

INTERNATIONAL FINANCE

ANSWER 2 OF THE FOLLOWING 5 QUESTIONS.

Your answers should be no longer than 6 pages (per question) (at approximately 250 words per page).

EACH QUESTION WILL COUNT FOR 50% OF THE EXAM GRADE.

The course materials should provide sufficient material for your answers. Please provide brief citations to the course materials for your examples (e.g. Materials packet 2, p. 10).

NOTE THAT THERE IS SOME POTENTIAL FOR OVERLAP IN ANSWERS TO THESE QUESTIONS. AVOID SUBSTANTIAL OVERLAP IN YOUR ANSWERS, BECAUSE, AS A GENERAL RULE, YOU WILL ONLY GET CREDIT ONCE FOR EACH PIECE OF INFORMATION YOU GIVE ME. FOR EXAMPLE, NOTE THAT IF YOU WRITE "SEE ABOVE", OR "SEE ANSWER TO QUESTION X" IN YOUR SECOND ANSWER, YOUR GRADE FOR THE SECOND ANSWER WILL SUFFER.

1. "It's not just a question of restarting the system ... We actually have to create a system that currently doesn't exist, namely a global regulation of financial markets." (George Soros, quoted in Businessweek, class blog Feb. 4, 2010).

Do you agree with this statement? With examples from the class materials, explain why or why not.

2.

EITHER

a. During the semester we came across a number of examples of standard form contracts or standard form contractual clauses used in transnational financial transactions. Do you think that a commonly used form of document or clause should be treated with greater care (on the grounds of legal certainty) by a judge than a less commonly used form? Does/should it make a difference to a judge in one jurisdiction that a contractual term in a standard form document used around the world is treated as valid in other jurisdictions? Do you think it would be useful to be able to develop a system for evaluating the legal effectiveness and/or appropriate interpretation of such documents and clauses in advance?

OR

b. "[I]t is important that, so far as possible, judicial decisions ... ensure that the law is clear and consistent. That has always been true, but the need for consistency and clarity is all the greater now that commercial contracts are becoming increasingly complex both in their underlying nature and in their detailed provisions ... It is also desirable that, if possible, the courts give effect to contractual terms which parties have agreed. Indeed, there is a particularly strong case for party autonomy in cases of complex financial instruments ... in such cases, the parties are likely to have been commercially sophisticated and expertly advised." (Lord Neuberger, Master of the Rolls, in *Perpetual Trustee Co. Ltd v BNY Corporate Trustee Services Ltd* (CA)(Packet 8).

Discuss this statement, with examples from the course materials.

3. A loan agreement contains the following provision:

Each Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement; provided, however, that (i) unless an Event of Default shall have occurred and be continuing or except in the case of an assignment to a financial institution, the Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld and shall be deemed to be given if no reply is received from the Borrower within ten days after a request for consent by a Lender)... (A) the assignee shall be a party hereto and have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement... Any assignment by a Lender of rights and/or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and/or obligations, as the case may be ... Each Lender may without the consent of the Borrower sell participations to one or more banks or other entities in all or a portion of its rights and/or obligations under this Agreement; provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations...

On 1 January, after assigning one third of its interests in the loan to each of a hedge fund, a sports betting company and a major competitor of the borrower, Lender X writes to the Borrower stating that it proposes to assign its interests in the loan. On 2 January Lender X sends the assignments to the Agent Bank which records the assignments without verifying whether the Borrower has consented to the assignments. Soon afterwards, it becomes clear that the Borrower has serious financial problems, and that knowledge of these problems prompted Lender X to assign its interests in the loan. What issues do these facts raise? What other provisions of the loan agreement are likely to be relevant to this situation? If the Borrower has claims against Lender X which might lead to the bankruptcy court applying equitable subordination with respect to Lender X, will the hedge fund, the sports betting company and the competitor be likely to be affected by the equitable subordination?

4. In a speech in March 2010 Lord Turner, the Chairman of the UK's Financial Services Authority, stated:

“Last August, some remarks of mine caused controversy. I suggested that some of the activities which went on in the trading rooms of some banks in the run up to the financial crisis were ‘socially useless’. People have asked me whether I regret those comments. The answer is no, except in one very small respect. Which is that I think it would have been better to use the phrase ‘economically useless’ or ‘of no economic value added’. For my purpose was to provoke a debate about the functions which banks and near banks play in the economy, and about whether and under what circumstances we can be confident that the impact of their activities will be beneficial for the real economy and thus for human welfare.”

Discuss this statement, with examples from the course materials.

5. Under what circumstances should US courts exercise jurisdiction over "foreign-cubed" securities class actions?