

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCES**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER (MAIN)**  
**YEAR: 2016/2017**

**TITLE OF PAPER : PUBLIC INTERNATIONAL LAW**

**COURSE CODE : L406**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS:**

- (i) ANSWER ANY FOUR (4) QUESTIONS.**
- (ii) EACH QUESTION CARRIES 25 MARKS.**
- (iii) IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
- (iv) REFER TO LEGAL AUTHORITIES TO SUBSTANTIATE YOUR ANSWERS.**

**DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR.**

## **QUESTION ONE**

The Kingdom of Harare got its independence in 1975. Three principal ethnic groups, the Rasp Arians, the Arizonians and the Katangese, populate the Kingdom. The ethnic groups have distinct languages, religions and cultures, although they are physically indistinguishable. About 50% of the population comprises Rasp Arians, 20% Arizonians, 10% Katangese and 20% 'mixed' or 'other'. Most Katangese have historically lived in the Upland Plateau, a geographically self-contained district making up approximately 30% of the total area of the country. Katangese generally think of the Upland Plateau as the centre of their ethnic culture and their most important religious and historic sites are located there.

Over the years since independence, the Katangese in the Upland Plateau have been denied the right to vote for their representatives in the government of the Kingdom. The Katangese have on several occasions been arrested, detained and subjected to harsh prison conditions for planning peaceful demonstrations. In the last three years, the central government has not included the Upland Plateau in the national budget. The Katangese's attempts to seek redress in the Courts, which are mostly composed of judges who are Rasp Arians, have failed. The Katangese now seek to secede from the Kingdom of Amazon and create a new state. They have been advised that their purported secession would be in violation of the principle of territorial integrity.

**Advise the Katangese on the validity or invalidity of their secessionist claim.**

**[25 Marks]**

## **QUESTION TWO**

(a) Mr and Miss Bachelor of Laws Year 4 of 2016 recently got married in terms of civil rites at the South African High Commission in Mbabane. The marriage was solemnised by the South African High Commissioner to the Kingdom of Swaziland who is not a recognised marriage officer under the laws of Swaziland. Although the South African High Commissioner is not a recognised marriage officer under the laws of Swaziland, the newlyweds hold the view that their marriage is valid on the ground that it was solemnised in the premises of the diplomatic mission which are an extension of the territory of South Africa.

**Advise Mr and Miss Bachelor of Laws on the legal validity of their proposition.**

**[10 Marks]**

(b) Critically discuss conquest as a mode of acquisition of territory.

**[15 Marks]**

**[25 Marks]**

### **QUESTION THREE**

(a) What is the relationship between international agreements that the government of Swaziland has ratified and the municipal law of Swaziland?

**Refer to legal authorities to substantiate your answer. [10 Marks]**

(b) In 2000, the state of Blake invaded and launched an attack against South Tome, a state with a population of about 500 000. In justification of its use of force, Blake argued that South Tome had illegally annexed some parts of its territory in 1969. Blake used highly sophisticated arsenal which left three quarters of South Tome's infrastructure damaged and 300 000 people displaced. Blake further argued that it was exercising its right to self-defence.

**Critically discuss the basis for and validity of Blake's argument that its actions were in self-defence and therefore permissible under public international law.**

**[15 Marks]**

**[25 Marks]**

### **QUESTION FOUR**

Roro and Associates, a building contractor from the Kingdom of Swaziland, concluded a contract with the South African government to construct carports at the South African High Commission in Mbabane. When the building contractor claimed payment in terms of the contract, the South African government refused to pay. When Roro and Associates sued the South African government for payment, the government claimed immunity from the jurisdiction of the courts of Swaziland because the contract is an act performed by the South African government.

(a) Using these facts, explain what the outcome of the case would be if:

(i) the absolute theory is applied; and **[6 Marks]**

(ii) the restrictive theory is applied. **[13 Marks]**

(b) Write explanatory notes on advisory opinions of the International Court of Justice.

**[6 Marks]**

**[25 Marks]**

**QUESTION FIVE**

X is wanted in South Africa to face charges of terrorism. Feeling that his arrest is imminent, he flees to Swaziland where he settles. The Swazi authorities are aware of his presence in the country and allow him to remain on a temporary residence permit. There is a valid extradition treaty between South Africa and Swaziland.

The South African police officer in charge of the case approaches his Swazi counterpart and asks if he can enter the country to capture X. The Swazi official refuses saying that the correct procedure under the extradition treaty should be followed. The South African officer conveys this news to his fellow officers and tells them that they may not seize X in Swaziland.

Despite these instructions, Y and Z, two South African constables, enter Swaziland one night in their police vehicle and in uniform, grab X and repatriate him to South Africa where he is arrested and charged.

**On the basis of these facts, discuss fully whether South Africa has incurred liability towards Swaziland and if so what form this liability takes and on what basis.**

**[25 Marks]**

=====END OF EXAMINATION PAPER=====