

Exam Date	22.06.2015		
Examination No.			
Student ID			
Date of Correction			
	Comments	Points	Pts. Achieved
Question 1			
a) Lis pendens		12	
Definition lis pendens; risk of parallel proceedings and contradicting decisions		2	
Analysis of Art 186 (1bis) PILA: no general lis pendens- rule		2	
- „noteworthy grounds“- exception		1	
- examples for circumstances to take into account		1	
Competence-competence: tribunal itself shall decide on jurisdictional matters		2	
Art II NYC: courts shall refer parties to arbitration		2	
Conclusion		2	
b) Separability doctrine		4	
Art 178 (2) (3) PILA - Definition: Separability doctrine		2	
Specific analysis: - deadline fixed (end of 2014/2015 season)		1	
- obvious intent of the parties		1	
c) Parties to the agreement		2	

Swiss Federal Tribunal: Extension to third parties: assignment of the claim (singular succession) Art 178 (2) PILA		2	
d) Formal validity		4	
Art 178 (1) PILA: analysis of the writing requirement - no signature needed		2	
Fulfilled for A and B, but not for C; - however: predominant view, that C would also be bound by the agreement		2	
e) Objective arbitrability of employment contracts		2	
Art 177 (1) PILA: all disputes concerning economic interests are arbitrable		2	
f) Subjective Arbitrability		2	
Art 177 (2) PILA: state entity cannot rely on its own law		2	
g) Jurisdiction of the arbitral tribunal		14	
Applicable legal framework: Domestic/international		2	
When does Chapter 12 apply? Art 176 (1) PILA seat Art 176 (2) PILA exclusion?		2 1	
Art 176 (3) PILA seat determined by parties		2	
Art 186 (3) PILA - preliminary decision by the tribunal		2	
- purpose: to clarify jurisdiction as soon as possible		1	
Art 190 (3) PILA: - challenge of preliminary award;		2	
otherwise this constitutes a waiver		2	
Total Question 1 (40%)		40	

Question 2	Comments	Points	Pts. achieved
Independence/Impartiality			
Definition Impartiality		1	
Definition Independence		1	
Art 180 (1) c PILA		2	
- “justifiable doubts” as to his			
or her independence			
- mandatory provision/Swiss		2	
constitution			
Art 180 (2) PILA: challenge		2	
the arbitrator;			
- notification without delay		2	
- principle of good faith		2	
- Arbitral proceedings may			
continue in the meantime, Art		2	
13 (3) UNCITRAL Model			
Law			
- Art 180 (3) PILA: party			
autonomy; subsidiary support		2	
of juge d’appui			
- Duty of disclosure		2	
IBA Guidelines on Conflicts		2	
of Interest			
- Not binding		2	
- Explanation of its structure		2	
- Which ground is specifically		2	
relevant?			
Motion to set aside the award:			
- risky if objection has not		2	
been raised at earliest stage –			
waiver!			
Structure & Conclusion		2	
Total Question 2 (30%)		30	

	Comments	Points	Pts achieved
Question 3			
Equal treatment/witness protection			
Art 184 (1) PILA: - procedure of taking of evidence up to parties; - ultimate decision made by tribunal		2 2	
Art 184 (2): - arbitral may ask state courts for assistance; - Juge d'appui (seat)		2 2	
Art 182 (2) PILA tribunal's discretion		2	
Art 182 (3) equal treatment		2	
IBA Rules on the Taking of Evidence - Art 8 (2) / Art 4		4 4	
Balancing of interests: right of witness, procedural right of calling a witness		5	
Reasoning		3	
Conclusion		2	
Total Question 3 (30%)		30	
Total Exam (100%)		100	