

QUESTION THREE

Momo, a foreigner whose nationality is unknown and who could not speak Kiswahili or English or any local language known in Kenya, was arrested for being suspected of having committed the offence of murder, contrary to section 203 of the Penal Code. It was alleged that he had murdered Tamu, a woman he had been living with for about two years at Nyali, Mombasa.

Without any legal representation, he was arraigned in court, eight months after being held in custody by the police. The charges and particulars were read to him in Kiswahili, to which he nodded seemingly in affirmative. The prosecutor was then called to state out the facts in issue. The prosecutor informed the judge that the "facts were as per the charge sheet." The judge entered a plea of guilty, and noted that since death was the only prescribed sentence under section 204 of the Penal Code, proceeded to sentence him to death without asking the accused for mitigation, and added that in his opinion "the same is of no consequence as it will not affect the sentence."

Momo appealed against both conviction and sentence. You have been appointed as counsel for Momo.

Set out the grounds you will rely on in his appeal against both conviction and sentence

(15 Marks)

QUESTION FOUR

"Whereas there is absolutely no reason why the Court should not accept a plea of guilty from an accused person, the consequences of it, in particular the fact that the accused thereby forfeits his right to a trial whereby he can confront his accusers and challenge the evidence against him, counsels caution and circumspection in the manner in which such pleas are taken," per Patrick Kiage, *Essentials of Criminal Procedure in Kenya*, Law Africa, 2010.

In light of the above statement, discuss the essential considerations a Court should take into account before entering a plea of guilty.

(15 Marks)

QUESTION FIVE

With the assistance of case law, discuss the legal position and the principles that a court would consider when faced with an application for

- (a) Bail pending Trial, and

(b) Bail pending Appeal

(8 Marks)

(7 Marks)

OPPO A5 Pro 2020



MUEO

MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESERCH & EXTENSION)

UNIVERSITY EXAMINATIONS 2013/2014 ACADEMIC YEAR THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 305

COURSE TITLE: BANKING LAW

DATE: 3RD DECEMBER, 2013 **TIME:** 2.00 P.M. – 5.00 P.M.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

THIS PAPER CONSISTS OF (4) PRINTED PAGES

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QUESTION THREE

Bosco, a prominent politician, wrote a post-dated cheque for Ksh. 10,000/= to his brother-in-law to be banked after five days. He, however, upon quarrelling with his wife, decided to stop the payment of the cheque. He rang the bank manager who told him he was on safari, but would advise his clerks not to clear the cheque. Bosco then rang the manager's secretary to stop the payment of the cheque. He later wrote a letter to the bank and posted it by ordinary mail stopping the payment, but the letter arrived four days after payment had been effected. When he contacted the bank, he was told his countermand was not effective.

Bosco has come to you for advice on what a countermand is and wishes to know the legal issues his situation raises and how they may be remedied.

Advise Bosco on the legal position.

(15 marks)

QUESTION FOUR

Development banking is an important function of banks. Having regard to the Brettonwoods Institutions and their relationship to Kenya, discuss the full parameters of development banking in Kenya.

(15 marks)

QUESTION FIVE

What are the most fundamental attributes of a central bank?

Give reasons for your selection and discuss the relationship of these fundamental attributes to other conventional central banking powers.

(15 marks)

QUESTION SIX

- (a) Describe the full parameters of bank regulation in Kenya. (8 marks)
- (b) Joe Blocks, an American businessman, wishes to set up a commercial bank in Kenya. Advise him on the requirements of the Kenyan banking law on bank licensing. (7 marks)



MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESERCH & EXTENSION)

UNIVERSITY EXAMINATIONS
2020/2021 ACADEMIC YEAR
THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF
BACHELOR OF LAWS

COURSE CODE: FLB 301

COURSE TITLE: INTELLECTUAL PROPERTY LAW

DATE: 16TH AUGUST, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

THIS PAPER CONSISTS OF (3) PRINTED PAGES

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QUESTION ONE

Article 46 of the Constitution of Kenya, 2010 provides:

46 (1) Consumers have the right-

- a) To goods and services of reasonable quality
 - b) To information necessary for them to gain full benefit from goods and services;
 - c) To the protection of their health, safety, and economic interest; and
 - d) To compensation for loss or injury arising from defect in goods or services
- (2) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.
- (3) This article applies to goods and services offered by public entities or private persons

Article 231 of Constitution of Kenya, 2010 provides:

231(1) There is established the Central Bank of Kenya

(2) The Central Bank of Kenya shall be responsible for formulating monetary policy; promoting price stability, issuing currency and performing other functions conferred on it by an Act of Parliament

(3) The Central Bank of Kenya shall not be under the direction or control of any person or authority in the exercise of its powers or in the performance of its functions.

