

TEST BANK

International Business Law

TEXT, CASES, AND READINGS
FIFTH EDITION



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Chapter 2

State Responsibility and Environmental Protection

A. STATE RESPONSIBILITY

1. To establish that a state is responsible for an injury to an alien or foreign business, a claimant must demonstrate:
 - a. conduct attributable to the state under international law.
 - b. a breach of an international obligation by the state.
 - c. an agreement signed by the state accepting liability.
 - d. All of the above.
 - e. Both a. and b. above.

Answer: e

1. Doctrine of Imputability

2. A state is only responsible for actions that are imputable to it.

Answer: True

3. A state is responsible for acts done by officials within their apparent authority.

Answer: True

4. A state is not responsible for acts done by officials when the officials acted because of a mistake.

Answer: False

5. A state is not responsible for acts done by officials who were clearly acting wrongfully.

Answer: False

2. Non-imputable Acts

6. States have an international obligation to help other states bring terrorists to trial.

Answer: True

7. A state is not responsible for acts causing injury to foreigners when the acts were carried out by:

- a. private persons.
- b. officials of other states or international organizations.
- c. rebels or insurrectionaries.
- d. All of the above.
- e. Both b. and c. above

Answer: d

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8. Which of the following is true?
- Contemporary terrorism commonly has state support and sometimes involves direct state action.
 - Modern terrorism commonly involves spectacular and horrible incidents that will attract media attention.
 - Terrorism is the sustained clandestine use of violence for a political purpose.
 - All of the above.
 - Both a. and b. above.

Answer: d

9. Which of the following imposes liability on states that support or participate in terrorist activities?
- 1963 Tokyo Convention on the hijacking and sabotage of civilian aircraft.
 - 1971 Montreal Convention on the hijacking and sabotage of civilian aircraft.
 - 1973 Convention on Crimes Against Diplomats.
 - 1979 The Hague Convention of 1979 on Hostage Taking.
 - None of the above.

Answer: e

3. Fault and Causation

10. In order to hold a state responsible for causing injury to an alien, one has to prove *culpa*. That is, one has to show that the state was knowingly or negligently at fault.
- Answer: False
11. The reason why alien claimants are not required to prove that a state acted with *culpa* (i.e., that it was at fault) when they are suing for injuries it caused to them is that it is so easy to prove *culpa* that courts regard such proof as a waste of their time.
- Answer: False
12. State A expelled the Bee Co. from its territory for political reasons. Bee Co. was forced to take up temporary quarters on an island in the Caribbean. The island was subsequently hit by a hurricane and Bee Co. suffered tremendous losses. In an arbitration between Bee Co.'s home state (State B) and State A, State B alleges that State A is liable for Bee Co.'s losses. The tribunal will hold:
- State A liable because political reasons are an inadequate basis for expelling a foreign company.
 - State A liable because it is clearly at fault (i.e., *culpa* is proven).
 - State A not liable because it did not factually cause the injuries to Bee Co.
 - State A not liable because there is no evidence that it acted wrongfully.
 - None of the above.

Answer: c

B. STANDARD OF CARE

1. *The National Standard*

13. According to the international standard, a state should treat an alien exactly as it treats its own nationals - no more, no less.

Answer: False

14. Third World states have not consistently supported the adoption of the national standard of care doctrine as a rule of international law in part because they fear that they might offend states that extend economic and other kinds of assistance to them.

Answer: True

15. Which of the following are criticisms leveled at the national standard of care rule?
- a. It would encourage aliens to bring frivolous and time-consuming law suits.
 - b. It would give greater rights to aliens than nationals.
 - c. There would be no protection for aliens in states where nationals are ill treated.
 - d. All of the above.
 - e. None of the above.

Answer: c

2. *The International Standard*

16. According to the international standard of care doctrine, while states have no obligation to admit aliens to their territory, once they do so, they must treat them in a civilized manner.

Answer: True

17. Which of the following acts would constitute an international crime if committed by a state?
- a. Denial of justice.
 - b. Injury to the environment.
 - c. The expropriation or nationalization of the property of aliens and foreign businesses.
 - d. All of the above.
 - e. None of the above.

Answer: b

3. Expropriation

18. The right of states to expropriate foreign property is universally recognized.

Answer: True

19. Most Western states regard expropriation as:

- a. improper.
- b. proper when it is done for a legitimate public purpose and the state pays adequate compensation.
- c. proper when it is done for a legitimate public purpose and the state pays adequate and prompt compensation.
- d. proper when it is done for a legitimate public purpose and the state pays adequate, prompt, and effective compensation.

