



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2017/2018

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAW

LIL 300: PUBLIC INTERNATIONAL LAW

DATE: Friday, 2nd February 2018

TIME: 12.00 p.m. - 2.00 p.m

INSTRUCTIONS

1. Answer Question **ONE** and any other TWO questions. Penalties accrue for failure to answer question **ONE**.
2. Support your answers with relevant illustrations from case law, statutory provisions and any other references.
3. Your writing must be **NEAT** and **LEGIBLE**.
4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
5. Do not scribble or draft answers on the inner or outer cover pages of your answer booklet.
6. Do not write anything except your **REGISTRATION NUMBER** on this question paper.
7. **ALL** Kenyatta University Examinations Rules apply as if they were contained herein.

QUESTION 1 (COMPULSORY, 30 MARKS)

Richie, a Tanzanian national, lives in Nakuru and owns a supermarket called "Nakurumalt". Following expansion of bigger supermarket chains, Richie's business starts deteriorating and it is becoming for him increasingly difficult to pay the suppliers on time. In June 2016, Aisha, a ketchup dealer from Naivasha, successfully sues Richie for payment of Shs. 315,000 for delivery of 1000 bottles of ketchup before the Magistrate Court in Nakuru. As Richie, still struggling to deal with claims of numerous suppliers and banking on patience and generosity of Aisha, with whom he used to have a love affair seven years before, still does not abide by the court ruling by October 2017, Aisha applies to the Magistrate Court in Nakuru for execution of the decree passed by the Court following a lawsuit against Richie by arrest of Richie, according to Section 40 of the Civil Procedure Act. Richie claims that such an arrest order would violate his human rights, most notably the right enshrined in Article 11 of the International Covenant of Civil and Political Rights.

A.

You are a KUSOL student on judicial attachment at the Magistrate Court in Nakuru. Write a legal opinion for the Magistrate Court judge, Hon. Lady Justice Gaga, advising her on the ruling to be made and focusing on how international law is applicable in Kenya. Assume that Richie could have satisfied Aisha's claims at some point, but decided to pay other contractors, hoping that Aisha would choose not to execute the decree against her former lover. (20 marks)

B.

On the basis of the case scenario, analyse the Kenyan constitutional regulation against the backdrop of monistic and dualistic approach to the Public International Law.

(10 marks)

Constitution of Kenya

2. (1) *This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.*

(...)

(5) *The general rules of international law shall form part of the law of Kenya.*

(6) *Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.*

International Covenant of Civil and Political Rights

Article 11

"No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation."

Section 40

A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the court (...)

Section 42

Every person detained in prison in execution of a decree shall be so detained—

(a) where the decree is for the payment of a sum of money exceeding one hundred shillings, for a period not exceeding six months; and (b) in any other case, for a period not exceeding six weeks:

Civil procedure rules

Order 22 rule 34 (2)

Before making an order for the committal of the judgment-debtor to prison, the court, for reasons to be recorded in writing, shall be satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—

(i) is likely to abscond or leave the local limits of the jurisdiction of the court;

or (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property;

Or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which is exempt from attachment in execution of the decree (...).

QUESTION 2 (20 MARKS)

Read the following extract from the United States National Security Strategy of 2002:

“We will disrupt and destroy terrorist organizations by: defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary [...] by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country”

Referring to the relevant authorities, discuss how the actions contemplated in the above paragraph are compatible with the UN-Charter. What procedures could the “international community” use to authorise those actions?

QUESTION 3 (20 MARKS)

Explain how the idea of state sovereignty has been forged throughout different eras of Public International Law development. Give your opinion on the implications of the concept of sovereignty for Africa at the point of national liberation.

QUESTION 4 (20 MARKS)

Ronaldo Lewandowski is the ambassador of the Republic of Bambuco in the North European Kingdom of Demonica. He observes that the leaking roof of the Embassy premises in Demonica's capital Freezhalm affects the work comfort of Bambuco diplomats in the cold, snowy and windy Kingdom. He hires Antelope Constructions Ltd. - a local construction company from Freezhalm - to perform a comprehensive renovation of the roof. As the Bambuco diplomats keep freezing even after the completion of renovations, Lewandowski refuses to pay the bill to Antelope Constructions Ltd. He also chooses to ignore a civil lawsuit for the payment instituted by the antelope Constructions Ltd. Against the Republic of Bambuco before the High Court of Freezhalm, claiming that the latter is barred from exercising jurisdiction by the public International Law. Even after the High Court allows the claim and orders that the bill be paid, Lewandowski is still relaxed, since, according to him, no state organ of Demonica can execute Freezhalm High Court judgments against another sovereign state. Finally, he gets really angry after Demonica authorities, following an execution order issued by the High Court of Freezhalm attach 23 boxes of cigars, 78 bottles of wine, 17 bottles of whiskey, 39 golf sticks and one hand signed Justin Bieber CD album belonging to the Embassy and deposited in a local golf club, in which Bambuco diplomats like to relax after hard work of a diplomat. Lewandowski asks you as a knowledgeable KUSOL student to prepare a legal opinion concerning the compatibility of the High Court of Freezhalm judgment on the claim filed by Antelope Constructions Ltd. and the attachment of objects deposited in the golf club with the Public International Law.

Draft the legal opinion.

QUESTION 5

Write short notes on any TWO of the following

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| 1. 3-element-doctrine | (10 marks) |
| 2. Attribution criteria in the law of State Responsibility | (10 marks) |
| 3. Universal jurisdiction | (10 marks) |