



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PUBLIC LAW

EXAMINATION PAPER

COURSE CODE : LLB 204
COURSE TITLE : PUBLIC INTERNATIONAL LAW
DURATION : 3 Hours
DATE : 27 May 2019

INSTRUCTIONS TO CANDIDATES:

1. Answer **FOUR** questions only.
2. Choose at least **ONE** question from each section.
3. Each question carries 25 Marks.
4. Start each question on a new page of your answer sheet.
5. Students may bring into the exam un-annotated and clean texts of the:
2013 Constitution of Zimbabwe,
Charter of the United Nations
Statute of the International Court of Justice.
Copies with notes inside shall not be allowed in the examination room and will be confiscated if found. No student is allowed to share his/her copy with another.

SECTION A

Question 1

State Zidania is a country in Southern Africa. The President of Zidania is His Excellency Comrade Mike Mayize. The president is the Head of State and Government and Commander-in-Chief of the Defence Forces and has been in power for four decades. He is married to Kelly, his second wife, who is two decades younger. The family has eight children. On 01 March 2019 Kelly received intelligence to the effect that her three extravagant boys who are based in South Africa were misbehaving by drinking excessively and engaging in substance abuse. Enraged by the news Kelly chartered a private jet to South Africa that very evening, she heard the news. She promised to wait for her husband in South Africa as he was due to attend a meeting of SADC Heads of State and Government on 31 March 2019. She was going to monitor the boys and hopefully instill discipline in them. When Kelly got to the luxurious hotel where her boys stayed she found them in the company of a 20-year-old young lady, Careen, who was introduced as the boys' "friend". In a fit of rage, Kelly attacked the young lady, accusing her of influencing her sons to engage in drug abuse and alcoholism. Using an electric cord she severely assaulted Careen and caused some serious injuries. The girl made a police complaint. The following day the media was awash with the story of the attack upon Careen by Kelly. Kelly went into hiding when police indicated that they wanted to interview her in connection with the case of attempted murder reported by Careen. Her whereabouts remained unknown until 31 March 2019 when her husband went to South Africa. He negotiated with the South African Government which granted Kelly diplomatic immunity from prosecution for the offence alleged. She joined her husband at the summit and flew out of South Africa after the end of the summit. She clandestinely left that country by a private aircraft hired for her by her husband.

You have been approached by the family of Careen to challenge the decision by the President to grant immunity to Kelly, and to advise on the following:

- (a) What is the nature of the immunity which was granted to Kelly? [10 marks].
- (b) On what grounds and with what prospects of success can the decision to grant immunity to Kelly be challenged in a court of law? [15 marks]

Question 2 (a)

The State of Moronia is a developing State divided into 10 Provinces. 9 of these Provinces each have an average population of 7 million. One Province, Felonia, is different from the rest. It is very sparsely populated due to its hostile climate and poor soils which make it unsuitable for farming or any other form of meaningful economic activity. Neglected by the Government, it is the least developed Province. Although it is by far the largest Province in terms of area, it has a population of only 500 000. It was first populated by convicts who

were relocated there to serve prison time working on early steel mills situated along the Red River. The steel mills were closed over a century ago but some of the convicts opted to remain behind making a living in diverse economic activities such as fishing and gold panning. The current inhabitants are mostly the descendants of these convicts. Apart from this background, they have nothing else in common and in fact belong to various racial and religious groups.

Twelve years ago, it was discovered that the province of Felonia actually lies on top of the largest oil reserve ever discovered. Soon after this discovery, Zululand a developed State situated within the same region as Moronia organized and sponsored an “Inaugural Conference of the Liberation Movement of Felonia”. Various family heads of the inhabitants of Felonia were invited and made to listen to “experts” and “historians” who managed to convince them that Felons have a right to self determination and to secede from Moronia. After this, the Felon Liberation Movement (FLM) was formed and immediately began to agitate for cessation from Moronia. The Government of Zululand provides moral, material and technical support to the Movement. Soon the FLM makes a unilateral declaration of independence from Moronia and announces the birth of the new state of Felonia and sets up a Government whose Head Quarters is to the South of Felonia. Over the years, there have been constant military skirmishes in the north between Felonia and Moronia but in all this time, the Moronia army has never managed to advance meaningfully beyond the Red River which dissects the upper one quarter of Felonia’s territory while the Felon Liberation Army, on the other hand, has never been able to repel the Moronia army beyond the Red River.

In the meantime, Felonia has embarked on a massive immigration drive and has accepted over 2 million immigrants into its territory most of who are from Zululand and her allies. While the so-called Head of State is a Felonian, the Head of Government is an immigrant from Zululand. Most of the top positions in the public service and the judiciary are held by immigrants from Zululand. Concessions to exploit the vast oil reserves have been granted to citizens of Zululand or her allies.

Of course the State of Moronia refuses to accept the state of Felonia as a state independent from itself and takes every opportunity to publicly denounce the “puppet government of Zululand”. The Government of Felonia on the other hand publicly celebrates its achievement of the right to self-determination and denounces Moronia for its “shameless imperialist ambitions” while praising “our friends and mentors the people of Zululand”. Felonia has submitted an application for membership to the UN but the UN has not yet made a decision. Despite frantic diplomatic efforts by the Felonian Minister of Foreign Affairs to have other States accept Felonia as a fellow state, only the state of Zululand and about five of her allies have accepted diplomatic missions from Felonia and entered into agreements with her. An application to participate in the 2010 soccer world cup was denied by FIFA. A bid to send a contestant to the Miss world Beauty Pageant similarly failed.

With reference to the international law requirements for statehood, discuss whether Felonians have properly exercised their right to self-determination and whether Felonia qualifies as a state enjoying international legal personality.

[15 marks]

Question 2 (b)

Mr Herbert Roberts, a national of Zimbabwe is a fugitive in South Africa. He is wanted by the FBI for a number of international terror attacks on state buildings and the American Embassy in Zimbabwe. If extradited to the United States and convicted of the charges, he could face the death penalty. A sentence, which has been abolished in South Africa.

Fully advise the Minister of Justice on the factors that may obstruct extradition. Your advice must include reference to relevant case law

[10marks]

SECTION B

Question 3

Article 2(4) of the United Nations Charter of 195 expressly states that:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

In addition, Article 51 states that:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

With reference to the above mentioned legislation, case law as well as applicable advisory opinions, give an exposition on the regulation of the use of force by States in Public International Law.

[25 marks]

Question 4

Is International Law, law in the proper sense of the term? Give reasons for your answer. In your answer, elucidate on the Zimbabwean legal system approach towards International law.

[25 marks]

Question 5

Mr Allan, is a former President of the People’s Republic of Chomolia. He was removed from office as President of Chomolia by the army and judiciary of Chomolia. Subsequently, elections were held and President Lupania was elected. A large Chomolia community lives in

UK supporting Mr Allan. This community disagrees with the removal of Mr. Allan from office and with the outcome of the recent election. As a response, they have been demonstrating peacefully in front of the Chomolian Embassy in the UK for 5 days. The police have been monitoring the demonstrations. However, at one point the crowd becomes more violent and they manage to enter the premises and cause substantial damage. The day after the UK authorities decide to send extra forces to the Embassy to stop the violence and arrest the protesters.

Can UK be held accountable under international law for the damages caused to the Chomolia Embassy?
[25 marks]

Question 6

Give a detailed explanation of the following terms in the context of jurisdiction in international law:

- (i) Territoriality principle
- (ii) Nationality principle
- (iii) Passive personality principle
- (iv) Protection of the state
- (v) Universal jurisdiction

[25marks]

*****END OF QUESTION PAPER*****