Answer: d

20. When speaking of “prompt, adequate, and effective compensation” in connection with the international standard of care doctrine,

- a. “adequate” compensation means “the value of the undertaking on the day the judgment is awarded.”
- b. “effective” compensation means that “the recipient must be able to make use of it.”
- c. “prompt” compensation means “payment within a reasonable period of time.”
- d. All of the above.
- e. None of the above.

Answer: b

21. If a state wishes to expropriate the property of a foreign business, it must (according to the international minimum standard doctrine):

- a. do so only for a public purpose.
- b. give reasonable advance notice to the foreign business.
- c. pay prompt, adequate, and effective compensation to the foreign business.
- d. All of the above.
- e. Both a. and c. above.

Answer: e

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22. In opposing the international standard of care doctrine, some Third World states argue that:
- adequate compensation should not mean full market value.
 - compensation should only have to be made in the local currency.
 - in determining compensation, factors such as colonial domination should be taken into consideration.
 - All of the above.
 - Both a. and c. above.

Answer: e

4. Denial of Justice

23. According to national standard of care advocates, any determination of a denial of justice should be made relative to the judicial system of the society where the case arose.

Answer: True

24. Which of the following are examples of denials of justice?
- A gross deficiency in the administration of the judicial or remedial process.
 - A manifestly unjust judgment.
 - An unwarranted delay or obstruction of access to the courts.
 - All of the above.
 - Both a. and b. above.

Answer: d

C. OBJECTIONS

1. Lack of Standing

25. Lack of standing is an objection which a defendant can raise to a court taking jurisdiction when the plaintiff has failed to state a cause of action.

Answer: False

26. In most international tribunals (such as the International Court of Justice), only a state may file a complaint.

Answer: True

27. Because only a state may file a complaint in an international tribunal (such as the International Court of Justice),
- the state can refuse to bring the complaint.
 - the state can abandon a case after it has filed the complaint.
 - the state may settle the matter adversely to the interests of a victim.
 - All of the above.
 - None of the above.

Answer: d

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2. Lack of Nationality

28. In most international tribunals (such as the International Court of Justice), a state may only sponsor a complaint on behalf of its own nationals.

Answer: True

29. An agreement made by an investor who seeks to establish a business operation in a foreign country that it will not ask nor allow its home state to intervene in any dispute with the host state is binding on the home state.

Answer: False

30. Calvo clauses are legally ineffective.

Answer: True

31. While Calvo clauses are legally ineffective, they generally have the practical effect of discouraging a home state from espousing a case in an international tribunal on behalf of a person who has signed such a clause.

Answer: True

32. With respect to the proper filing of a complaint in an international tribunal (such as the International Court of Justice) on behalf of a person with dual nationality, the state of which the individual has a master nationality may bring suit against the other national state.

Answer: True

33. With respect to the proper filing of a complaint in an international tribunal (such as the International Court of Justice), which of the following is true?

- a. A person with a single nationality may only be sponsored by the state of his nationality.
- b. A stateless person may have his case sponsored by an international organization (such as the United Nations).
- c. Persons with dual nationalities cannot have their cases sponsored by any state.
- d. All of the above.
- e. Both a. and b. above.

Answer: a

34. Ms. X is a national of both State A and State B. With respect to the proper filing of a complaint on her behalf in an international tribunal (such as the International Court of Justice), which of the following is true?

- a. State A may file a complaint against State B.
- b. State A may file a complaint against State C.
- c. State B may file a complaint against State A.
- d. State C may file a complaint against State B.
- e. None of the above.

Answer: b

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35. Mr. Z is a national of both State A and State B. State A wishes to sponsor a case on behalf of Mr. Z against State B in an international tribunal (such as the International Court of Justice), claiming that Mr. Z's master nationality is that of State A. To show this, State A:

- a. may demonstrate that most of Mr. Z's economic, social, political, civic, and family life is centered in State A.
- b. may point to Mr. Z's long-time residence in State A.
- c. must prove that Mr. Z has a closer and more effective bond with State A.
- d. All of the above.
- e. Both a. and b.

Answer: d

3. Lack of a Genuine Link

36. With respect to the proper filing of a complaint in an international tribunal (such as the International Court of Justice) on behalf of a person, the sponsoring state must establish that there is genuine link between that state and the sponsored person.

Answer: True

37. Although individuals must have a genuine link with a state before the state may properly file a complaint on their behalf in an international tribunal (such as the International Court of Justice), this is not so when the state sponsors a suit on behalf of a juridical person (such as a business firm).

Answer: False

4. Failure to Exhaust Remedies

38. Before an individual or business firm can seek the help of its state in supporting a complaint of mistreatment, the individual or firm must first exhaust all the remedies available to him or it within the foreign state.

Answer: True

39. Normally, before an individual or business firm can seek the help of its state in supporting a complaint of mistreatment in an international tribunal, the individual or firm must first exhaust all the remedies available to him or it within the foreign state. This is not true when:

- a. adequate redress is clearly unavailable.
- b. the requirement has been waived by treaty.
- c. there has been excessive delay.
- d. All of the above.
- e. None of the above.

Answer: d

5. Other Objections

40. When a defendant in a suit claims that the plaintiff waited too long before filing a complaint, this assertion is known by the name of “laches.”

Answer: True

41. When a defendant in a suit claims that the plaintiff’s own conduct makes it ineligible for relief, this assertion is known by the name of “dirty hands.”

Answer: True

D. RELIEF

42. Which of the following forms of relief involve a payment of money?
- a. Compensatory damages.
 - b. Restitution in kind.
 - c. Satisfaction.
 - d. All of the above.
 - e. Both a. and c.

Answer: a

E. INSURANCE

1. Private Insurers

43. Private insurers offer which of the following kinds of insurance coverage?
- a. Property insurance.
 - b. International Casualty insurance.
 - c. Coverage of overseas employees.
 - d. All of the above.
 - e. None of the above.

Answer: d

2. National Investment Guaranty Programs

44. “Political risk” or “noncommercial” insurance is readily available from many private insurers.

Answer: False

45. The most common insurance claim that the United States Overseas Private Investment Corporation (OPIC) pays is a claim for expropriation.

Answer: False

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46. The finance program of the United States Overseas Private Investment Corporation (OPIC) allows OPIC to:
- a. facilitate commercial lending by providing investment guarantees for commercial bank loans.
 - b. participate as a direct lender to small businesses involved in small projects.
 - c. participate as a medium- to long-term project lender.
 - d. All of the above.
 - e. Both a. and c. above.

Answer: d

47. Which of the following risks are covered by the political risk insurance program offered by the United States Overseas Private Investment Corporation (OPIC)?
- a. Currency inconvertibility or transfer risk.
 - b. Expropriation or confiscation.
 - c. Political violence.
 - d. All of the above.
 - e. Both b. and c. above.

Answer: d

48. Before the United States Overseas Private Investment Corporation (OPIC) will pay on a claim alleging a loss from creeping expropriation, the claimant must:
- a. show that its entire undertaking has been jeopardized.
 - b. show that it is no longer allowed to manage or control its investment.
 - c. show that its investment was destroyed by local political violence.
 - d. All of the above.
 - e. Both a. and b. above.

Answer: d

49. Which of the following is the riskiest form of insurance coverage that the United States Overseas Private Investment Corporation (OPIC) provides?
- a. Creeping expropriation insurance.
 - b. Currency inconvertibility insurance.
 - c. Expropriation insurance.
 - d. Political violence insurance.
 - e. None of these is particularly more risky than any of the others.

Answer: d

2. Multilateral Investment Guaranty Programs

50. Unlike national investment guarantee programs, the World Bank's Multilateral Investment Guaranty Agency (MIGA) operates under the political oversight of both capital-exporting and capital-importing states.

Answer: True

F. ENVIRONMENTAL PROTECTION

1. *Origins of international environmental protection laws.*

51. Principal 21 of the Stockholm Declaration, adopted in 1972 at the UN Conference on the Human Environment, proclaimed that all states “have a duty not to damage the environment of other states or of areas beyond the limits of national jurisdiction.”

Answer: True

52. The United Nations Environment Program (UNEP) is responsible for monitoring the earth’s environment.

Answer: True

53. The Rio Declaration, adopted at the 1992 UN Conference on the Environment and Development (UNCED), proclaimed that “environmental protection constitutes an integral part of the development process and cannot be considered in isolation from it.”

Answer: True

54. The Rio Declaration, adopted at the 1992 UN Conference on the Environment and Development (UNCED), rejected the so-called “precautionary approach” to protecting the environment and instead it only requires states to take corrective action to counteract threats of serious or irreversible damage to the environment when there is scientific certainty that injury will result.

Answer: False

55. Agenda 21, adopted at the 1992 UN Conference on the Environment and Development (UNCED), establishes which of the following as goals for the international community?

- a. To prevent pollution and to conserve and protect the earth’s natural resources.
- b. To promote sustainable and environmentally friendly growth.
- c. To reduce the world’s human population.
- d. All of the above.
- e. Both a. and b. above.

Answer: e

2. *Regulation of Pollution*

56. The goal of the 1992 *United Nations Framework Convention on Climate* is to eliminate greenhouse gases in the earth’s atmosphere.

Answer: False

57. The 1992 *United Nations Framework Convention on Climate* rejects the so-called “precautionary principle” in favor of a “principle of scientific certainty.”

Answer: False

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58. The 1997 Kyoto Protocol to the 1992 *United Nations Framework Convention on Climate* binds Annex I countries that are parties to the Protocol to reduce their greenhouse gas emissions during the five-year period between 2008 and 2012 to below what they were in 1990.

Answer: True

59. The main supporter of the 1997 Kyoto Protocol to the 1992 *United Nations Framework Convention on Climate* is the United States.

Answer: False

60. The 1985 *Vienna Convention for the Protection of the Ozone Layer* requires state parties to cooperate in scientific research to protect human health and the environment resulting from human activities that affect the ozone layer.

Answer: True

61. The Montreal Protocol to the 1985 *Vienna Convention for the Protection of the Ozone Layer*, requires state parties to phase out the use of carbon tetrachloride and certain chlorofluorocarbons and halons by the year 2000.

Answer: True

62. Annex 16 on Environmental Protection to the 1944 *Chicago Convention on International Civil Aviation* establishes standardized international emissions limits for aircraft noise and gaseous pollutants.

Answer: True

63. The 1989 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* requires state parties to accept hazardous wastes from non-state parties and other state parties incapable of safely processing them.

Answer: False

64. The 1968 *Treaty on the Non-Proliferation of Nuclear Weapons* assigns to the International Atomic Energy Agency (IAEA) responsibility for carrying out inspections at nuclear facilities in states that have nuclear weapons.

Answer: True

65. The 1982 UN *Convention on the Law of the Sea* requires states to take measures to minimize:

- a. pollution from the installations and devices used in the exploration or exploitation of the seabed and its subsoil.
- b. pollution from vessels.
- c. the release of toxic, harmful, or noxious substances from land-based sources.
- d. All of the above.
- e. Both a. and b. above.

Answer: d

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66. Disputes between states as to their obligations to comply with the provisions of the 1982 UN *Convention on the Law of the Sea* are resolved by:
- the International Court of Justice.
 - the International Tribunal for the Law of the Sea.
 - a mutually agreeable arbitration tribunal.
 - Any of the above.
 - None of the above. The Convention does not provide for a dispute resolution mechanism.

Answer: d

67. Which of the following are examples of “carbon sinks” as that term is used in the 1992 *United Nations Framework Convention on Climate*?
- forests.
 - garbage recycling plants.
 - legislative bodies.
 - oil fields.
 - None of the above.

Answer: a

68. The principal organs of the International Atomic Energy Agency (IAEA) is/are the:
- Assembly.
 - Board of Governors.
 - Secretariat.
 - All of the above.
 - Both b. and c. above.

Answer: e

69. The International Atomic Energy Agency (IAEA) is responsible for:
- overseeing the nuclear devices and materials of states having nuclear weapons to ensure that they are used only for military purposes.
 - providing assistance to state parties developing nuclear weapons.
 - promoting the peaceful use of atomic energy.
 - All of the above.

Answer: c

3. Protection of Natural Resources

70. The *World Charter for Nature*, which was adopted by the UN General Assembly in 1982, declares that living resources shall not be utilized in excess of their natural capacity for regeneration.

Answer: True

71. The 1992 Rio Conference’s Declaration on Environment and Development declares that the environment and development should not be considered in isolation from each other.

Answer: True

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72. The only state to vote against the adoption of the *World Charter for Nature* by the UN General Assembly in 1982 was:
- Brazil.
 - France.
 - India.
 - Japan.
 - United States.

Answer: e

73. The 1992 *Convention on Biological Diversity* would require state parties (when it comes into force) to:
- develop strategies, plans, and programs for conserving biological diversity.
 - identify and monitor biological diversity.
 - undertake environmental impact assessments of activities that adversely affect biological diversity.
 - All of the above.
 - None of the above.

Answer: d

5. Liability for Environmental Damage

74. The 1963 *Convention on Civil Liability for Nuclear Damage* allows state parties to establish limits on the liability that the operators of nuclear installations can have for the nuclear damage they might cause.

Answer: False

75. The 1969 *International Convention on Civil Liability for Oil Pollution Damage* allows states parties to establish limits on the liability that the operators of oil tankers or other ships may have for polluting the ocean with oil.

Answer: True

ESSAYS

1. In the law of state responsibility, how is the “national standard” of care different from the “international standard”? Which is the better rule?

Answer: Students are expected to define and compare both rules (see the text). Which of them is the better rule depends upon one’s perspective. For developed free market states where the primary motive of governments is to foster profit making, then the international standard, which looks only at protecting the value of an investment, is by far the better rule. For Third World states, that still feel that they are taken advantage of by foreign investors, the national standard is the better rule. If one takes into consideration the growing interest in protecting the environment, it is possible that neither rule is the best, and that some new rule which requires foreign investors to act as good citizens and which requires host states to act fairly needs to be adopted.

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2. Is a state responsible for terrorists activities within its borders?

Answer: The traditional answer is no. This is because a state is normally not responsible for acts committed by individuals who are not under its control. Several commentators have argued for a change in the rule.

3. Ecks Company was incorporated in State X, but has its headquarters, operating plant, most of its employees, and most of its shareholders in State Y. In 1980, a small branch office of Ecks Co. in State Z hired an industrial spy, Mr. O. O. Seven, to obtain secrets from a large competitor in State Z. The spy was successful. For more than a year he supplied the branch with the competitor's most important industrial secrets, which the branch in turn passed on to Ecks Co. The competitor was a contractor of State Z, and many of the secrets the spy uncovered related to State Z's national defense.

Unfortunately, Mr. Seven was caught red-handed in 1981. He was arrested and convicted of espionage. In bargaining for a reduced sentence, he agreed to testify against the Ecks Co. and its branch office's manager. As a consequence, State Z prosecuted both the Ecks Co. and its branch office's manager for espionage. The manager was found guilty, fined, and sentenced to a prison term. The Ecks Co. did not hire a lawyer to represent it in court, and it did not appear to answer the charges against it. The court entered a default judgment and confiscated all of the assets of the branch as punishment. Ecks Co. never appeared to appeal this decision to State Z's appellate courts. Subsequent efforts by Ecks Co. to set up a new branch in State Z were disallowed. Ecks Co. has long fumed over the loss of its State Z branch and the sentence handed down by the State Z court. Finally, this year, it was able to persuade State X to bring a suit on its behalf before the International Court of Justice (ICJ). Both State X and State Z have recognized the jurisdiction of the ICJ to resolve this dispute. State X alleges that the Ecks Co. was denied justice. Are there any objections to the ICJ's jurisdiction that State Z may be able to raise?

Answer: Yes, there are several. (1) Lack of appropriate nationality. While either of the states of a dual national may sponsor a suit on behalf of their national, there must be a genuine link between the sponsoring state and the national. Here, there is a formal link (i.e., Ecks was incorporated in State X), but there are no "genuine links" (i.e., Ecks has its headquarters, operating plant, most of its employees, and most of its shareholders in State Y). (2) Failure to exhaust all local remedies. Ecks never appeared to appeal its decision in State Z (and there seems to be no indication of why Ecks might be justified in not having done so). (3) *Laches*. State X waited more than a decade before sponsoring Ecks' suit. This seems to be an extraordinarily long time with no justification for the delay. (4) Dirty hands. Ecks was involved in espionage. It has no legitimate claim to having been denied justice as its own actions brought on the alleged denial of justice it is claiming.

4. Xavier, a citizen of Country X, had been working as an accountant for a railroad in Country Y. Country Y, a member state of the British Commonwealth of States that follows the common law tradition, was in the midst of a civil war. Without warning, Xavier was arrested by the local Chief of Police and detained in a local jail. The police refused to tell him why he had been arrested and for four months they detained him without giving him a reason for doing so. When Xavier asked to contact the Country X consul, the police would not let him to do so. Finally, he was taken before a military judge, told that he was charged with having embezzled money from his railroad, and

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asked how he wanted to plea. He pled “not guilty.” The military judge simply shook his head, pronounced Xavier “guilty,” and sentenced him to a fine of \$10,000 (U.S.) and to 3 years in prison. In the prison, Xavier was beaten up the day he arrived by the prison guards just so that he would know “who is the boss.” He was required to keep the warden’s books and do the warden’s tax returns in exchange for enough money to buy his meals and his clothing. Fortunately, the rebels liberated the prison where Xavier was being confined and he was set free. Several years later, Country X and Country Y set up a Claims Commission to hear claims brought by citizens of Country X who had suffered injuries in Country Y during Country Y’s civil war. You are a member of that commission and you have been assigned to write the draft opinion for a claim submitted by Xavier. Xavier claims that he was improperly arrested, detained, tried, and imprisoned and that Country Y should compensate him for this.

