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INTERNATIONAL LAW

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## **INTERNATIONAL LAW CERTIFICATION SAMPLE EXAMINATION QUESTIONS**

### **INTRODUCTION**

Disclaimer: The following questions are provided to the public as examples of the types of questions that appear on International Law certification exams, as well as the subject areas that are tested. All questions have been pulled from previous exams and were correct and factual at the time of administration; however, the International Law Certification Committee acknowledges that some questions and/or answers may no longer be accurate due to the passage of time since administration.

## SAMPLE QUESTIONS

1. **Disadvantages of using an "S" corporation for a foreign owned inbound investment structure include:**
- a. only that there are restrictions against nonresident shareholders.
  - b. only that there is U.S. estate tax exposure.
  - c. both that there are restrictions against nonresident shareholders and that there is US estate tax exposure
  - d. not having "C" corporation tax liability.

*Answer: C*

2. **As provided by U.S. Customs and Border Protection regulations, to prevent the importation of gray market merchandise, recordation of a trademark with U.S. Customs and Border Protection can only be accomplished by which holder of the intellectual property right?**
- a. The foreign holder.
  - b. The U.S. holder.
  - c. The foreign holder together with the U.S. holder.
  - d. It is not necessary to record a trademark with U.S. Customs and Border Protection to prevent importation of gray market merchandise.

*Answer: B*

**3. In Florida, a foreign decree is entitled to comity provided:**

- a. the parties have been given notice and an opportunity to be heard, the foreign court had original jurisdiction, and the foreign decree does not offend the public policy of the state of Florida.
- b. the foreign court ensures reciprocity by proving that it has previously enforced one or more Florida judgments.
- c. enforcement of the foreign decree, even if violative of the public policy of the State of Florida, is consistent with the state's economic interest.
- d. the foreign decree is consistent with Florida law, even if the parties had not been given notice or the opportunity to be heard in the foreign jurisdiction.

*Answer: A*

**4. A "green card" holder may petition for which of the following relatives to become lawful permanent residents of the United States?**

- a. Spouse and parents.
- b. Spouse, parents, and unmarried children under 21.
- c. Spouse and unmarried children under 21.
- d. Spouse and unmarried children regardless of age.

Answer: d. INA 203(a)(2)(A) and (B), and 8 USC 1153. Change made to track language of the statute that refers to "unmarried" and not "single."

5. **A Court may refuse the recognition and enforcement of an arbitral award under the New York Convention if:**

- a. The award is against the public policy of the country enforcing the award.
- b. One of the parties to the arbitration decided not to present its case.
- c. The award is contrary to the substantive law governing the arbitration.
- d. The award falls within the scope of the submission to arbitration.

Answer: a: Article 5, Paragraph 2 (b), UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the "New York Convention." See also *Four Seasons Hotels and Resorts B.V. v. Consorcio Barr, S.A.*, 613 F. Supp 2d 1362 (S.D. Fla. 2009).

6. **A British entity with "Limited" at the end of its name most closely resembles a United States:**

- a. Corporation.
- b. Partnership.
- c. Trust.
- d. Sole proprietorship.

Answer: a. British Companies Act, 2006, Part 1, Section 3, Types of Companies. For reference, see <https://www.gov.uk/limited-company-formation/overview>.

7. Company A, with its seat in Germany and no offices in the U.S., and Company B, with its seat in Australia and no offices in the U.S., are competitors who manufacture a product which is sold through sales representatives worldwide. Representatives of Company A and Company B meet at a conference in Germany and agree to fix the price at which the product will be sold worldwide, and that price is followed by their respective sales representatives around the world. **Which of the following statements is correct?**
- a. Neither Company A nor Company B can be charged with price-fixing in the United States because the conduct which led to the price fixing occurred outside the U.S.
  - b. Neither Company A nor Company B can be charged with price-fixing in the United States because neither company has an office in the U.S.
  - c. Both Company A and Company B can be charged with price-fixing in the United States because their conduct foreseeably affects competition in the United States.
  - d. Whether Company A or Company B can be charged with price-fixing in the United States will depend on whether the price-fixing is legal in the country in which it took place.

*Answer: C*

8. In a transfer to which Internal Revenue Code Section 351 applies, U.S. corporate transferors of intangible property to a foreign corporation:
- a. can treat the transaction for U.S. tax purposes as a sale in exchange for payments contingent on use of that property.
  - b. can defer U.S. tax on attributable foreign revenue.
  - c. can contribute such property free of U.S. tax.
  - d. must treat the transaction as a taxable sale for market value because section 351 does not apply to transactions outside the U.S.

*Answer: A*

9. **Products of the United States, when returned after having been exported, are entitled to entry free of duty if:**
- a. the articles have not been advanced in value while abroad.
  - b. the articles have been improved in any condition by any process of manufacture or other means while abroad.
  - c. duty drawback is claimed on the entry.
  - d. the articles were manufactured in a foreign trade zone.

*Answer: B*

**10. Which of the following duties is not imposed on the issuer of a documentary credit under the UCP 600 (the Uniform Customs and Practice for Documentary Credits)?**

- a. The issuer must state in the credit whether the credit is available by sight payment, deferred payment, acceptance, or negotiation.
- b. The issuer is irrevocably bound to honor the credit as of the time it issues the credit.
- c. The issuer must assume responsibility for delay or loss in transit resulting from errors or delay in transmitting messages or documents if the requirements for sending the message or document were contained in the credit.
- d. The issuer must examine the documents delivered under a presentation within 5 days of the presentation.

*Answer: C*

**Example Essay:**

Mr. Simon Wong originally from Hong Kong and, more recently a resident of Los Angeles, is an active importer of products from the Far East. He comes to you, an attorney specializing in international law, seeking legal guidance with respect to his business.

