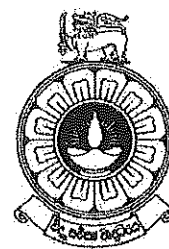


**THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LLB DEGREE PROGRAMME- LEVEL 5  
FINAL EXAMINATION -2021/2022  
LLU5712/LWU3315 – PUBLIC INTERNATIONAL LAW  
DURATION- 3 HOURS**



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**DATE: 20 January 2023**

**TIME: 9.30 a.m – 12.30 p.m**

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**Answer any five (05) questions only.**

**Candidates will be penalized for illegible handwriting.**

1. Article 38(1) of the Statute of the International Court of Justice is widely recognized as the most authoritative statement as to the sources of international law. However, it seems that the Article does not go far enough to resolve the problems relating to the hierarchy of the said sources. For instance, the question of priority as between custom and treaty law remains very complex albeit more than seventy years have passed since the coming into force of the Statute of the International Court of Justice.

Comment on the above statement with particular reference to the importance of customs and treaty law as sources of international law.

Support your answer with relevant case law.

**(20 marks)**

2. “The controversy has focused on the relevance of the lack of sanctions in cases of violation of international norms as compared to municipal law and it has often confused the question of whether international law is ‘law’ with the problem of the effectiveness and enforcement of international law”

*Peter Malanczuk, Akehurst’s Modern Introduction to International Law, 7th ed, p.5.*

Critically assess the validity of the above statement by referring to the contemporary application of international law.

Provide reasons for your answer.

**(20 marks)**

3. Sovereignty, self-determination, and recognition are the most important pillars of statehood.

Evaluate the role and significance of the three pillars mentioned in the above statement in acquiring statehood.

Support your answer with the relevant case law and examples of contemporary state practices.

**(20 marks)**

4. Since 1945, there has been a substantial increase in the number of States; and other international actors have also begun to emerge. The principles and practices which determine whether an entity is understood to be a member of the international community and governed by international law have also changed significantly over time.

Does the above statement correctly reflect the evolution of international legal personality over time? Discuss.

Support your answer with relevant authorities.

**(20 marks)**

5. "The concept of international responsibility could be interpreted as a stadium between the internal law and state sovereignty in internal sense, on one hand and the ultimate goal of realistically feasible implementation of the principles of the international law, saliently with coercion (as a paramount hierarchical level), on the other."

Dimitrovska, M, *The Concept of International Responsibility of State in the International Public Law System*, Journal of Liberty and International Affairs, Vol. 1, No. 2, 2015, p.2.

In light of the above statement analyze the scope and application of the concept of state responsibility.

**(20 marks)**

**Question No. 6 and 7 are based on the following scenario.**

State of “Amara” and the State of “Samara” are two neighboring countries that are separated by the strait of “Rama” in the South Yellow Sea. There is an island called “Vidura” in the middle of the strait. The strait and the territory of the island are close to main shipping lanes and rich fishing grounds in the South Yellow Sea. “Samara” argues that it surveyed the islands centuries back and found them to be “*terra nullius*” (land belonging to no one). After the civil war occurred in the region, the state of “Samara” declared that “Vidura” island belongs to it. In the meantime, the state of “Amara” argues that there is documentary evidence which indicates that Vidura island belongs to them. Especially, this island is included within the “Treaty of Mutual Cooperation and Security between the State of Amara and the State of “Madura”. According to the treaty, the state of Amara would require the State Madura’s aid in the defense of Vidura island.

This unresolved territorial dispute has been going on over 40 years and both states claim the ownership of the island based on historical facts. However, the ownership of Vidura island is currently under the control of the state of Amara. On 23<sup>rd</sup> of November 2021, the state of Amara set up the "South Yellow Sea Air Defense Identification Zone" which includes the Vidura island, and announced that it would require all aircraft entering the zone to file a flight plan and submit radio frequency or transponder information. With these newly imposed regulations, the dispute between the State of Amara and Samara over the Vidura island has resurfaced. In December 2021, the Samara government issued an official statement stating that if the right of the Vidura island is not given to them, they intend to attack the island. Meanwhile, with the release of the relevant official announcement, it was informed that the Minister of Foreign Affairs of the State of Amara is expected to initiate peaceful discussions with the State of Samara to resolve this dispute. However, no reply was received on this official announcement and no action was taken by the government of Samara. As the next step, the State of Samara assembled its armed forces along its border and pointed its armoured tanks towards the State of Amara.

Two weeks after the Amara government’s request for negotiations, the state of Samara bombed on Vidura island killing 200 fishermen and severely damaging the port city of “Nurai”. The President of Amara State issued an official statement claiming that State of Samara severely violated international obligations in this attack, and the international community should involve and take actions against the state of Samara. Further, the

President of Amara indicated that they expect another attack from the State of Samara and if it seems that there is such a risk of another attack, his country will not hesitate to attack.

6. How would you apply international legal principles relating to use of force in the given scenario?

Prepare your answer considering the actions of Amara, Samara and Madura by citing international legal standards, case law and contemporary examples.

**(20 marks)**

7. Assume that you are a legal researcher working at the Ministry of Foreign Affairs of the State of Amara. Prepare an opinion paper advising the President of the State of Amara on available methods of peaceful settlement under international law to resolve the dispute with the State of Samara.

Cite the relevant legal authorities.

**(20 marks)**

8. The realization of the need to radically reform on the law relating to diplomatic immunity led to the adoption of the Vienna Convention on Diplomatic Relations of 1961. However, it remains debatable whether diplomatic immunity is being used for its original intended objectives.

Critically comment on the above statement, in light of the historical development of the international law of diplomatic immunity and the current need to ensure the effective functions of diplomatic missions.

**(20 marks)**

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