

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Investment Law  
Semester-II (Batch: 2018-19)

LL.M. End Semester Examination: May-2019

Date: 6<sup>th</sup> May, 2019

Duration: 3 hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

**Part-A**

**Marks**

- Q.1 'Jurisdiction' and 'admissibility' are two legal concepts that, despite their frequent application by arbitral tribunals, have lent themselves to a certain amount of confusion. Clarify the use of these concepts with specific regard to arbitral proceedings under the International Centre for Settlement of Investment Dispute (ICSID) Convention and the ICSID Additional Facility Rules by highlighting the landmark awards passed by the ICSID. (10)
- Q.2 The adoption by the International Law Commission (ILC) in 2001 of its articles on 'state responsibility' is an achievement that presents a paradox. It is about the form and authority of the articles and the paradox that they could have more influence as an ILC text than as a multilateral treaty. Explain why undue influence may be attributed to an ILC text (particularly by arbitral tribunals), and how an arbitral tribunal should approach interpreting and applying the 'articles on state responsibility'. (10)
- Q.3 Write short notes on **any two** of the following: (2x5=10)
- (a) Investment treaty arbitration as public international law.
  - (b) Most Favored Nations (MFN) Clause in Investment Arbitration.
  - (c) 'Expropriation' clause in Bilateral Investment Treaties of Investment Arbitration.

**Part-B**

- Q.4 States as sovereign entities can expropriate the assets of foreign investors subject to the conditions outlined in international law. However, the protection of foreign investment against expropriation is also a centuries-old principle of foreign investment law. Explain the concept of expropriation evaluating the justifiability of the outlined conditions under international law and also mention the protections available under customary international law to the foreign investor against such expropriation. (10)
- Q.5 Though the exact nature and content of a Bilateral Investment Treaty (BIT) concluded between one state and another may vary with those concluded between other states, yet most BITs are designed to extend fair and equitable treatment, full protection and security, MFN and national treatment to the investors. (10)

In view of the above observation, explain the concept of 'fair and equitable treatment', 'full protection and security', 'MFN and national treatment'. Also, decide whether Indian Model BIT 2016 offers these protections to the foreign investors.

- Q.6 Briefly explain the salient features of Foreign Direct Investment (FDI) Policy of India. (10)  
Define the concept of downstream investment and Indirect Foreign Investment. Discuss in detail the guidelines provided under FDI policy for calculating indirect foreign investment with suitable examples.
- Q.7 Answer **any two**: (2x5=10)  
(a) Explain the essential elements of a financial system.  
(b) Explain the dependency theory of foreign investment and its limitations.  
(c) Explain "Calvo Doctrine" and its application in the present foreign investment regime.

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