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UNIVERSITY WITH A PURPOSE

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2019

Course: International Investment Law	**Semester: VII**
Program: BBA.LLB (Corp Law)	**Time: 03 hrs.**
Course Code: LLBD 441	**Max. Marks: 100**

Instructions:

S. No.		Marks	CO
	Write short notes on following		
1	Evolution of concept of Investment under International Investment Law (IIL)	**2**	**CO1**
2	Treaty Shopping. Illustrate.	2	CO1
3	Erga Omnes Obligation	2	CO2
4	Is UN charter a Treaty?	2	CO1
5	Non Liquet in International Law	2	CO1
	SECTION B		
6	Write the summary of facts and main legal arguments of Libyan Nationalisation Case.	**10**	
7	Illustrate and explain the concept of Most Favoured Nation obligation in an international investment law treaty with the help of decided cases.	**10**	
	SECTION-C		
8	Critically analyse the distinction between Direct Expropriation and Indirect Expropriation. What are the exceptions that make an Expropriation legitimate?	**10**	**CO4**
9	B&B was an Italian Company commissioned by government of State K to study the possibility of establishing and operating a plastic bottle manufacturing company. Through a joint venture with the government of State K, the PLASCO Company, it signed a contract for the construction of both a plastic manufacturing unit and a mineral water bottling plant. Through a decree, the State K government established certain prices that lower than those chosen during board of Directors meeting before	**10**	**CO3**

and after the decree. According to B & B these prices were lower than the prices and therefore, government claimed that it has right to fix the price. Decide, if the act of government is sustainable under IIL. Both states are party to BIT which contains standard clauses of BIT.

SECTION-D

State X has been running its economic activity based on socialist model of polity. The name of the currency of State X is Ruppees. All the essential economic activities were strictly controlled by the State. Few years later the State X decided to introduce economic reforms to boost its slowing economy. Therefore, it introduced the Economic Activity Reforms Act, 2001, it welcomed the privatization of economic activity through liberalizing the control of state. One of the sector that it identified to be opened to private player was telecom industry as it internet has become tool for most of the economic activity. One of the Law was Law No. 23,928, the "Convertibility Law," which was complemented by Decree No. 529/1991. Together they pegged the Ruppees to the Dollar at a fixed rate of 1:1, and no increase in the domestic monetary supply would henceforth be permitted without a corresponding increase in the Central Bank's foreign currency holdings. As a consequence, inflation abated and the economy grew during the period from post 2001.

To protect investors' long-term interests, regulatory regimes were established for the electricity and hydrocarbon sectors. Together these regimes, the Electricity and the Hydrocarbons Regulatory Frameworks, formed the new "National Energy Regulatory Framework Authority" (NERFA).

In order to promote infusion of capital therein the State organized international seminars to attract international investment. The neighbouring country of State X is State Y. Sanchar Ltd is a company incorporated in the State Y. It decided to invest in the State X keeping in mind investor friendly laws and pegging of Ruppees to Dollars. State Y's currency is Dollar. **Sanchar Ltd.** incorporated another company in State X by the name of **Sanchartantra** Ltd. Sanchar Ltd held hundred percent equity in Sanchartantra Ltd. Sanchartantra Ltd made an investment of 65 percent in the local telecommunication company Doorsanchar Ltd. Doorsanchar Ltd, after sometime sold 30 percent to Bahutdoor Sanchar Ltd of State C.

However, two years after incorporation of Sanchar Y Ltd. the government of State X drastically changed the law and introduced heavy regulation in the field of telecommunication. It enacted another law modifying its previous laws and introduced following regulation; a) telecommunication enjoying the pegging of Ruppees and Dollar to be lifted; b) it authorized the NERFA to impose withholding on expatriation of telecommunication profits. NERFA decided to impose stricter regulation on the Sanchartantra by asking it to submit various documents for auditing thereto. It also increased levy of 10 percent surcharge of Education Cess in addition to the existing Corporate Tax of 25 percent for all investments originating State Y.

Post this order of NERFA for Sanchartantra, one Ms. Dhanvarsha of State C who is also a member of Board of Director of Bahutdoor Sanchar Ltd bought the 55 percent

shares of Sanchartantra Ltd.

Sanchartantra Ltd. resisted this imposition of additional tax in the form of Educational Cess terming it as Expropriation and violative of its rights under international investment Law. Matter escalated so much the Sanchartantra Ltd decided to invoke the arbitration clause of BIT and took the matter to arbitration under the ICSID.

All are the party to ICSID.

State X and State Y has signed a Bilateral Investment Treaty which carried following definition of Investment:

"Investment means: (I) an enterprise; (II) an equity security of an enterprise; (III) a debt security of an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise; (IV) a loan to an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise;"
 "Investors" means nationals or companies of a Contracting Party who have effected or are effecting investment in the territory of the other Contracting Party;

State C and State Y also has BIT which are pari materia to BIT between State X and State Y.

In light of aforementioned facts please decide with the help of decide cases?		
10. Is the ICSID arbitral tribunal competent to invoke BIT between State X and State Y? Or Should it invoke BIT between State C and State Y? Reasoned with help of decided cases. 11. Critically analyse if reasoning why arbitration is better dispute resolution mechanism than municipal courts. 12. Is the claim under ICSID Arbitration under Art.25 tenable?	20+10 +20	CO5 and CO2 and CO4