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I (20 points)

International Monetary Matters

A. On January 15, 1967, Pierre, a Frenchman and Harry, a citizen of the United States of America, each decided to invest in the international monetary market. Each bought (Harry, of course, through a European agent) \$35,000 worth of gold from the United States Government at the official IMF price, and the same amount in stocks of sound South African gold mining companies. Pierre, however, sold \$10,000 Eurodollars short on a three-year contract, and bought (with some Swiss Francs of his) for January 15, 1970 delivery the same U. S. dollar amount in French francs - believing that deGaulle's monetary policies would cause a revaluation of his nation's currency. At the same time, Harry sold short \$10,000 worth of French Francs and the same amount of pounds sterling on three-year contracts, and bought for January 15, 1970 delivery, \$10,000 worth of West German Marks.

Harry lives in New York, and Pierre in Paris. All details of their transactions are known to the authorities. Roughly, how did each fare on his investments and incidents related thereto? (Be as precise as the facts of this question permit.) Why? What treaty makes possible the precision in calculating in such matters?

B. In January of 1969 you were consulted by a Swiss client on the investment advisability of selling his considerable holdings of Eurodollars in exchange for gold at the then-prevailing free market rate. Assuming your clairvoyance at least as far ahead as January 15, 1970, what would your advice have been? Give at least three separate reasons for that advice.

Also, why would you not have suggested that he buy from the United States government at the official IMF rate?

II (20 points)

Pedro, a prosperous businessman and citizen of Mexico, is an unlucky fellow. Coming to the United States in 1969 in order to tour the country and also to contract with Apex Electrical Co. for the wiring of his new taco factory in Acapulco, he was arrested by the Cook County police and jailed for vagrancy for thirty days in a Chicago prison immediately upon landing at O'Hare International Airport. Clearly he was not a vagrant, nor had he ever violated any law of the United States or of any of its political subdivisions. As he emerged from the airport, however, it was rather evident that he needed a clean shirt and shave, and was plainly a Latin-American.

II. (continued)

Protest to the local authorities being unavailing, Pedro lodge complaint with his embassy in Washington.

Upon his release (his detention cost him great personal humiliation, together with the undoubted loss of at least \$10,000 on a pending business deal in Houston), he went to the Apex offices and there contracted for the work in question on terms seemingly favorable to both parties. All work by Apex was to be done in Acapulco, and the contract contained perfectly standard Mexican-law choice-of-law and Calvo clauses. Apex began the work, and then ceased, in clear breach of the contract, in order to take a more profitable job in Mexico City. Upon being sued by Pedro for breach in the appropriate Mexican court, Apex sought to persuade the United States State Department to protest local Mexican jurisdiction, and use its good offices to settle the matter through diplomatic channels in the good old nineteenth-century style. There is no evidence that the Mexican court would have denied Apex justice according to the international standard, although it is not bound by all of the United States requirements of constitutional due process of law as regards, e. g., jury trial and the best evidence rule. Assume that no treaty specifically governs this situation.

What liability or other result is likely to ensue from Pedro's exercise of every possible right of redress in each of these matters, and why? What effect will the Calvo clause have, if any?

III. (20 points)

Heinz, by birth and continuously until the time in question a German citizen, in 1943 duly filed citizenship papers and complied with other requirements for citizenship in the neutral nation of Ruritania. Ruritanian law required that he do so personally at the passport office in Lavatoria, the capital, that he live in the country for six consecutive weeks after granting of citizenship, and that he pay income taxes to Ruritania (on all of his income, wherever and however derived) for the year following the grant. (Ruritania had double-tax treaties with all nations involved, so don't worry about 100-plus % double taxes.) After having done all of this, Heinz married a Ruritanian beauty, Ursulita, following a whirlwind courtship. Then, he sailed in his yacht with his new wife and all of his worldly possessions for New York City. Despite his Ruritanian passport, he was interned there as an enemy (German) alien, and his entire property was seized for the same reason by the United States Alien Property Custodian.

Protests to the State Department being unavailing, Heinz persuaded the Ruritanian embassy to press his claim in the World Court for recognition of his Ruritanian citizenship, and consequent return of his property and release from internment.

III. (continued)

Answer five questions regarding this situation, giving your reasons;

1. Will the World Court (Permanent Court of International Justice-predecessor to the ICJ) take jurisdiction in this matter?
2. If so, will Heinz be declared by it to be a Ruritanian citizen?
3. Even if (1) and (2) are answered "yes", why might Heinz still be denied what he seeks?
4. In what essential ways do the present facts differ from those of Nottebohm?
5. Would the MFN clause of the United States-Ruritanian FCN treaty be likely to assist the court in deciding this matter?

IV (20 points)

The United States-Xenophobia Status-of-Forces Agreement requires that civilian and military personnel employed by the visiting forces be subject to the primary jurisdiction of the host country's appropriate courts regarding offenses against the laws of that country. The courts of Xenophobia and the procedural rules that govern them meet and exceed international standards of justice, while not embodying all United States rules of constitutional due process.

One evening, unfortunately, a United States soldier and a civilian of the same country, both subject to the SOFA referred to above, were playing poker in an hotel room in Eleganza, the Xenophobic capital city. The civilian lost a lot of money in the game, and, thereafter, the soldier was found dead of gunshot wounds in the room. It is believed by the Xenophobic authorities that he shot and killed the soldier immediately after losing, in anger over his losses. The civilian thereafter returned to his home on the United States Army base, where he has remained ever since.

Both homicide and gambling of the sorts mentioned above are offenses against Xenophobic law; only the former is punishable under applicable law of the United States. However, conviction of homicide can be had in Xenophobia upon a preponderance-of-evidence showing, while United States civilian courts of course maintain the standard of "beyond a reasonable doubt."

IV (continued)

Xenophobic authorities strongly request that the civilian be surrendered to them for trial for both offenses, citing the SOFA as the basis for their request. Counsel for the civilian insist that he is entitled by the U. S. constitution to due process of law, of which he will be denied if the foreign tribunal is given jurisdiction. How will you advise the United States commanding officer to act under the circumstances, and why? What outcome is probable?

V. (20 points)

The good ship "Nautilus", privately owned and registered in the United States, has been harassed recently by many events. Its owners, International Steam Navigation Co. ("Int.") ask your advice on how to deal with, and possibly seek redress for, the following incidents. Advise them, suggesting proposed action or not as the case may be, and give international law and - if applicable - other reasons for your advice.

1. First, the Nautilus was rammed and thereby damaged on the high seas by an English freighter that is owned by the British Petroleum Co. and was then engaged in supplying the English naval fleet with fuel oil. Upon seeking to libel the freighter in the English admiralty court, Int. found itself barred on BP's plea of sovereign immunity.

2. Next, it was stopped at sea by a French destroyer, upon having left the French port of Le Havre. The destroyer's captain ordered two of the Nautilus' crew removed for return to France to stand trial there on charges of having taken drugs in contravention of French domestic law on board the Nautilus while it was in the harbor at Le Havre.

3. Then, it was attached, (via summons delivered by a motor launch) while exercising its right of innocent passage through English territorial waters, in connection with a libel proceedings for supplies furnished to it while in London on a prior voyage.

4. Finally, another member of its crew was removed while it was in port at Plymouth, England, under a warrant of arrest on the charge of having murdered a fellow crew-member while the Nautilus was at dockside in that port.