Question 1

a) Applicability of the PILA, in case B intends to initiate arbitral proceedings against A?

Chapter 12 PILA: Art 176 (1) PILA 1

i. seat of tribunal in CH? 0.5
*can be determined by the parties 0.5

*"seat" means, in principle, place, not a country 0.5
> here: “seat in Switzerland” > no specific seat chosen 0.5

*majority view: could lead to the invalidity of the AA 0.5

(see Poudret/Besson, n. 139)

*Interpretation of this wording? 0.5

(according to the interpretation of contracts)

*Art. 355 (2) CCP per analogiam? (disputed) 0.5
*Art. 176 (3) PILA: seat can be determined 1

by the tribunal or the institution

> in casu: no institutional arbitration, 0.5
and no arbitral proceedings initiated

> arbitrators must be appointed, 0.5

or at least Canton/juge d’appui specified (Art. 179 PILA)

ii. domicile of at least one party not in CH? 0.5
*when? > at the time of the conclusion of the AA 1

*Parties to the contract or parties to the proceedings? 0.5

> according to the SFT (see 4P.54/2002, E.3.), 0.5
the parties to the proceedings matter, and not
the parties to the contract (disputed)

> both A and B (the parties to the proceedings) 0.5
have their seat in CH

Result: PILA is not applicable (view of the SFT) 0.5

iii. no exclusion (Art 176 (2) PILA)? 0.5

in casu not pertinent

b) Applicability of the PILA, if C has assigned its rights out of the contract to D, and D initiates arbitration against A?

Chapter 12 PILA: Art 176 (1) PILA 1

i. seat of tribunal in CH 0.5

as above

ii. domicile of at least one party not in CH 0.5

*assignment has no influence, relevant is C 0.5

> C had its domicile abroad 0.5
> at the time the AA was concluded 0.5

iii. no exclusion (Art 176 (2) PILA) 0.5

in casu not pertinent

Result: PILA is applicable 0.5

Total Q1: 15
### Question 2

<table>
<thead>
<tr>
<th>Points</th>
<th>Points achieved</th>
<th>Comments</th>
</tr>
</thead>
</table>

#### i. applicability of the NYC

*Art. 194 PILA* refers to the NYC 1

*Art. I (1) NYC:* "foreign arbitral award" 1

refers to the arbitral seat 1

in CH: territorial principle 1

CH: neither reciprocity nor commercial reservation 1

Result: NYC is applicable 1

#### ii. "sufficient connection-requirement"

> comes into play if a creditor wishes to attach assets of a foreign state located in CH 1

> only in cases in which foreign state acted as holder of private rights ("iure gestionis") 1

> circumstances present that tie the legal relationship closely to CH 1

> mere location of assets in CH is not sufficient 1

#### iii. effects of missing connection

> procedural prerequisite missing (admissibility) 1

> request is inadmissible (procedural decision) 1

#### iv. breach of obligations under the NYC (Art. III)?

> in principle, Art. V NYC governs R&E of awards 1

yet, they must be procedurally admissible (Art. III NYC) 1

Result: no breach of the NYC 1

---

**Total Q2:** 15

---

**Total Q1+Q2:** 30

**Points reached:** 0