

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2013

TITLE OF PAPER : PUBLIC INTERNATIONAL LAW

COURSE CODE : L 406

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

1. THE PAPER CONSIDERS OF SIX (6) QUESTIONS.
2. ANSWER ANY FOUR QUESTIONS.

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

H.L.A. Hart suggests that international law constitutes important social rules that are in respects similar to municipal law, but social rules they remain.

Do you agree? Explain, referring to learned literature.

[25 MARKS]

QUESTION 2

Maravia is an island of rugged mountainous terrain in the Pacific Ocean. It is some 1000 kilometres long, and 100 miles wide.

The British “discovered” the island in 1588 when they landed on the western part of the same, and named the spot Port Safe. They easily defeated the natives and hoisted the British flag there. Meanwhile, the natives ran east-wards and carefully concealed their presence while praying their gods for a solution.

The British left in 1708, but kept visiting the place every once in a while until 1800, when there was an outbreak of the epidemic of bubonic plague. They then kept away for a long time.

During this time, however, the French landed on the eastern side of the island. The natives welcomed the French as they looked friendly and gave them (natives) gifts of spices, silver and porcelain, and also provided medical help in treatment of the plague. In return, the natives told them, “You are free to make use of the land of Maravia in whatever way, and for as long as you want.” The French then hoisted their flag there and started putting up buildings and installations.

When the British next visited Port Safe in 1880, they found the French had pulled down their flag, and literally taken over the whole island. There were skirmishes, and the French were driven back to the eastern end of the island, from where they have on occasion, kept fighting the British.

Since then, though the British have remained at Port Safe and the French have kept in the east, the quarrel between the two has remained. But, interestingly, the natives’ hostility towards the British has waned considerably.

Now both the French and British want a permanent solution. They have chosen you as arbitrator. The French insist the island was ceded to them by the natives, and that the British claim based on conquest is contrary to preemptory norms of international law today.

Write out a legal opinion supported by authority.

[25 MARKS]

QUESTION 3

Explain and critically consider the law relating to the determination of:

- (a) the baseline for bays. (10 marks)
 - (b) the continental shelf. (15 marks)
- [25 MARKS]

QUESTION 4

Mugaland is a former British colony in Central Africa. It comprises 30 ethnic groups. In the north are Nilotic peoples including the Malang and Machong. In the South are various Bantu peoples including the Barunda, Chage and Matutso.

The Nilotic and Bantu peoples are totally different from each other in language and culture. Indeed, the said Malang, Nilotics from the north, are closer to the Malang people of a neighbouring country.

The north is very hot and desert-like. The South is cool and has tropical, luxuriant vegetation. The colonial authorities had thus established their administration in the south, where the capital, the major hospitals, schools and the national university have also developed. The result is that the people of the South are generally better educated and more prosperous.

Thus, when Independence came, the leading politicians were understandably from the south. Interestingly, the constituencies in the north have been delimited in such a way that large areas have few representatives in a national parliament dominated by people from the south.

To the incessant calls for development of the north, government has usually said that it lacks the necessary resources, and that in the meantime the northerers should freely partake of developments in the south.

And while it is true that government's resources are relatively limited, the people of the north have now decided that they should secede in order to have justice and development in their own way.

- (a) Referring closely to authority, advise the leaders of the north as to whether their bid for secession is tenable in international law. (20 marks)
 - (b) Briefly suggest an alternative peaceful solution. (5 marks)
- [25 MARKS]

QUESTION 5

Outline and critically assess the role of the African Commission on Human and Peoples' Rights in the enforcement of human rights in Africa.

[25 MARKS]

QUESTION 6

Hardie Block was a British national. He was born, studied and worked, in London.

At the age of 40, he became a national of Nagaland, an African country. He bought 40 percent of the shares in Haram Ltd, a company registered in Nagaland. Andre Fouche, a French national and friend of Block, held the remaining 60 percent of the company's shares.

Haram Ltd contracted with Nagaland Corporation (hereinafter Naga Corp) an agricultural parastatal, whereby the former invested £500,000 in "the Mango Project". In turn, Naga Corp was to provide land and all required infrastructure and machinery. The profits were to be shared equally. It was also stated in the agreement that government would never nationalise the project or its assets. The agreement further indicated that Naga Corp was acting for and on behalf of the Nagaland government.

The project flourished for ten years, then suddenly government by statute expropriated it, and indicated that Haram Ltd. would be compensated as and when funds became available.

Terribly angered by this set-up, Block and Fouche exchanged "sharp words" with a Nagaland government official. They were quickly arrested, charged with assault, and kept in a small police cell with 25 Nagaland nationals. In that cell, food was scarce and coarse, and the sanitary and toilet arrangements were primitive.

After two weeks, they were suddenly released and told that they had been pardoned.

Advise Block and Fouche as to their rights and remedies in international law.

[25 MARKS]