



INTERNATIONAL
LITIGATION AND
ARBITRATION

International Litigation & Arbitration Certification Examination Sample Questions

Disclaimer: The following questions are provided to the public as examples of the types of questions that appear on the International Litigation & Arbitration certification exams, as well as the subject areas that are tested. All questions have been pulled from previous examinations and were correct and factual at the time of administration; however, the International Litigation & Arbitration Certification Committee acknowledges that some questions and/or answers may no longer be accurate due to the passage of time since administration. None of these questions will appear on future exams.

1. While Federal Rule 4(f) and the Hague Service Convention provide several methods for service abroad, service does NOT have to be made in accordance with the Hague Service Convention when a foreign defendant:
- A) is a commercial multinational company with a subsidiary located in the U.S.
 - B) can be found and served within the U.S. under the relevant U.S. law.
 - C) maintained a continuous and systematic presence in the U.S. for at least three years.
 - D) maintained a continuous and systematic presence in the U.S. for at least seven years.

Answer: B

2. In which circumstances does Federal Rule of Civil Procedure 28(b) NOT authorize litigants in federal court to obtain a foreign deposition?
- A) Pursuant to any applicable treaty or convention.
 - B) Pursuant to a letter of request.
 - C) On notice before a person authorized to administer oaths in the foreign country or before a person commissioned by the court to take oaths..
 - D) By agreement of the parties.

Answer: A

3. If a non-party in a foreign country is not within a U.S. court's subpoena power to require production of "designated books, documents or tangible things" and is unwilling to produce such materials, the party seeking discovery must use which of the following to attempt to obtain the requested materials?
- A) Federal Rule of Civil Procedure 45(b)(3).
 - B) The Hague Service Convention, if applicable.
 - C) The Hague Evidence Convention, if applicable.
 - D) 28 U.S.C. § 1782, assuming applicable factors are met.

Answer: C

4. Which of the following agreements designed to further the same purpose as the Foreign Corrupt Practices Act is the law in the U.S.?
- A) Inter-American Convention Against Corruption.
 - B) Criminal Law Convention on Corruption.
 - C) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
 - D) The United Nations Declaration Against Corruption and Bribery in International Commercial Transactions.

Answer: C

5. Which of the following is INSUFFICIENT to establish that a foreign court had personal jurisdiction over the defendant, for purposes of enforcing a foreign monetary judgment in a Florida court?
- A) The defendant was served personally in the foreign proceedings within the territory of the foreign state.
 - B) The defendant was served personally in the foreign proceedings within the state of Florida.
 - C) The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state.
 - D) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action or claim of relief arising out of business done by the defendant through that office in the foreign state.

Answer: B

6. Which of the following statements regarding the International Center for the Settlement of Investment Disputes and the ICSID Convention is INCORRECT?
- A) The ICSID Convention provides the basic procedural framework for mediation and arbitration of investment disputes arising between member countries and investors that qualify as nationals of other member countries.
 - B) The ICSID Convention provides the basic procedural framework for mediation and arbitration of investment disputes arising between foreign governments.
 - C) Arbitration and mediation under the Convention are entirely voluntary, but once the parties have given their consent, neither may unilaterally withdraw it.
 - D) The ICSID Convention is a multilateral treaty formulated by the Executive Directors of the International Bank for Reconstruction and Development (the World Bank).

Answer: B

7. Which of the following statements about the Foreign Sovereign Immunities Act is correct?
- A) It is the sole basis for establishing jurisdiction in U.S. courts over a defendant sovereign state.
 - B) It and the doctrine of jus cogens are the only two bases for establishing jurisdiction in U.S. courts over a defendant sovereign state.
 - C) It is a codification of the Act of State doctrine.
 - D) It limits the jurisdiction of federal courts, but not state courts.

Answer: A

8. Which of the following is NOT a primary source of authority for enforcement of an arbitration award:
- A) New York Convention.
 - B) Panama Convention.
 - C) Federal arbitration Act.
 - D) U.S. common law.

Answer: D

9. When seeking to enforce a foreign award under the New York Convention, the party must provide the court with:
- A) a certified copy of the demand for arbitration.
 - B) a certified copy of the arbitral award.
 - C) a certified bond in the amount of the arbitral award.
 - D) a certified copy of the entire arbitral record.

Answer: B

10. Which of the following statements regarding forum selection clauses contained in form passenger cruise contracts is INCORRECT?
- A) The clauses are subject to judicial scrutiny for fundamental fairness.
 - B) The clauses are permissible provided the passenger is not denied a trial "by a court of competent jurisdiction."
 - C) The clauses' interpretation depends upon the applicable state law because passenger cruise contracts are a matter of admiralty law.
 - D) The clauses apply to personal injury claims as well as contractual disputes.

Answer: C

Sample Essay

Arturo Ibarra (“Ibarra”) is a petroleum engineer and a citizen of the country of Festivus. He invented a patented process for making unproductive oil wells productive. One of the challenges is that Festivi oil is thick and requires additional treatment to be able to be extracted and refined. Ibarra entered into a contract with the nationally owned Festivian oil company, Festivus Oil Co. (“FOC”), to enhance FOC’s oil wells in Festivus to make them productive. Ibarra entered the contract with FOC through a Festivus corporation, Soluciones Petroquimicas, S.A. (SPSA), wholly owned by him. SPSA supplied all chemicals and personnel to service the oil wells.

In order to provide equipment for the project, U.S. investors incorporated ABC, LTD in the British Virgin Islands. ABC and SPSA entered a joint venture for the project. In support thereof, ABC entered into a contract with FOC directly to lease all the equipment that SPSA needed for the project. Notably, Festivus also has bank accounts and conducts other business in the U.S.

Later, Festivus is taken over by nationalists, and it seizes all the equipment that ABC leased to it.

Please answer the following questions:

- 1. Can ABC sue Festivus in the U.S., and, if so, how and why?**
- 2. If the answer to 1 is yes, please address if Festivus could assert the defenses of lack of personal jurisdiction and lack of subject matter jurisdiction.**
- 3. What other internationally recognized defense(s) might Festivus raise and would they be successful?**
- 4. Assuming Festivus could be sued in the U.S., could ABC successfully attach prejudgment Festivus’s wholly owned gas stations and bank accounts?**

Sample Essay Answer/Point Allocation

<u>POINTS</u>	
3	FISA
5	Personal Jurisdiction is subject matter
5	Commercial Action Exception under FSIA discussion
6	Act of State discussion
3	Prejudgment commercial activity
3	A pre-judgment / related to sued upon claim
Total	25