

JUS5851 Spring 2023

Ruritania is a state in urgent need of foreign investments. Currently, the country has no bilateral investment treaties with any state. The Ministry of Justice of Ruritania is considering preparing a model bilateral investment treaty that can strike a good balance between offering attractive protection to foreign investors and securing that state interests are sufficiently protected.

The Ministry has asked you to give short advice by answering the following questions:

- 1) How could the concept of investment be shaped?
- 2) Should the Draft Articles on State Responsibility be explicitly mentioned in a bilateral investment treaty?
- 3) Should fair and equitable treatment be restricted? If so, how?
- 4) Should an umbrella clause be included?
- 5) Should exhaustion of local remedies be introduced?
- 6) What are the risks of including MFN-clause?
- 7) How could environmental concerns be best met in a bilateral investment treaty?
- 8) Evaluate *pro et contra* for having international arbitration, domestic courts, or (future) international court as dispute resolution mechanism between a foreign investor and a state in a bilateral investment treaty.