Mr. Wong shows you a 14-karat gold chain which he purchased in Macao. The chains are marked with the Country of Origin in tiny letters on the end caps of the chain near the clasp. He further says that he has been importing these chains for years through the ports of Los Angeles and New York where this method of marking has been acceptable.

Mr. Wong next shows you a photograph of a “ChiPad” that looks identical to Apple’s iPad. The ChiPad is made in China by a company that has no business relationship with Apple. Mr. Wong’s customer is a high-end retailer of electronics in Palm Beach and has asked Mr. Wong to issue a second invoice with a lower price paid or payable, strictly for the purpose of reporting the commercial invoice and value to CBP. Last month, Mr. Wong attempted to import \$150,000.00 worth of ChiPads into the U.S., but they were seized by CBP upon entry as CBP alleged intellectual property rights violations. Mr. Wong is considering renewing its agreement with its supplier in China and Mr. Wong’s customer in Palm Beach is requesting additional product.

Mr. Wong next shows you platinum, rubber and plastic watches and advised you that his customs broker classified all the watches in the same Harmonized Tariff Schedule of the United States (HTSUS) subheading 4016, which covers “articles of rubber”. Mr. Wong advised you that he received a CF28, Request for Information from U.S. Customs and Border Protection (CBP), dated ten (20) days prior to this current meeting between you and Mr. Wong, stating that CBP believes the appropriate HTSUS for all the watches is within chapter 91, and is requesting samples as well as descriptive literature about the imported watches case, band, and movement.

Mr. Wong next advises you he also imports wooden bedroom furniture from the Peoples Republic of China. His customs broker advised him that wooden bedroom furniture qualifies for NAFTA eligibility and can enter the U.S. duty free. Mr. Wong has been importing wooden bedroom furniture duty free for the last three years and was just made aware of an Antidumping Duty Order on wooden bedroom furniture from the Peoples Republic of China.

Mr. Wong is planning to take a trip to Canada to purchase and drive into the U.S. \$3,500.00 worth of anti-aging products for resale in Cuba.

**What advice should you give Mr. Wong?**

## MODEL ANSWER

### Question:

- Mr. Wong shows you a 14-karat gold chain which he purchased in Macao. The chains are marked with the Country of Origin in tiny letters on the end caps of the chain near the clasp. He further says that he has been importing these chains for years through the ports of Los Angeles and New York where this method of marking has been acceptable.

### Answer:

- The country-of-origin marking is not acceptable (despite years of importing this way) because the Country of Origin is not conspicuous, legible, indelible and cannot be read without strain. 19 C.F.R. §134.41(b).
- The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.
- As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country-of-origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.
- With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable
- The client should also be counseled regarding filing a prior disclosure on the past violations of previous shipments he has indicated he has entered with the improper marking.

### Question

- Mr. Wong next shows you a photograph of a "ChiPad" that looks identical to Apple's iPad. The ChiPad is made in China by a company that has no business relationship with Apple. Mr. Wong's customer is a high-end retailer of electronics in Palm Beach and has asked Mr. Wong to issue a second invoice with a lower price paid or payable, strictly for the purpose of reporting the commercial invoice and value to CBP. Last month, Mr. Wong attempted to import \$150,000.00 worth of ChiPads into the U.S., but they were seized by CBP upon entry as CBP alleged intellectual property rights violations. Mr. Wong is considering renewing its agreement with its supplier in China and Mr. Wong's customer in Palm Beach is requesting additional product.

### Answer:

- Intellectual property rights (IPR) Issues - Enforcement
  - Discuss counterfeit nature of goods (confusingly similar)
- Seizure Case with CBP (bonus points to address how to deal with seizure case)
- Importer of Record - should argue rationale for any IPR compliance
- Penalty Case - CBP can issue penalty for MSRP
- Would be second penalty case - with lower mitigation (as a repeat offender)
- Valuation error / attempt to pay less duties to CBP and issue a double invoice - This cause of action would subject the importer to criminal sanctions. 134.3, 134.44.
  - Can't do business with supplier further
  - Illegal to "double invoice" - potential criminal enforcement

Question:

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Answer:

- HTS - CBP advised incorrect HTS used
  - What is correct HTS
  - CBP Cross Rulings
  - How to get to correct HTS
  - General Rules of Interpretation/Explanatory Notes
- Pros and Cons of correcting HTS
- Prior Disclosure - 19 C.F.R. 162.74
- Potential Penalties
- 5-year Statute of Limitation (SOL)

Question:

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Answer:

- ITC - ADD/CVD Case (19 C.F.R. Part 351)
  - No cash deposits made for last 3 years
- Prior Disclosure
  - Tender amounts owed for prior 3 years (plus interest)
  - Culpability (argue negligence)

- Importer vs. Customs Broker
  - "Reasonable care" using brokers advice
  - Treasury Decisions 31 Cust. B. & Dec. No. 51 T.D. 97-96 December 1, 1997, REASONABLE CARE CHECKLIST
  - CBP AN INFORMED COMPLIANCE PUBLICATION
- NAFTA Eligibility incorrect - FTA not applicable to China
- 5-year SOL - Potential Penalty
  - 19 C.F.R. 1592

Question:

- Mr. Wong is planning to take a trip to Canada to purchase and drive into the U.S. \$3,500.00 worth of anti-aging products for resale in Cuba.

Answer:

- Over \$2,500 for commercial importation entry is required
- NAFTA eligibility
- Cuba - OFAC and BIS compliance necessary
  - Part 746 - EAR
  - Part 515 - CACR
- FDA compliance - cosmetic vs. drug
  - 21 C.F.R.