(4).....

(5) The Act of Parliament shall provide for the composition, powers, functions and operations of the Central Bank of Kenya.

- a) Having regard to Article 46 of Constitution, critically analyse how the statutory framework for financial service regulation in commercial banking, investment banking and insurance, promotes consumer protection aspects of consumer education, consumer complaint/dispute resolution, and consumer compensation.

- b) Having regard to Article 231 of the Constitution of Kenya aforesaid, critically analyse the independence of the Central Bank of Kenya under the Central Bank of Kenya Act.

(15 marks)

(10 marks)

Total (25 marks)

Question One

Mulika, a professional photographer, took a photograph of Ingosi playing his one-stringed instrument, the *Shiriri*, at the annual Luyia cultural festival (the 'Photograph'). The Kikwetu Museum of Art ('Kikwetu'), a nonprofit museum that displays works of art to the public, included the Photograph in an online catalogue on its website for a physical exhibition on African traditional musical instruments. The catalogue included 200 webpages representing the exhibit objects on physical display. The Photograph was displayed as a thumbnail image on the webpage discussing the *Shiriri*, along with a large photograph of the instrument, two thumbnail images, and two paragraphs of text describing the instrument's history and technical specifications. Online visitors could click on the Photograph's thumbnail to view a larger version of it. Mulika sued Kikwetu for copyright infringement and the High Court gave judgment in favour of Kikwetu on the grounds that Kikwetu's use of the Photograph was fair dealing. Mulika is contemplating an appeal.

Advise the parties as to their legal position.

(25 marks)

Question Two

AfyaBora Pharmaceuticals Ltd held a patent on the drug poladine, which had been highly successful as a treatment for bipolar disorder. In the human body poladine was in fact metabolized into an acid polalite. It was this substance, polalite that was almost exclusively responsible for the drug's effectiveness. Shortly before the end of the poladine patent, AfyaBora patented the acid polalite.

After the expiry of the poladine patent, Dawa Generics Ltd made and sold poladine. AfyaBora alleges that Dawa Generics is infringing the polalite patent by supplying consumers with the essential means to make the acid polalite within the human body. Dawa Generics argues that the making of the acid polalite within the human body by the ingestion of poladine formed part of the state of the art prior to the grant of the patent and therefore the invention was not new within the meaning of the Industrial Property Act 2001.

Advise AfyaBora.

(15 marks)

Question Three

When the Covid - 19 Pandemic hit Kenya, Macho Nne noticed a practical problem for people wearing eye glasses. You put your face mask on and your glasses start fogging up and you cannot see clearly. He invented and patented a clip, the MachoClip, placed at the top of a mask to tackle the steamy glasses problem. The clip secures the top of the seam around the bridge of your nose, ensuring your breath exits away from your glasses. When seeking to exploit the patent, he discussed with two managers of Eldoret Hygienists Ltd (EHL) the possibility of EHL marketing the MachoClip. In those discussions, Macho Nne revealed to the managers in

b) Advise Elgon Properties on its rights.

[10 marks]

c) Ranga, in an effort to revive his flailing real estate development business, applied for and was awarded a tender for the construction of the residence of the Governor of Uasin Gishu County. One of the requirements in the letter of award of the contract was that he furnishes his employer with a performance bond for Kshs 100 million. He now requires you to advise him on what a performance bond is, and what its legal effects are.

[5 marks]

QUESTION 2

Gwyneth is the registered proprietor of a 20 acre piece of land located in Embakasi. The land borders the Jomo Kenyatta International Airport, the Nairobi National Park, and the Standard Gauge Railway Station. She intends to develop the land into a housing estate to be known as 'The Sweet Poem', and which shall be comprising of 160 maisonettes each of which will be sold and are to be owned individually by third parties. The estate shall have common amenities, such as roads, common areas, swimming pools and club houses to be owned and managed collectively by the members of the estate. This will be done through a corporation to be registered by the members.

The Bill of quantities for the Sweet Poem requires financing to the tune of Kshs 2.5 billion, and which is to be financed exclusively by a bank. She approached the Housing Bank of Kenya, and which is considering the financing this development.

