Exam Date	26.06.2018		
Examination No.			
Student ID			
Question 1	**Comments**	**Points**	**Pts. achieved**
A)		10	
1. notion of "investment" not defined in ICSID – why? … because it would be implicit in the consent of the parties (thus expecting state consent to manage ICSID jurisdiction).		2	
2. Is a natural person with dual citizenship, pursuant to the ICSID Convention's nationality requirement able to access ICSID arbitration? Yes, if the Respondent is a Contracting Party and the Claimant has the nationality of another Contracting Party, but not the one of the respondent State.		2	
3. broad asset based definition of investment – 2 Examples? e.g. o movable and immovable property (incl mortgages) o intellectual property rights (i.e. patents, copyrights, trade-marks) o shares/stocks		2	
4. In a "*narrow*" dispute settlement clause a foreign investor can only request an arbitral tribunal to assess … … the amount of compensation in case of expropriation; see China – Peru BIT e.g. *Austrian Airlines v Slovakia*		2	
5. What have arbitral tribunals regularly held, if a BIT clause protects only investments "*made in accordance with host State law*"? Arbitral tribunals have regularly held that they have no jurisdiction to decide over a dispute. (see *Fraport* ICSID case)		2	
B)		10	
To what extent has the specific wording of MFN clauses influenced their interpretation by investment tribunals? o also encompass procedural and jurisdictional issues vs. limited to substantive treatment? o *Maffezini v. Spain* case: - tribunal held that a BIT's MFN-clause extended to procedural issues and permitted an investor to rely on more favourable (i.e. shorter) waiting periods which were contained in another BIT of the host State before instituting arbitration. o This reasoning was followed among others in cases like *Siemens v. Argentina*, *Gas Natural v. Argentina*, etc. o Other tribunals like those in *Plama v. Bulgaria* and *Telenor v. Hungary*, however, rejected the *Maffezini*-approach for broader jurisdictional purposes. o In spite of these apparent divergences of different ICSID		1 1 1 1 2	

tribunals, it seemed relatively safe to assume that mere procedural difficulties, such as waiting periods, like in *Maffezini*, could be avoided by relying on dispute settlement clauses in other BITs through the invocation of an MFN clause.		1	
o Subsequently, however, tribunals have even allowed the invocation of an MFN clause in order to import a jurisdiction that would otherwise not have been available and other tribunals have even denied the possibility to avoid mere waiting periods like in *Maffezini* (*Wintershall*).		1	
o Since then negotiating parties have increasingly resorted to specific language in BITs aimed at clarifying whether or not procedural issues should be covered or not.		1	
o Most explicit are formulations like the one found in the draft CETA which expressly prevent importation of standards from third party treaties.		1	
Total Question 1		**20**	