



ZCAS UNIVERSITY

SCHOOL OF LAW

BACHELOR OF LAWS IN COMMERCIAL LAW

MID SEMESTER TEST

OCTOBER 2023

SLA3292 INVESTMENT LAW

TIME ALLOWED: THREE (3) HOURS (plus FIVE (5) minutes reading time)

Instructions

1. Answer four (4) questions. Question one is compulsory and any three (3) from part B
2. The examination paper carries a total of 70 marks.
3. Candidates are permitted to bring the following statutes into the examination room
 - (i) Zambia Developmental Agency Act No. 11 of 2006 of the Laws of Zambia
 - (ii) All ZDA amendments
4. Candidates must not turn this page until the invigilator tells them to do so.

PART A: THIS QUESTION IS COMPULSORY AND MUST BE ATTEMPTED.

QUESTION 1

You are a legal expert specializing in international investment law and are advising the government of Country X, that has implemented a series of public health measures aimed at reducing smoking rates and improving overall public health. One of these measures involves the mandatory plain packaging of tobacco products, which severely restricts branding and trademarks on tobacco packaging.

A foreign tobacco company, stonR Tobacco Corp., based in Country Y but has a subsidiary in Country X, files a claim under an investment treaty alleging that the plain packaging measures amount to expropriation of their intellectual property rights and are in violation of the treaty.

In light of the above and principles of international investment law, analyze the potential elements of expropriation that stonR Tobacco Corp. may argue in their claim against Country X. Discuss relevant legal principles, standards of expropriation, and any potential defenses that Country X may raise.

[TOTAL: 25 MARKS]

[EXPECTED CASES 5]

PART B: ANSWER ANY THREE QUESTIONS FROM THIS PART

QUESTION 2:

TOBI Corporation, a global pharmaceutical company, is considering investing in a Special Economic Zone (SEZ) located in a developing nation renowned for its advancements in the biotechnology sector. The SEZ provides a range of incentives, including tax breaks, simplified regulations, and a pool of skilled labour.

Discuss the advantages and disadvantages of TOBI Corporation investing in this SEZ, and analyze how this investment might influence the economic development of the host country.

[TOTAL: 15 MARKS]

QUESTION 3:

You are a legal advisor to an energy company, Power Energy Co, based in Kenya. One day at an energy efficiency workshop, someone informs you about just how ideal of an investment destination Zambia is. You later inform the owner of the company about your discussion at the

workshop and after some months of research, Power Energy Co. decide to invested heavily in building and operating a coal-fired power plant in Zambia. The investment was made with the expectation of a certain level of return on investment over a specified period.

However, one year after your investment, Zambia's new government decide to implement a new environmental policy to reduce carbon emissions and transition to renewable energy sources. As a result, Zambia introduced stringent regulations, effectively requiring the closure of existing coal-fired power plants, including the one owned by Power Energy Co.

Power Energy Co. alleges that the new environmental policy and subsequent regulations amount to expropriation of its investment and are in violation of the Energy Charter Treaty's (ECT) provision against expropriation, that both countries are party to.

The board come to you for advice on whether they should proceed to sue the Zambian Government for expropriation and what their chances of success are.

Advise.

[TOTAL: 15 MARKS]

[EXPECTED AUTHORITIES 5]

QUESTION 4:

“One of the fundamental purposes of the investment law and related legislation is to create a legal framework that will maximize those potential benefits and minimize the potential costs to the host country. To put the matter in another way, the investment law structures the bargain between the host country and the foreign investor with respect to sharing benefits and costs of foreign investment”.

Discuss the four major issues that are normally included in most investment laws, and how adequately the Zambia Development Agency has attempted to deal with the said four issues.

[TOTAL: 15 MARKS]

[EXPECTED AUTHORITIES 3]

QUESTION 5:

Describe various types of incentives offered by a host country to attract foreign investors. Provide examples for each type and discuss the rationale or justification behind these incentives.

[TOTAL: 15 MARKS]

[MINIMUM EXPECTED AUTHORITIES 3]

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