



UNIVERSITY OF PETROLEUM AND ENERGY
STUDIES

End Semester Examination, December 2021

Course: BIT and Investment Trade Disputes

Semester: IX

Program: BBA LLB (ITIL)

Duration: 03 hrs.

Max. Marks: 100

Course Code: CLIN5001

SECTION A
(Type the answers in test box)

Objective Type Questions/Definitions/fill in the blanks

5Qx2M=10 Marks

Q. No.		Marks	CO
1	_____ is considered as the forerunner of BITs.	2	CO2
2	Explain the meaning of Bilateral relations.	2	CO2
3	Identify the number of negotiation rounds that have taken place in the GATT. Which one was the longest?	2	CO1
4	Describe the principle of National Treatment under GATT.	2	CO1
5	State what are Most Favored Nation (MFN) clauses.	2	CO1

SECTION B
(Scan and upload)

(Conceptual based question)

4Q x5M=20 Marks

Q. No.		Marks	
1	<p>The definitions of “investments” in investment treaties almost always go beyond the narrower concept of FDI. It is common for the definition of investment to include “every kind of asset” “owned or controlled” “directly or indirectly” by a foreign investor. That definition is usually followed by a non-exhaustive list of the forms such assets may take, including movable and immovable property, shares or stock in a company, futures, options, derivatives, contract rights, goodwill and intellectual property rights including trademarks and copyrights. Some definitions of “investments” also specify that they include entities whether owned or controlled by the government or private entities, and whether or not operated for profit.</p> <p>Explain the importance of investor and investment terms in a BIT.</p>	5	CO3
2	<p>When countries enter into a BIT, both countries agree to provide protections for the other country’s foreign investments that they would not otherwise have. A BIT provides major benefits for a country’s investors in another country by several ways.</p> <p>Discuss the ways in which interests of foreign investors are insured under a BIT.</p>	5	CO2
3	<p>In particular, for economies with weak financial systems, an open capital account and a fixed exchange rate regime are not an auspicious combination. Indeed, there is a</p>	5	CO2

	<p>compelling case to be made that rigid exchange rate regimes can make a country more vulnerable to crises when it opens its capital markets.</p> <p>Explain the role of FDI in bilateral relations and how is exchange rate fluctuation accommodated in BITs?</p>		
4	<p>At the outset, a preamble expresses the object and purpose of the BIT. Post the preamble, a BIT generally incorporates a definition clause that outlines the scope and ambit of the BIT by defining an ‘investor’ and ‘investment’ – the key qualifiers of protection under the BIT.</p> <p>Outline the importance of scoping a BIT and the key clauses which help in determining the scope of a BIT, using cases.</p>	5	CO3

SECTION-C
(Scan and upload)

(Descriptive/Analytical Questions)

2Qx10M=20 Mark

Q.No.		Marks	CO
1	<p>A Fair and Equitable Treatment (FET) provision, which is usually featured in BITs, protects a far off investor’s rights against the host state and prevents interference with the investor’s legitimate expectations. An FET is capable of sanctioning legislative and administrative actions of the host state.</p> <p>Consider the above statement and analyze the need for FTE provisions in a BIT.</p>	10	CO3
2	<p>States have a sovereign right under international law to take property held by nationals or aliens through nationalization or expropriation for economic, political, social or other reasons. In order to be lawful, the exercise of this sovereign right requires certain conditions to be met under international law.</p> <p>Illustrate the different types of expropriations and the conditions required for such exercise of expropriation.</p>	10	CO4

SECTION-D

(Scan and upload)

(Case Studies/ Application Based Questions)

2Qx25M =50 Marks

Q.No.	Attempt both the questions 1 and 2.	Marks	CO
1	<p>The main purpose of a Bilateral Investment Treaty (BIT) is to stimulate foreign investments by reducing political risk. BITs protect the investors and the company by imposing conditions on the controlling behavior of the host state and thus, preventing undue interference with the rights of the foreign investor.</p> <ol style="list-style-type: none"> 1. Illustrate the purpose and importance of a Bilateral Investment Treaty. 2. As a Legal Advisor to the Government, discuss and write the necessary ingredients of a BIT and the mandatory clauses in a model BIT. 	25	CO4

2	<p>The Government of the Republic of India has adopted a revised text of the former 2003 version of its Model Bilateral Investment Treaty (BIT). Having entered into effect in December 2015, this text is intended to serve as a template for negotiations of India's existing and future investment relations with countries around the world, including important trading partners, such as the European Union, the United States and Canada.</p> <p>An investor from USA has reached out to you for legal advice on the changes that are brought in the new Indian Model BIT. Demonstrate the key changes with examples from the Model BIT.</p>	25	CO4
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