of business at Estancia, Guatador (hereinafter "Licensee").

Whereas Licensor has invented a method (hereinafter "the Process") for the manufacture of personal music players (hereinafter "the Product") and possesses valuable secret knowledge useful in performing the Process (hereinafter "the Know-how");

Whereas Licensor has obtained patents for both the Process and the Product in the United States and in Guatador (hereinafter "the Patents");

Whereas Licensor has obtained trademarks for the My-Pod name in the United States and in Guatador (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 a license, exclusive of Licensor and other licensees, to practice the Patents and Know-how in Guatador and to sell the Product under the Trademark in North and South America, with the exception of the United States and Canada (hereinafter "the Territory"). Licensee shall not sell the Product outside the Territory.

2. *Improvements.* During the term of this Agreement, Licensor shall make available to Licensee any improvement related to the Process or Product, which Licensor has acquired, at no cost to Licensee. Licensee shall assign to Licensor the entire right to any improvement related to the Process or Product, 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. *Royalty.* Licensee shall pay Licensor a royalty of 33% of Licensee's net profits from sales of the Products in the Territory. Irrespective of the sales achieved in any given year, Licensee shall pay Licensor U.S.\$25,000 upon each anniversary of the date of this Agreement.

5. *Term and Termination.* This agreement shall continue until the expiration of Licensor's Patents in Guatador, provided, however, that either party may terminate this agreement upon 10 days' written notice in the event that the other party breaches any term of this agreement and fails to cure such breach within 30 days of receipt of written notice of such breach.

6. *Arbitration.* All disputes arising out of this agreement shall be finally decided by arbitration conducted in San Francisco, California pursuant to the International Arbitration Rules of the American Arbitration Association.

7. *Entire Agreement.* This agreement constitutes the entire agreement of the parties.

QUESTION TWO
(30 points)

Your client, a U.S. manufacturer, wishes to enter an agreement with an agent to sell its product in Germany, but would like to avoid the effect of those provisions of German law implementing Article 17 of the EU Council Directive on Commercial Agents. Please discuss and evaluate the options for your client?

(End Question Two - Question Three on Next Page)

QUESTION THREE
(30 points)

In 2001, the United States entered a Free Trade Agreement with the Republic of Oz. Although much of the agreement deals with matters of trade, Chapter 10 provides certain protections to foreign investors, including the following provision:

"Article 1008. Companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice."

Article 1001 defines "company of a Party" as "a company constituted or organized under the laws of a Party."

The Bank of Oz is a financial institution incorporated under Ozian law with branches throughout the United States, including a number in California. Recently a class action was filed against the Bank of Oz on behalf of its female non-managerial employees alleging that the Bank's policy of hiring only male Ozian citizens to fill senior management positions in its California branches violates Title VII of the 1964 Civil Rights Act and California's 2004 Citizenship Discrimination Act ("CDA"). Section 2 of the CDA provides:

"It shall be unlawful for any employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's citizenship."

The Bank has moved to dismiss both the federal and state claims based on Article 1008 of the Free Trade Agreement. Please discuss whether the motion should be granted.

(End of Question Three — Question Four on Next Page)

QUESTION FOUR
(30 points)

On September 29, 2005, Senator Inhofe introduced Senate Bill 1797—the Foreign Investment Security Act of 2005. The Act would amend the Exon-Florio provision of U.S. law in five ways:

(1) It would extend the initial period after filing notice, during which CFIUS makes its determination whether to investigate a proposed transaction, from 30 to 60 days.

(2) It would permit the chairman and ranking member (in other words, the top Republican and top Democrat acting together) of the relevant Senate or House committee to require that CFIUS conduct a 45-day investigation of a proposed transaction.

(3) It would add a new factor to be considered under § 2170(f):

“(6) the long-term projections of United States requirements for sources of energy and other critical resources and materials for economic security.”

(4) It would require additional reporting to Congress—specifically, (1) reporting the findings and recommendations of any CFIUS investigation to the relevant Senate and House committees at the same time it is reported to the President; and (2) quarterly reports summarizing and analyzing each transaction that is being reviewed, was reviewed during the past quarter, or is likely to be reviewed during the next quarter. It further provides that “[e]ach such summary and analysis shall be submitted in unclassified form, with classified annexes as the Secretary [of the Treasury] determines are required to protect company proprietary information and other sensitive information.”

(5) It would allow Congress to block a transaction that the President had allowed to go forward by a joint resolution passed by both houses of Congress and signed by the President. A transaction the President decided not to block could not be consummated until 10 legislative days after the President notified Congress of his decision. If a joint resolution were introduced during that time, the transaction could not be consummated for an additional 30 legislative days to give each house of Congress an opportunity to vote on the joint resolution.

Please evaluate the advantages and disadvantages of each of these proposals.

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