

Exam # _____
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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 2001
MONDAY, DECEMBER 17, 2001
TIME: 2.5 HOURS

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OPEN BOOK EXAMINATION

(Instructions on Next Page)

Page 1 of 7 Pages

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 one half hours. There are three questions, each of which is worth 50 points. I recommend that you devote fifty minutes to each question.
3. Read each question carefully, including the instructions contained in the 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.
4. Think about and organize your answers before starting to write.
5. To the extent possible, write on every other line of the bluebooks and on only one side of the page. This will give you room to revise your answers if necessary.
6. Please write as neatly as you can.

Good luck!

(Examination Begins on Next Page)

QUESTION ONE
(50 points)

You are general counsel for Stars & Stripes, Inc., a Delaware corporation with its principal place of business in Emeryville, California, that manufactures and sells United States flags. In the wake of the September 11 terrorist attacks, Stars & Stripes has been receiving an increasing number of orders from Europe, so that it currently supplies as much as 10% of the market for U.S. flags in some European countries. Elizabeth Ross, president of Stars & Stripes, has decided to establish a network of distributors in Europe to better serve that market. She has had preliminary negotiations with Tricolore S.A., a French corporation with its principal place of business in Paris, France.

Ms. Ross has given you the following draft agreement and asked you to suggest changes and additions that would help protect Stars & Stripes' interests and make the agreement consistent with European Union law. You may assume for the purposes of answering this question that the United States and France have a tax treaty identical to the U.S.-German Tax Treaty on pages 570-97 of the casebook. Make sure you explain the reasons for each change or addition you suggest.

DISTRIBUTORSHIP AGREEMENT

This Agreement is made this ___ day of _____, 2002 by and between Stars & Stripes, Inc., a Delaware corporation having its principal place of business at Emeryville, California (hereinafter "Manufacturer"), and Tricolore S.A., a French corporation having its principal place of business at Paris, France (hereinafter "Distributor"). In consideration of the mutual promises contained herein, Manufacturer and Distributor hereby agree as follows:

1. Appointment. Manufacturer appoints Distributor, and Distributor accepts appointment, as Manufacturer's exclusive distributor of United States flags (hereinafter the "Product") in France (hereinafter the "Territory").
2. Distributor Relationship. Distributor undertakes to canvass for purchasers of the Product within the Territory. Distributor shall not canvass for purchasers of the Product outside the Territory and

(Question One Continues on Next Page)

shall not sell the Product to purchasers outside the Territory. Manufacturer undertakes to supply Distributor's requirements for the Product.

3. Purchase Obligation. Distributor shall, during the term of this Agreement, purchase at least 90% of its requirements for United States flags from Manufacturer.

4. Distributor Not Manufacturer's Agent. This Agreement shall not constitute Distributor the agent or legal representative of Manufacturer for any purpose whatsoever.

5. Payment. Distributor shall purchase the Product from Manufacturer F.O.B. Manufacturer's plant at Emeryville, California with a 25% distributorship discount from Manufacturer's list price.

6. Price. Distributor shall sell the Product in France for no less than Manufacturer's list price.

7. Term and Termination. This Agreement shall continue until terminated by one or both of the parties. Either party may terminate this Agreement without cause upon one month's written notice to the other party. Either party may terminate this Agreement immediately upon written notice to the other party in the event that a petition for bankruptcy is filed by or against the other party or in the event of a material breach of this Agreement by the other party.

8. Disposition of Inventory. In the event of termination, Manufacturer shall purchase from Distributor its inventory of the Product that is resalable as new at Distributor's cost less 15%.

9. Arbitration. All disputes arising out of this Agreement shall be finally decided by arbitration conducted in San Francisco, California pursuant to the Rules for Commercial Arbitration of the American Arbitration Association.

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

(Question One Continues on Next Page)

QUESTION TWO
(50 points)

Zip Communications, Inc. is a U.S. media conglomerate incorporated under Delaware law and headquartered in New York, New York. Zip owns a network of T.V. and radio stations throughout the United States. It also owns several local cable companies and Zip.com, a large internet service provider. In the most recent fiscal year, Zip had revenues of \$100 billion, all from within the United States. Zip's stock, which is listed on the New York Stock Exchange, is currently valued at \$24 billion.

Stratford Publishing Ltd. is a U.K. publishing conglomerate incorporated under English law and headquartered in London, England. Stratford's controlling shareholder is Sir William Shakespeare, a glove-maker's son and ruthless businessman, who turned a small bookstore into a publishing empire. Stratford owns several book publishing companies in England and one in Germany. It also owns two daily newspapers in England and Avon Magazines Ltd., which publishes a number of popular magazines in the United Kingdom and continental Europe. In the most recent fiscal year, Stratford had revenues of \$35 billion in the United Kingdom, \$10 billion in other European Union countries, and \$5 billion in the United States. Stratford's stock is listed on the London Stock Exchange and is currently valued at \$10 billion.

Seeing a golden opportunity to marry Stratford's content with Zip's technology, Sir William has proposed to have Stratford acquire 33% of Zip's stock. Please assess the regulatory hurdles that such a deal would face in the United States and the European Union.

(Question Two Continues on Next Page)

QUESTION THREE
(50 points)

Texas Cotton Company is a Texas corporation and the United States' largest cotton exporter. Over the last five years, it has exported an average of 200,000 bales of cotton to Mexico under its "Yellow Rose" label. This label, which Texas Cotton has registered with the U.S. Patent and Trademark Office ("PTO"), shows a yellow rose against a red background, with the initials "U.S.A." at the bottom.

Lone Star Cotton, Inc. is also a Texas company and also exports cotton to Mexico. In 1999, Lone Star changed its export label from a white star on a blue background to a yellow flower on a red background with the initials "U.S." at the bottom, and since then it has seen its annual sales to Mexico rise from 10,000 bales to 50,000 bales. None of the cotton Lone Star sells under its "Yellow Flower" label is sold in the United States and Lone Star has not attempted to register the label with the U.S. PTO. Lone Star has, however, filed a trademark application with the Mexico Trademark Office, although no trademark has yet been granted.

Texas Cotton believes it is losing export sales to Lone Star as a result of confusion among Mexican buyers. It has brought suit in district court under the Lanham Act seeking an injunction against Lone Star's further use of the "Yellow Flower" label. The district court granted the injunction on the authority of the Fifth Circuit's 1983 decision in American Rice, Inc. v. Arkansas Rice Growers Cooperative Association (SM 147-52). On appeal, Lone Star concedes that the injunction was properly issued under American Rice, but argues that the Fifth Circuit should overrule that decision in light of the U.S. Supreme Court's 1991 decision in E.E.O.C. v. Arabian American Oil Co. ("Aramco") (SM 12-19).

You are a law clerk to Judge Joanna Wise on the Fifth Circuit Court of Appeals. Please outline the arguments for and against Lone Star's position and recommend how your judge should vote.

(Question Two Continues on Next Page)