

SPECIAL INSTRUCTIONS

1. This examination is divided into two Parts and is worth **150 points**.
2. Specifically, Part I of the exam includes two short-answer questions worth 25 points each, for a total of **50 points**. You should plan on spending about 30 minutes on Part I of the exam, or about 15 minutes per question. Part II of the exam includes a single essay question worth **100 points**. You should plan on spending about an hour on Part II of the exam.
3. Please do not spend time simply re-stating the facts as an introduction to your answer. The only facts that should appear in your answer are the ones you use and apply in your analysis.
4. **Please use references to code sections.**
5. This exam was designed to be completed within the **1.5 Hours** that you have been given, but if you do find yourself pressured and/or about to run out of time, make sure to outline your answer to suggest what you would have said and what laws you would have applied, etc., if you had more time. Try to say at least *something* about all of the issues tested before trying to say *everything* about any particular issue. For this reason, I would strongly suggest that you organize and outline your answer (especially to Part II) before you begin to write it, and your outline should include, at the very least, all of the issues you plan on discussing, and the applicable rules/laws/principles you plan on applying.

Good luck everyone!

Please start exam questions on the next page

PART I

SHORT ANSWER QUESTIONS (worth 50 points total)

- 1. 25 POINTS (Suggested time: ~15 minutes).** Jon Snow entered into a contract with Daenerys Targaryen for the sale of 100,000 chards of dragonglass to kill the White Walkers, who lived beyond the great Wall in the north. Both islands signed the CISG. Daenerys agreed to the sale as long as Snow paid the ultimate price, his loyalty (well, that at 100 gold pieces). Snow agreed and Daenerys had her army package and load 100,000 chards of dragonglass onto ships setting sail for the Wall. However, unbeknownst to Snow or Daenerys, Daenerys's army had no clue what dragonglass was and instead of asking her (or anyone, for that matter), simply took it upon themselves to have Daenerys's dragons breathe their fire to melt giant rocks into shiny objects and called it "dragonglass." Immediately after the shipment arrived, Snow attempted to kill a White Walker with the molten rock fashioned to resemble dragonglass and was surprised to see the White Walker get stronger, fueled by the melted rock! Snow immediately contacted Daenerys and stated that he was no longer loyal to her and that he would never give her the loyalty (or gold coins) she wanted because she sent non-conforming goods! He said "for this breach, I shall never bend the knee!" **How would you advise Snow of his legal remedies? Does he have a claim under Article 49? What are Daenerys' best argument? (500 words max)**
- 2. 25 POINTS (Suggested time: ~15 minutes).** Jimenez needs your help preparing for a Chamber of Commerce presentation. Draft an executive summary handout titled "The Three Things Your Business Must Know About the CISG" for distribution to local businesses engaged in international trade. For each point, provide a brief explanation and one practical example. Assume the audience has no familiarity with the CISG. **(500-600 words max)**

PART II

ESSAY QUESTION: INTERGALACTIC BEER CRISIS (100 points) (Suggested time: ~1 hours)

Note: All parties have their primary places of business in CISG and NY Convention signatory states. Only Endor has adopted the UNCITRAL Model Law.

The Jawas of Tatooine brew premium “Jawa Beer” using a secret bantha-hide formula, selling to retailers at 2,000 GC per barrel under long-term contracts requiring delivery of 1,000 barrels annually.

The Ewoks of Endor, grain merchants for twenty years, send this telex on January 5, 2025:

Can supply Grade A brewing grain, 1,000,000 pounds at 1 GC/pound. Delivery in two installments: 500,000 pounds March 1, 500,000 pounds May 1. FOB Endor Spaceport. Standard terms apply.

The Jawas reply by email on January 10:

Accept your offer. Require conforming goods per industry standards. Payment upon delivery.

They add in bold:

**All disputes: Tatooine law and arbitration in Mos Eisley per local customs.
No modifications except in writing signed by both parties.**

The Ewoks ship the first installment on March 1 with an invoice stating:

Per our agreement. Note: Disputes resolved by arbitration at Jedi Temple, Coruscant, under UNCITRAL Rules. Goods conform to Endor agricultural standards.

The Jawas receive the first shipment on March 15 and pay 500,000 GC without commenting on the arbitration clause. They brew 500 barrels immediately.

Soon thereafter, testing reveals this grain contains 15% “filler grain”—a cheaper variety that, while meeting Endor agricultural standards, produces beer with a distinctive bitter aftertaste. In the brewing industry, “Grade A brewing grain” is universally understood to contain less than 2% filler grain. The Ewoks, as agricultural (not brewing) specialists, were unaware of this trade usage.

When retailers taste the first 500 barrels, they declare it substandard for premium beer. The Jawas investigate their options and determine they can sell this beer for approximately 1,200 GC per barrel if marketed differently, though this requires significant rebranding costs.

On April 1, the Jawas notify the Ewoks:

First shipment non-conforming. Keeping goods but expect appropriate adjustment. Still awaiting May shipment.

