

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B SEMESTER 1 SUPPLEMENTARY EXAMINATION
L3303 – HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW

14 AUGUST 2023

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS

1. This paper contains six questions.
2. You are required to answer any **FOUR (4)** questions.
3. All questions carry equal marks.

QUESTION 1

Pollock wrote that the only essential condition for the existence of law are the existence of a political community and the recognition by its members of settled rules binding upon them in that capacity.

Discuss Pollock's statement in light of the development of international law and the theories postulated by philosophers to explain the nature of this system of law.

[25 MARKS]

QUESTION 2

In his article titled 'Territorial Disputes at the International Court of Justice', Sumner contends that:

In international law and relations, ownership of territory is significant because sovereignty over land defines what constitutes a state. Additionally, as Machiavelli suggested, territorial acquisition is one of the goals of most states. The benefits of having territory, though, are only as great as a state's borders are clear, because a state's boundaries must be well defined for the modern state to function. In many cases, however, these boundaries are subject to competing international territorial claims. (Brian T. Sumner, 'Territorial Disputes at the International Court of Justice' (2004) 53(6) *Duke Law Journal* 1779)

Discuss the above statement with reference to the various modes of acquisition of territory in international law and principles of law pertinent to the concept of territory in international law.

[25 MARKS]

QUESTION 3

The Kingdom of Ramala is an independent state in Southern Africa that is landlocked by its neighbours. Ramala is rich in mineral resources and while it is a small country, most of its neighbours depend on it for survival. However, Ramala Intelligence Services have learned that there are plans to stage an invasion by foreign leaders to take control of the Kingdom of Ramala's resources. The head of state of Ramala decides that the best defence is a good offense. Accordingly, it sends spies to assassinate all foreign heads of state that are "actual or suspected enemies of Ramala."

Several other countries that are allies of the Kingdom of Ramala begin to take similar measures, each attempting to kill the head of an enemy state. Some succeed. Boroa is a state sharing a border with Ramala. The Prime Minister of Boroa was recently assassinated, and Boroa intelligence reports that Ramala spies are responsible for the murder. Boroa therefore makes its own, unsuccessful, attempt on the life of the Ramala leader.

Boroa then decides to lodge a complaint with the Security Council of the United Nations, pursuant to Article 34 and 35 of the U.N. Charter, claiming that Ramala is "violating international law" by its policy of assassination.

Ramala responds by arguing before the Security Council that:

"The 'custom' among states of not assassinating heads of state has changed due to recent events"

You are a legal adviser working for the UN Security Council and you are asked to write a legal opinion advising the Security Council on the arguments presented before it by Ramala.

[25 MARKS]

QUESTION 4

Define the following terms:

- | | |
|-------------------------------|----------------|
| a) Cession | 5 Marks |
| b) <i>Opinio juris</i> | 5 Marks |
| c) <i>Pacta sunt servanda</i> | 5 Marks |
| d) Fitzmaurice compromise | 5 Marks |
| e) <i>Uti possidetis</i> | 5 Marks |

[25 MARKS]

QUESTION 5

The existence of international law as a viable body of law consisting of rules and norms governing relations between States, among other things, has given rise to a constant controversy about the juridical nature of international law among the jurists. This led to the development of numerous theories to justify that international law is a 'true law'.

Discuss the relevant theories justifying the legitimacy of international law as a viable legal system in contrast to theories denying the legitimacy of international law.

[25 MARKS]

QUESTION 6

States are considered the original and principal legal subjects of public international law.

- a. Discuss 2 examples illustrating the fact that states possess the most full-blown form of legal personality under international law. **10 Marks**

- b. Discuss the advantages and disadvantages of the fact that states are still the primary subjects in the field of international law-creation. **15 Marks**

[25 MARKS]