

**SEATTLE UNIVERSITY**

**SCHOOL OF LAW**

**FINAL EXAMINATION**

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**TRANSNATIONAL LITIGATION  
& ARBITRATION**

**December 6, 2006, 1:30 p.m.**

**PROFESSOR BELES**

**Time: Three Hours**

**INSTRUCTIONS**

1. NUMBER OF PAGES: This exam consists of four Pages, i.e., this Instruction page and three pages dedicated to the questions.
2. NUMBER OF QUESTIONS: There are two questions. The first question has three subparts. The second question also has three subparts.
3. WEIGHT OF THE QUESTIONS: The two questions are each worth fifty percent (50%). Therefore, you cannot obtain a passing grade by answering only one of the two questions. Dedicate the time you feel is appropriate to the subparts of each question.
4. MATERIALS ALLOWED IN THE EXAMINATION ROOM: This is not an open-book test. Therefore, no supplemental materials are permitted in the room during the test period.
5. ONLY BLUEBOOKS OR LAPTOPS ARE PERMITTED IN THE ROOM: You may write your answers in bluebooks or on your laptop computer with the use of *SofTest* from *ExamSoft*.
6. POSSIBLE ADJUSTMENTS TO YOUR GRADE: If your class participation has been of a high quality, I will make a positive adjustment to your grade. If you have missed more than four (4) classes during the semester, I have reserved the right to make a negative adjustment to your grade dependent on the individual circumstances of your absences.

**GOOD LUCK ON THIS EXAM AND IN YOUR PROFESSIONAL CAREERS AS  
FUTURE MEMBERS OF THE BAR.**

**TRANSNATIONAL LITIGATION & ARBITRATION  
EXAM QUESTIONS**

**Facts Common to Both Questions 1 and 2.** Washington Productions Inc ("WPI") was a Washington State movie production company with its headquarters in Seattle. For over a year, it had unsuccessfully attempted to sell shares of its stock to finance production of a planned motion picture. WPI attributed its lack of success to what it called "the burdensome disclosure and filing requirements mandated by United States securities laws."

In an attempt to circumvent these laws, WPI created End-run Productions Inc ("EPI"). EPI is a wholly owned subsidiary located in and formed under the laws of the European country of Europa. Europa needed foreign investment to shore up its tax base in order to provide its citizens with essential health and education services, so it kept business regulations to a minimum. WPI was attracted to Europa because of its business-friendly attitude and minimal securities laws.

Soon after its creation, WPI instructed EPI to solicit new investors via "spam" emails. Interested email recipients were directed to EPI's Europa-based website via hyperlink. The website contained disclosures that complied with Europa's minimal securities laws, but were woefully inadequate for purposes of United States securities laws. Additionally, United States securities laws expressly condemned offshore activities like those engaged in by EPI and gave injured U.S. investors the right to sue violators wherever in the world they might be found.

Paul Plaintiff ("Paul") was a resident of Washington State. He received one of EPI's emails and was immediately attracted by the idea of owning a part of a European motion picture. Paul followed the hyperlink to EPI's website. He liked what he saw, but he had a few questions concerning the terms of the securities contract set forth on the website. He would not click on the "accept" button until he received answers to his emailed questions. After he received EPI's answers, he invested \$10,000 for 10,000 shares of EPI. He paid for his shares by credit card through EPI's website.

As it turned out, EPI was unable to attract sufficient investors to make production of the movie viable and Paul lost all of his \$10,000. Subsequently, Paul learned that WPI was the parent of EPI, but all of WPI's and EPI's assets were located in Europa. Paul filed suit against EPI in the United States District Court for Western Washington alleging violations of United States securities laws. Paul attempted to serve EPI by serving WPI's registered agent in Washington State. **End of Common Facts**

**QUESTION 1.** Assume you are the district court judge's law clerk. She has asked you to prepare short memos analyzing the pros and cons of the following Motions:

- A) EPI's Motion for Dismissal based on lack of personal jurisdiction. Answer Part A before proceeding to Part B.
- B) Assume EPI's Motion is Denied and the court finds that it has personal jurisdiction over EPI. EPI then moves for Dismissal based on Forum Non Conveniens. Answer Part B before proceeding to Part C.
- C) Assume EPI's Motion is Denied and the court retains jurisdiction. EPI then makes a Motion for Application of Europa Law.

**QUESTION 2.** Assume you are admitted to practice law only in the State of Washington. Based on your reputation for being knowledgeable in the field of international arbitration, EPI retains you to draft an "arbitration clause" enforceable in Europa. Your arbitration clause is to be inserted in the investment contract set forth on EPI's Europa-based website. Assume that the United States and Europa are both parties to the New York Convention.

- A) DO NOT draft an arbitration clause in your answer. Instead, explain what issues you would consider in drafting such a clause and why. Answer Part A before proceeding to Part B.
- B) Assume your arbitration clause designated Europa as the forum for arbitration and Europa's favorable laws as those to be applied in the arbitration. Paul brought suit

in the United States District Court for Western Washington for violations of United States securities laws. Paul also claimed that the investment contract he agreed to on EPI's website, (which included your arbitration clause), was void because it violated United States securities laws. You make a Motion to Dismiss in which you request that the court refer the matter to arbitration. What arguments will you make to support your Motion and what arguments is Paul likely to make in opposition? Answer Part B before proceeding to Part C.

C) Assume you won the Motion and the arbitration took place in Europa. Also assume that the arbitral tribunal decided in favor of Paul. Finally, assume the tribunal based its award on United States securities laws instead of Europa law that was designated by the parties in their website arbitration clause. Paul discovered that EPI had assets in Seattle, so he attempted to enforce his award in King County Superior Court. Discuss the arguments you would make on behalf of EPI in resisting enforcement of the award and the arguments you are likely to confront.

**End of Exam**