

The examination constitutes 100 % of the final mark for this course. Students are required to answer FOUR questions – ONE from Section A, ONE from Section B, ONE from Section C, and an additional question from either Sections A, B or C. Answer each Section in a different answer book. On the cover of the answer book, please mark clearly mark whether Section A, B or C. Please also ensure that you have written the name of your lecturer on the front cover of each of the answer books.

Section A

- 1 ‘Almost all nations observe almost all principles of international law and almost all their obligations almost all the time,’ holds Louis Henkin. Using Henkin’s comments as your vantage point, discuss whether, in your estimation, you think International Law really is ‘Law’. [10]
- 2 Discuss the impact of the 1996 Constitution on the relevance and applicability of public international law in South Africa. Has the impact been dramatic or has nothing much changed? [10]

Section B

- 3 Section 235 of the South African Constitution provides for the following:

‘The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.’

The Zulus in KwaZulu-Natal have made an application to the Constitutional Court claiming the right to secede from South Africa. They believe they are entitled to self-

determination as they are a self-defined people that share a common language and culture. Discuss with reference to relevant authority within public international law.

- 4 You are a member of the National Prosecuting Authority. A Sudanese national and official in their government is arrested in Durban and your boss wants to bring charges against him in the High Court there. He is accused of committing various serious crimes around the world. He is accused of orchestrating the genocide of residents of the Darfur region in Sudan. He is also accused of smuggling drugs into Zimbabwe. According to some of the evidence in your possession, certain South Africans were hospitalized as a result of taking some of these drugs. Finally, he is accused of purchasing arms in Chad and bringing them into South Africa, with a view of returning to Sudan with them later. The purchasing of arms in these circumstances is contrary to South African law.

Prepare a brief memo for your boss advising him whether it would be possible for a South African court to exercise jurisdiction over the Sudanese national. [10]

Section C

- 5 Monty was born in North Korea and grew up in Iceland. He has never been to South Africa but hears that there are many investment opportunities there. He is extremely wealthy and decides to relocate to South Africa. He has only ever held Korean nationality and, since North Korea is relatively unpopular, has found it difficult to do business in the west because of his passport. He approaches the South African government and offers major investment in the health sector if the government will fast track his application for a passport. After having spent ten months in South Africa, the authorities have arranged for the relevant Act and regulations to be amended allowing for the nationalization process to be fast-tracked in certain cases. As a result, Monty is issued a South African passport.

While in Uruguay, Monty is tortured by a police-officer, in uniform, who accuses him of attempting to commit a crime. Monty institutes an action in the Uruguayan courts for damages. He loses his trial and is refused leave to appeal. Convinced that the system is against him, Monty leaves Uruguay and returns to South Africa. Once there, he attempts to convince the South African government to institute an action against Uruguay in the International Court of Justice. What prospects of success would South Africa have? **[10]**

- 6** The National Security Adviser to the Bush Administration, Condoleezza Rice, has said ‘History is littered with cases of inaction that led to very grave consequences. ... We have to ask how many dictators we should have stopped.’

Under what circumstances, if any, recognised in contemporary international law, may Israel launch an attack against Lebanon in an attempt to destroy Hezbollah? **[10]**

[TOTAL MARKS: 40]