Then, on April 28, three days before the May 1 delivery date, Endor's planetary government suddenly imposes an embargo on all grain exports due to an unexpected famine on a neighboring moon. The embargo, which no one anticipated, makes it illegal for the Ewoks to export any grain for six months.

The Ewoks immediately notify the Jawas:

Cannot deliver May shipment due to government embargo. This unforeseeable event beyond our control. Will deliver when embargo lifts.

The Jawas respond:

Unacceptable. You must find alternative sources or means. We need grain by May 15 or will suffer significant losses.

On May 2, the Jawas purchase 500,000 pounds of replacement grain from a Coruscant supplier at the current market price of 3 GC per pound (markets having spiked due to the Endor embargo). They brew the remaining 500 barrels of premium quality beer.

The Jawas now seek compensation from the Ewoks for both shipments.

Questions

1. Performance and Breach Issues (40 points)

Analyze whether the Ewoks properly performed their contractual obligations regarding both shipments. For the first shipment, address how to interpret "Grade A brewing grain" and whether the delivered goods conformed. For the second shipment, evaluate whether the Ewoks' non-delivery should be excused. What is the legal significance of the Jawas keeping the first shipment?

2. Remedies (35 points)

Determine what amounts, if any, the Jawas may recover from the Ewoks. Consider all potential remedies and obligations, and calculate specific amounts where applicable. Show your reasoning and calculations.

3. Dispute Resolution (25 points)

The parties disagree about where and how to resolve their dispute. Analyze what dispute resolution provisions, if any, govern this transaction.

END OF EXAM

Appendix A: Key Concepts in International Arbitration for the Sale of Goods

FUNDAMENTAL DISTINCTIONS

Lex Arbitri = The procedural law governing the arbitration (e.g., UNCITRAL Model Law, FAA)

- Can be chosen by parties explicitly
- If not chosen, usually defaults to lex loci arbitri

Locus Arbitri = The “seat” or place of arbitration (e.g., “arbitration in New York”)

- Legal significance, not just physical location
- Determines which courts have supervisory jurisdiction

Lex Loci Arbitri = The arbitration law of the place of arbitration

- Applied when parties haven’t specified different lex arbitri
- Mandatory provisions may override party choice

Container Contract = The main commercial contract containing the arbitration clause

TYPES OF ARBITRATION

Institutional Arbitration

- Administered by an institution (ICC, AAA, LCIA)
- Institution provides rules, appointing authority, administrative support
- If institution chosen but not rules → institution’s rules implied
- If rules chosen but not institution → institution may be implied

Ad Hoc Arbitration

- No institutional involvement
- Parties determine procedure themselves or adopt rules (e.g., UNCITRAL Rules)
- If no agreement on arbitrators → court assistance may be needed (Model Law Art. 11)

PATHOLOGICAL CLAUSES

Definition: Arbitration clauses that are unclear, ambiguous, or potentially unenforceable

Common Pathogens:

- Naming non-existent institutions (“International Chamber of Commerce in Switzerland”)
- Inconsistent dispute resolution methods (“arbitration in court”)
- Vague seat designation (“arbitration in a neutral country”)
- Incomplete procedural specifications (“per local customs”)
- Conflicting provisions (arbitration vs. litigation)

Legal Test: If clause is genuinely capable of more than one reasonable interpretation and the difference is material → likely unenforceable

KEY DOCTRINES

Separability

- Arbitration clause treated as independent agreement
- Invalid container contract $\neq$ invalid arbitration clause
- Allows tribunal to rule on validity of main contract
- Limits: Defects in consent (fraud, duress) affecting entire agreement

Competence-Competence (Kompetenz-Kompetenz)

- Arbitral tribunal can decide its own jurisdiction
- Positive: Tribunal determines its competence
- Negative: Court defers to tribunal unless agreement “manifestly null”

NY Convention Requirements

- Article II: Agreement must be “in writing”
- Signed document OR exchange of letters/telegrams
- Courts increasingly liberal in interpretation

ENFORCEMENT STAGES

Stage 1: Court determines whether to compel arbitration or hear case **Stage 2:** Arbitral tribunal determines its jurisdiction and merits **Stage 3:** Court reviews award (set aside at seat OR recognition/enforcement elsewhere)

APPENDIX B: UNCITRAL Model Law

Article 7. Definition and form of arbitration agreement

1. “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
2. The arbitration agreement shall be in writing.
3. An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
4. The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
5. Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
6. The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

1. A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
2. Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

1. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A

plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 19. Determination of rules of procedure

1. Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
2. Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 34. Application for setting aside as exclusive recourse against arbitral award

1. Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
2. An arbitral award may be set aside by the court specified in article 6 only if:
 - a. the party making the application furnishes proof that:
 - i. a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
 - ii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - iii. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - iv. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
 - b. the court finds that:
 - i. the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

- ii. the award is in conflict with the public policy of this State.
- 3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- 4. The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

**APPENDIX C: New York Convention on the Recognition and Enforcement of Foreign
Arbitral Awards**

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
 - (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

APPENDIX D: FULL TEXT OF THE CISG

(Please attach the following pdf to the end of this exam) (54 pages long) (you can then delete this filler text and the link).

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf