FOREIGN RELATIONS LAW
(Three Hours)

There are fifteen questions in the exam. PLEASE ALLOCATE YOUR TIME APPROPRIATELY!

Each of these questions provides four options as to the possible answer; one of the four possible answers must be selected for each question. FOR EACH QUESTION, SELECT THE BEST (I.E., LEAST INCORRECT) ANSWER; RECORD EACH ANSWER IN THE BLUE BOOK WITH THE NUMBER OF THE QUESTION. The maximum raw value of each choice is 10 points. Selection of the best answer on each question will receive 10 points; second-best, 7 points; third-best, 3 points; worst answer, 1 point. If you wish you, may write a brief explanation of your answer in the blue book, indicating the relevant question for that explanation. If well-crafted, these explanations may allow up to 3 additional points to be added to any response. The maximum raw score to be allocated to each question will be 13 points.

AGAIN, ALLOCATE YOUR TIME APPROPRIATELY!

Good luck!
As the final year of law school ended, seven classmates found different jobs in areas of law that involved foreign relations. After working in political jobs in Washington for several summers, Edward received an offer of employment as a staff attorney on the National Security Council (“NSC”). Mitch, a military history buff and a star college halfback, accepted an officer’s commission as a lawyer in the Navy Judge Advocate General (“JAG”) Corps. Lauren was offered a position in the office of Senator Chilton from her Western home state. Joan, the best student of the group, received a clerkship with Judge Lefton Wright of the U. S. Court of Appeals of the District of Columbia. Peter accepted a position as an associate with Service, Powers, and Cash, a firm that provided legal advice to a number of foreign missions. Nora took a prestigious but poorly-paid New York job with Human Rights Guardians, an internationally recognized nongovernmental organization. Francois, an international LLM student from the Netherlands who had been funded in law school by his country’s foreign ministry, took a position as a junior diplomatic officer in the Embassy of the Netherlands in Washington. Although several of the classmates worked in Washington, and all of them had occasion to come to Washington on business separately, they had not been in touch with each other since law school. That all changed on Friday, June 13, when the President made new statements about intelligence regarding Iranian preparations for a nuclear test.

According to press reports, the NSC had concluded that Iranian preparations for a nuclear detonation were approaching completion. Anonymous NSC sources indicated that Iran had successfully accumulated sufficient quantities of fissionable material to allow the commencement of nuclear testing in the near future. One report asserted that Middle Eastern and South Asian students, some trained in the United States, had facilitated the collection and preparation of those materials. Other reports indicated the materials were moving by ship to Iranian ports. Many commentators demanded that the President take action to prevent the test.

**Question 1** Peter read the press reports on the subway to his office at Service, Powers, and Cash, but he had to focus on two particular work questions. His first question concerned a breach of contract action involving his client, a Hungarian government-owned trading company. His client arranged the export from Hungary of small electronic components, and an American buyer was filing suit because the components were defective. Peter’s client wanted to avoid liability. Peter planned to tell them that:

a) **The Hungarian company receives absolute sovereign immunity from litigation in US courts.**

b) **The Hungarian company’s assets used in commercial activity may be subject to execution.**

c) The Hungarian company receives restricted sovereign immunity.

d) **The Hungarian company is fully subject to legal action because it does business in the US.**

**Question 2** Peter’s second question involved a free trade agreement with Belize. The President had announced that such an agreement had been negotiated, and he was considering having the Secretary of State put the agreement before the Senate for approval. However, a number of trade unions and anti-globalization groups in the US were rumbling about opposing the agreement. A political officer from the Embassy of Belize was coming in to talk about strategies for adoption of the agreement. At this point, Peter thought:

a) Belize should encourage adoption of a treaty in order to prevent subsequent statutory changes.

b) **Belize should encourage adoption of a sole executive agreement to avoid congressional interference.**

c) **Belize should encourage a congressional executive agreement in order to insure congressional approval.**

d) Belize should recognize that trade agreements cannot be altered by congress after they are negotiated.

**Question 3** At the same moment, Edward was arriving at his office at the NSC. On arrival, he faced different concerns. His supervisor informed him that the White House was considering several measures related to Iran, some suggested by members of Congress. One member of the House of Representatives suggested that all Middle Eastern and South Asian students currently studying in the United States be
detained and questioned in order to determine whether national security regulations had been violated. Edward's supervisor wants to know whether such action could be accomplished lawfully. Edwards told his supervisor that:

a) The president has sole plenary power to regulate and supervise resident foreign nationals.

b) Resident aliens have due process rights under the 14th Amendment.

c) No regulation or legislation could impose differential burdens on resident foreign nationals.

d) Congress may adopt legislation imposing regulation on resident foreign nationals.

**Question 4** In addition, the supervisor wanted to know whether any unilateral US action could be taken with regard to the vessels that might be carrying fissionable materials to Iranian ports. Edward called Mitch at Navy JAG to inquire about the action. Mitch informed Edward that the activity could violate treaties and international customary law with regard to foreign flagged vessels on the high seas. After the call, Edward told to supervisor that:

a) International law is US law, and the President must act in consistency with international law.

b) The President has authority to determine the implementation of US international legal obligations.

c) Naval vessels have the right to board and inspect vessels in order to determine their flag state.

d) The President may suspend certain treaty obligations when the supervening national interest requires that action.

**Question 5** As Lauren rode the subway to Capitol Hill, she read Washington Post reports that the White House was planning preemptive military action against Iran. When she arrived at the office, Senator Chilton's secretary informed Lauren that the Senator was demanding her presence. When she reached the office, Senator Chilton informed Lauren that she intended to propose legislation prohibiting the President from undertaking any preemptive military action against Iran. After some polite, Lauren replied:

a) Senator Chilton should pursue legislation under Article I, Sec. 8 of the constitution prohibiting executive use of force without congressional approval.

b) Senator Chilton should seek legislation requiring presidential compliance with the War Powers Resolution.

c) Senator Chilton should recognize that the president has predominant constitutional power over national security.

d) Senator Chilton should introduce legislation prohibiting the use of funds to attack Iran.

**Question 6** When she returned to her desk, Lauren found her phone ringing. She picked it up, she heard her friend Nora tell her that something had to be done. Nora said that several attorneys in her office suggested that legal action be brought to prohibit any preemptive attack by the president. Human Rights Guardians had good connections with several well-known peace groups who could act as plaintiffs in the litigation along with Nora's employer. Lauren responded:

a) The plaintiffs should pursue litigation under Article I, Sec. 8 of the constitution prohibiting executive use of force without congressional approval.

b) The plaintiffs should pursue litigation requiring presidential compliance with the War Powers Resolution.

c) The plaintiffs should recognize that the courts may dismiss the case because it poses a political question.

d) The plaintiffs should recognize that they court will probably dismiss the case because the plaintiffs lack standing.
Question 7  While Nora was talking to Lauren, Nora’s supervisor came into her cubicle. He informed Nora that members of the legislature of a neighboring state were proposing two separate bills. The first bill would require registration of all Middle Eastern and South Asian state resident foreign nationals: each such individual would be required to report to local police officials each week. Nora’s supervisor asked for her reaction to the legislation. Lauren told him that:

a) As governments of general jurisdiction, states could not be limited as to the subject matter of their regulation.
b) The state could not interfere with congressional power over immigration by imposing special regulations on resident aliens within their borders.
c) The state could impose regulations on all within their borders to serve traditional state functions.
d) The state could impose any special regulations on resident aliens that they determined to be necessary for any public purpose.

Question 8  The second bill in the state legislature prohibited any business in the state from employing foreign nationals unless they could prove that they were legal residents of the U.S. Nora’s supervisor also asked for her evaluation of the second bill.

a) The state could not interfere with congressional power over immigration by imposing special regulations on resident aliens within their borders.
b) The state could impose any regulations on resident aliens that it determined to be necessary for any public purpose.
c) The state could impose regulations on all within their borders to serve traditional state functions.
d) As governments of general jurisdiction, states could not be limited as to the subject matter of their regulation.

Later that morning, the New York Times reported that the government of Iran had responded to the press reports of planned US preemptive military action. In Tehran, the Iranian prime minister stated that "a rain of fire would be unleashed on the United States by dozens of martyrs who would sacrifice themselves to wreak havoc upon the Great Satan." Television commentators discuss the risk of a terrorist offensive against the United States if preemptive action against the Iranian nuclear sites occurred. Shortly after the press announced the Iranian response to the news reports of planned preemptive action, the President, declaring a national emergency, issued an executive order directing the detention of all Iranian nationals found in the United States or in territories under US jurisdiction. Furthermore, no federal court could hear any challenge to the President’s order of the detention of Iranian nationals during the national emergency.

Question 9  Judge Wright called Joan into his chambers. He had received notice from the filing clerk that an emergency appeal had just been filed. The initial case, filed by Iranian nationals with the assistance of Human Rights Guardians, had sought a preliminary injunction to stop the arrest and detention of Iranian nationals and a writ of habeas corpus on behalf of currently detained Iranian nationals, both actions initiated in a local district court. The district judge had conducted an expedited hearing during which she denied the preliminary injunction and dismissed the writ of habeas corpus. Judge Wright asked Joan about the President’s detention of Iraqi nationals and whether there could be any valid basis for an action to challenge the President’s detention order. Joan replied:

a) The President has the plenary power to detain aliens for national security reasons.
b) Resident aliens benefit all constitutional rights including habeas corpus.
c) Congress may adopt regulations applicable to immigration and resident aliens.
d) Aliens receive due process protection while they are lawfully resident in the US.

Question 10  That same morning, Peter was working in his office at Service, Powers, and Cash when he received a frantic call from Francois about the President’s detention program. One of the detainees,
David Hussein, was a resident alien with dual Dutch-Iranian national, and Francois had attempted to see that detainee at the nearby federal detention facility where he was reportedly being held. Francois had been told in the office of that facility that he would not be allowed to see Hussein for reasons of "national security." Francois argued that detainees had a right to see officials from their state of nationality. Peter responded:

- Specific bilateral friendship, commerce and navigation treaties provide the only sources of any right of diplomats to visit incarcerated foreign nationals.
- Congress must adopt specific legislation enabling diplomats to visit incarcerated nationals.
- A multilateral treaty extends rights to foreign diplomats to visit their nationals when incarcerated.
- Foreign diplomats have no particular rights to visit incarcerated nationals.

Later that morning, the press published reports of a leak from the National Security Council; after consultation with principals, the President concluded that preemptive attack was the only method for stopping the manufacture of an Iranian nuclear weapon.

Several days after stories of the leak became public, a tremendous explosion occurred at the Iranian reactor site in question. According to European journalists, the explosion destroyed the reactor site, killing 14 and wounding 87 civilian and military personnel. One of the wounded interviewed was Jamil Hussein, a Dutch-Iranian national, the brother of an individual held in detention in the U.S. Hussein adamantly asserted that the facility destroyed was an incomplete power generation plant; his company, Guildenstern Consulting, a Netherlands firm, had been participating at the site since the initiation of construction. As these reports became public, there was also an announcement that the U.S. national intelligence community was revising its threat assessment: Iran had not been pursuing nuclear weapons capability, but solely power generation. Islamic radicals around the globe swore to seek revenge against the "Crusader infidels" who committed such wanton attacks.

In a London bar, several Americans were overhead discussing specific details of the explosion of the reactor in Iran. When notified, the London police investigated and found that the individuals may have been involved in the explosion, and that the individuals worked for the Schwartzwasser Group, an American private security firm that had a number of large contracts with the US Defense and State Departments.

**Question 11**  
Peter was called into a partner’s office to meet with officials from Guildenstern Consulting. In addition, Francois attended the meeting. Five of the firm’s employees had been severely injured in the explosion; Guildenstern wanted to initiate legal action to recover compensation for the injured employees. The partner asked Peter how legal action might be initiated. Peter said:

- Peter suggested that Guildenstern should initiate litigation against Schwartzwasser under the Alien Tort Statute.
- Peter suggested that Guildenstern should initiate litigation under the terrorist state exception of the Foreign Sovereign Immunities Act.
- Peter suggested that Guildenstern should initiate litigation against Schwartzwasser under state tort law.
- Peter suggested that Guildenstern should recognize that compensatory recovery is not feasible.

**Question 12**  
One Guildenstern officer asked whether action could be brought against the United States. He argued that the bombing of the Iranian reactor was a violation of international law that caused death, injury and property damage. After a moment's thought, Peter replied:

- Peter suggested that Guildenstern should initiate litigation against the United States under the Alien Tort Statute.
b) Peter suggested that Guildenstern should initiate litigation under the tort exception of the Foreign Sovereign Immunities Act.
c) Peter suggested that Guildenstern should initiate litigation against the United States under state tort law.
d) Peter suggested that Guildenstern could not recover against the US in this situation.

As the meeting was coming to a close, the partner’s administrative assistant came in and whispered into the partner’s ear. The partner told those attending the meeting that two explosions had just occurred almost simultaneously. In one, a sport utility vehicle had crashed into the front of the Rock Creek Bank building. On leaving the vehicle, the driver appeared to attempt to detonate explosives in the vehicle; an explosion resulted, causing one serious injury and a destructive fire in the bank. In the second explosion, a fuel tanker exploded suspiciously at a nearby Norva Oil refinery after the driver left the vehicle. The explosion and the resulting fire caused several severe injuries and tens of millions of dollars in damages. Both drivers, subsequently apprehended, were Jordanian nationals. Preliminary intelligence reports indicated that both had spent time in Iran, then had returned to Jordan before entering the U.S. illegally.

**Question 13** Norva Oil wanted to file legal action to recover damages against Iran, since the Prime Minister had predicted terrorist attacks in the U.S. The chief operating officer of the firm called Senator Wright to inform her of their intentions. Senator Wright asked Lauren for her opinion of Norva’s likelihood of success. Lauren concluded:

a) Norva Oil has a clear legal claim against Iran.
b) States providing support for terrorist acts may face claims for all harms caused by such terrorist acts.
c) Norva Oil has [no little] chance of success in litigation against Iran.
d) Iran may be protected by foreign sovereign immunity.

**Question 14** Both drivers were incarcerated in a Navy brig (prison) in Norfolk, Virginia. Mitch was assigned as defense counsel for Abdul, the driver of the sport utility vehicle. When Mitch first spoke to his client three weeks after his capture, Abdul said that he had not spoken to anyone else since his capture, that the room was unheated, that he received one small meal each day and no opportunity to leave his cell. Abdul argued that he had certain rights, that he had not committed any crime, and that the explosion was accidental. Mitch responded:

a) Abdul has no legal right to any outside contact.
b) By executive order, the President had suspended Abdul’s rights on national security grounds.
c) As an illegal alien, Abdul has very few rights beyond a right to a hearing.
d) Abdul would have a right to a fair trial.

**Question 15** The other driver, Hassan, the driver of the tanker truck, was interviewed by Mitch’s JAG office colleague. That colleague told Mitch that Hassan had been subject to the same conditions while incarcerated. However, Hassan had said that the conditions violated the Geneva Conventions, and he demanded to see a representative of the Red Cross. Taken aback, Mitch replied:

a) The Geneva Conventions only apply to protect prisoner of war during formally declared wars.
b) Hassan’s treatment may not pose problems under the Geneva Conventions even if they apply.
c) The Geneva Conventions designate the Red Cross as the protecting organization in some cases.