

**The examination constitutes 100 % of the final mark for this course.**

**Students are required to answer BOTH Part A AND Part B.**

## **PART A**

**For Part A, students are required to answer, in a separate answer book, ALL the questions posed.**

In 1987 the north African Islamic Republic of Azania ('A') receives a plea for assistance from a rebel movement within the territory of its southern neighbour, Batsonia ('B'). The rebel movement represents the distinct cultural interests of the Calific people – whereas the majority of the Batsonian population speak Batsonik, the Calific people speak Califa and are recorded to have entered Batsonia some two hundred years after the Batsonian majority, in about 1800 AD – a mere fifty years prior to British colonisation of the entire area. The Calific people are, too, concentrated in the province of Califia in north western Batsonia. Azania decides to respond to the plea by way of a military invasion of Batsonia. The successful invasion results, initially, in the annexation of the Calific territory to Azania. Following vociferous and widespread international protest, however, in 1988 Azanian troops withdraw and the independent state of Califia ('C') is created.

Batsonia takes the matter to the ICJ in which it argues that the initial annexation of Calific territory by Azania was illegal; and, that the state of Califia was established contrary to international law. The claim of Batsonia is opposed by both Azania and Califia.

1. What are the sources of international law on which the parties will have to rely in fashioning their arguments? Give a concrete example of each source of law mentioned. **[5]**
2. Was the annexation of Calific territory by Azania valid in terms of contemporary international law? If not, why not? **[5]**
3. Under what circumstances, if any, might Azania have legally acquired Calific territory? What impact, if any, does the doctrine of *uti possidetis* have on your answer? **[10]**

Assume that the ICJ decides that the independent state of Califia should be accorded international legal personality. Despite the presence, now, of a sizeable Batsonian speaking minority in Califia (not to mention a continued Calific minority in Batsonia), Califia issues a decree to the effect that all persons permanently resident within its recognised territorial boundaries 'shall, henceforth, be held to hold Califian nationality'. A Batsonian speaking Califian national holding high rank in the newly created Califian Defence Force, General Denda ('D'), initiates a plot in Califia for the overthrow of the democratically elected Califian government. Fearful of being arrested, Denda crosses the border into Batsonia where he now orchestrates his campaign. With the knowledge of the Batsonia government, Denda arranges for the incarceration of the Califian minority in Batsonia, which minority he then proceeds to subject to grave incidences of torture. Califian intelligence sources hear of the intended plot and of the torture of Califian speaking Batsonian nationals and have Denda abducted from Batsonia to stand trial in Califia.

4. Is it within the jurisdictional competence of Califia to impose its nationality on all persons within its territory? Justify your answer. **[5]**
5. Does Califia have jurisdiction to try Denda for treason? Justify your answer by way of reference to the principles for jurisdiction relevant in this case. **[10]**

All states within the area soon establish diplomatic relations with Califia, while, Califia, in turn, establishes diplomatic relations with its neighbours. Califia's abundant water resources result in Califia being regarded as an important exporter of hydroelectric power. Esporila ('E'), Califia's eastern neighbour, is particularly interested in the available power and the two countries soon sign a number of important bilateral treaties. Apart from the establishment of a high level diplomatic mission in Esporila's capital, a number of Califian companies also establish offices in Esporila. One of these companies, the Califian Power Company, a registered parastatal, contracts with the Esporilan government for the supply of hydroelectric power needed for the significant number of development projects being undertaken in the north west of Esporila. Unfortunately, despite the arrest of Denda, following continued internal unrest between the Batsonian and Calific speaking peoples within Califia, the Califian Power Company is unable to meet its contractual obligations to Esporila. Esporila then sues

the Califian Power Company before a domestic Esporilan tribunal. The Califian Power Company raises the plea of sovereign immunity (given their common colonial heritage, legal developments in both Califia and Esporila have closely followed that of the United Kingdom).

6. Under what circumstances, if any, might the Califian Power Company succeed in its plea of sovereign immunity? Would your answer be any different if the year were 1966?

[10]

In 1998, after ten years as a sovereign independent state, Califia and Batsonia decide to negotiate some resolution of the conflict bedeviling the two countries. These negotiations determine, ultimately, that, despite the language differences that divide the peoples populating the two countries, there are many more factors that bind them, such as a common colonial history, a shared geography, and a common religious tradition. The parties agree that Califia will, once again, merge with Batsonia.

7. What are the implications of this merger on the treaties negotiated by Califia during its ten years of independence?

[5]

**Total for PART A**

**[50]**

## **PART B**

**For Part B, students are required to answer, in a separate answer book, EITHER question eight OR question nine.**

**8.**

- (a) Please write a comprehensive essay on the status of the TBVC ‘states’ (Bantustans) in the international legal order. During the course of your essay you should consider (and engage with) issues such as (i) the significance of statehood in international law; (ii) the criteria for determining statehood; (iii) the significance of ‘recognition’ in the process of state-creation and the various theories of recognition that have emerged; and (iv) the significance collective

non-recognition. Please ensure that you focus your discussion of these issues on the TBVC states.

[40]

- (b) When it comes to the incorporation of treaties into municipal law, South Africa follows the dualist approach. Please explain, briefly, what this means and how treaties are incorporated into the South African domestic legal order. [10]

**Total for Question 8 [50]**

9.

- (a) Michelle Jenkins is a lily-white widowed woman who was born in South Africa in 1940. She lived in Johannesburg and went to school in Johannesburg as well. At the age of 27, she married (in community of property) a man who was born in Zimbabwe but left there along with his parents shortly after independence. They had two lovely children. The kids were also schooled in Johannesburg. Five years ago, her husband inherited a massive tobacco farm called “Little England” which is about 80km North-East of Harare. The couple took over the farming operations, and have been living at Little England since November 1995. Last year her husband died of colon cancer and the farm is now her concern.

About three months ago her farm was invaded by a group of about 50 teenaged ‘war veterans’ who claim to be acting as agents of Mugabe’s ruling party. The government of Zimbabwe deny that the war veterans are acting on its instructions yet they also do nothing to ensure that they vacate the farm. Michelle Jenkins was seriously violated by the war veterans – she was first subjected to a brutal gang-rape before being forcibly evicted, without a court order, from the farm. She has complained to Zimbabwe police, but nothing has been done to bring her assailants to justice.

Michelle Jenkins decided, last week, to leave Zimbabwe and return to South Africa. She apparently approached the Department of Foreign Affairs for their

assistance since she seems to be ‘getting nowhere’ in her quest for justice. They have in turn approached you, as an international lawyer, to provide them with a legal opinion on how they (the South African government) ought to proceed in order to obtain compensation for one of their nationals injured in a foreign state. Please advise the Department of Foreign Affairs as to whether South Africa can act in this situation, and if so, then what they would need to establish in order to be successful with their claim. [40]

- (b) It is established law that only a recognized state or government enjoys *locus standi* in a South African municipal court. It can sometimes be difficult for a judge in a municipal court to know whether an entity is recognized or not. The judge would, obviously, require proof of recognition. Please write a short note on how recognition is proved in municipal courts and what the procedure ought to be in acquiring this proof. [10]

**Total for Question 9 [50]**

**Total for PART B [50]**

**TOTAL for PART A and PART B [100]**