Answer: See Case 2-7, *Chattin v. United Mexican States*. Xavier was denied justice under the standards established in common law countries and according to the international standard set out in Case 2-7.

5. Are punitive damages a proper remedy for an international tribunal?

Answer: No. See the Concurring Opinion of Prof. Orrego Vicuna in Case 2-9, *Re Letelier and Moffit*. While unstated, it can be implied that punitive damages in an award against a state would be unseemly (i.e., a court telling a state that it deserves to be punished).

ANSWERS TO CHAPTER QUESTIONS

1. Yes. The prevalent international rule is that states are responsible for the acts of rebels. A good argument can be made, nevertheless, that they should not be. See *Kummerow and Fulda Cases* (1903), 10 UNRIAA 384.
2. See Case 2-1, *Sandline International Inc. v. Papua New Guinea*, which stands for the proposition that the acts of a state’s officials and agents done within their scope of competency may be imputed to the state. While states are normally not responsible for the acts of terrorists, it seems here that these terrorists were acting as agents of Quirkydom. That being the case, Quirkydom would be liable since the acts of the terrorists would be imputable to it.
3. See Case 2-1, *Sandline International Inc. v. Papua New Guinea*. Country X is liable. The injuries were caused by its military in strafing the train. Clearly, the acts of the military can be imputed to Country X as they were acting within the scope of their official authority.
4. Restoration of the concession might be granted. While states have an absolute right to expropriate or nationalize property within their territories, they are not allowed to make discriminatory expropriations. Here, Ruraltania is discriminating between Big Co. from Country K and the Japanese offshore concessionaire. Unless the two kinds of oil operations can be distinguished, the expropriation of Big’s concession is discriminatory. The incorporation of Little Co. in Ruraltania complicates matters, as domestic law governs its nationalization. The concession, however, belongs to Big Co. and it is Big Co. that is injured. As to compensation, the predominant view is that Ruraltania must pay “prompt, adequate and effective compensation” for

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expropriated properties. The amount should be the current fair market value of the concession (not its potential earnings). Payment should be made at the time the tribunal makes its award, and payment should be in an internationally convertible currency. As for the damages done to Little Co.'s files and property, this is, again, a matter of local law because Little Co. is incorporated in Ruraltania. Whether the manager is entitled to compensation for his injuries is iffy. Even if Ruraltania is held to an international standard in the way that it must treat aliens, the action of the university students may not be imputable to it. One would have to show that they were acting as agents of the government. This would probably be difficult to do.

5. Probably not, because there appears to be no genuine link between Country M and either Big Co. or Little Co. See Case 2-8, *The M/V "Saiga" Case (Merits)*.
6. Calvo clauses, such as this, are not effective. That is because the injury complained of is an injury to Country C and MNF does not have the right to waive Country C's rights.
7. Arguable. See Case 2-10, *Revere Copper and Brass*. If MNF can continue to operate in Needyland, even if its profits have been diminished, there is no expropriation. Its profits would have to be so greatly diminished that it could not operate before it would be entitled to the insurance proceeds.
8. See the discussion of the *I'm Alone* case in the text. Crocodonia is entitled to compensation for the seizure of its airplane, and possibly some monetary damage for bullying its national honor, but the Crocodonian firm is guilty of having "dirty hands" since it mislabeled the crocodile skins to wrongfully import them into Country U. No compensation is due for the destroyed cargo.
9. Yes. Art. 194(1) of the 1982 UN Convention on the Law of the Sea requires states to take action to prevent marine pollution but only "in accordance with their capabilities." Considering State Q's status as a poor developing state, State Q's regulations relating to marine pollution are probably adequate. The Convention allows for nonflag states to enforce the provisions, but only when foreign ships are within their inland waters, territorial seas, or exclusive economic zones, or over their continental shelves. This was not the case here. While nonflag warships may detain a ship on the high seas suspected of such things as piracy (Art. 105), it may not detain a ship that is polluting the oceans. But, see Case 2-10, *Southern Bluefin Tuna Cases*, which says that UNCLOS clearly calls upon states to apply the precautionary approach in protecting the environment. If that is so, it could be argued that it was proper for State W to remove the oil from the leaking ship.