You are the lawyer appointed to act on behalf of the Housing Bank of Kenya, and which bank requires your advice on the following issues:

a) Advise the bank on five different types of searches the bank ought to conduct as part of its due diligence.

[5 marks]

b) Advise the bank on the different ways it may protect its interest in the development.

[10 marks]

QUESTION 1

Five years ago, Ranga was a successful real estate developer and obtained a Kshs 500 million loan from the Bank of Uasin Gishu. The loan was secured by a Kshs 500 million charge over a project in the estate of Elgon View, and guaranteed by Elgon Properties, a development company, and Chechen Industries, a large steel pipe manufacturer. When the real estate market encountered difficulties one year ago, Ranga defaulted on the loan. Negotiations for further funding failed.

Ranga unsuccessfully approached the bank to negotiate the sale of its debt to Victoria Estates, a company owned by the bank. In the course of the negotiations, the bank disclosed a considerable amount of information about the project and Ranga's financial affairs. Because of this disclosure, Ranga lost an opportunity to sell his share in the project and lost Kshs 200 million. This news made headlines in the local press and he imagines that his name has been badly damaged.

Owing to its inability to recover its monies from Ranga, the Bank of Uasin Gishu has required Elgon Properties to settle the debt owed by Ranga.

Between January 2020 and December 2020, the accountant at Ranga's office, Ms Renegade defrauded Ranga by inflating the amount payable to her for her salary and by including bogus employees in the salary schedule. The payments were made by the bank out of the current account maintained by Bank of Uasin Gishu. The schedules were signed only by Ms Renegade, who was one of the two required signatories for the relevant period. After the fraud, initially discovered in February 2021, Ms Renegade confessed and was immediately fired from her job, and convicted of fraud of Kshs 100 million in March 2021. However, it was not until June 2021 that the Bank of Uasin Gishu was notified of the fraudulent conduct. This was done by way of notice of court proceedings in which Ranga claimed a refund of Kshs 100 million debited from his account due to Ms Renegade's fraud.

The Bank of Uasin Gishu denies any liability and also points to the account verification clauses in the account statements which were regularly sent to Ranga. Each clause provided that: 'Please check this statement carefully and immediately notify the bank of any unauthorised or disputed transaction or any other error.'

Ranga had also kept a large diamond in the bank's safe deposit box and he found it missing when he last checked in January 2021. His inquiries with the bank have not yielded any positive reply.

- a) Advise Ranga on his legal rights and the possible causes of action, if any, that he may have against the bank.

[10 marks]

CRIMINAL PROCEDURES

29 APRIL 2019

QUESTION 1

FLB 302

~~Dr. Mkorofi is a constitutional officer holder, a member of the Commission on Revenue~~
Allocation. He was charged at the Chief Magistrates Court at Ujinga for an offence of insult to religion at his place of work. The trial court released him on bail on condition that he can only access office after consultations between the office of the Director of Public Prosecutions and the Directorate of Criminal Investigations to ensure that witnesses who work at the Commission are not interfered with. Though this order was given on 20th June 2018, the consultations have been unending and he has not gone back to his office yet. He has sent his wife to approach you so that you can represent him and ensure that he goes back to office and continues working. His wife has a trail of questions that she wants your advice and opinion on which are listed below. Citing case law, kindly answer her questions with precision:

- What considerations do courts take into account when granting or refusing to grant bail?
(10 marks)
- What should Dr. Mkorofi do if he wants the decision of the Chief Magistrate to be changed and on what basis?
(15 marks)

QUESTION 2

In *Gabriel Njoroge vs. Republic* (1982-1988) the Court held that "dock identification is generally worthless unless other evidence is adduced to corroborate it." Citing case law and the relevant provisions of the police standing orders, lay out the requirements for a valid identification parade.
(15 marks)

QUESTION 3

Citing the relevant provisions of the Criminal Procedure Code, describe what a trial magistrate should satisfy himself/herself about, if a plea taking session is to be valid
(15 marks)

QUESTION 4

The High Court's intervention during a trial before the Chief Magistrates Court can be invoked at any time and for any reason. Explain the basis for this claim and the circumstances under which the High Court's intervention may be invoked.
(15 marks)

QUESTION 5

The power of the Director of Public Prosecutions to prosecute is not absolute but there are many circumstances under which his authority may be interfered with by Courts. Citing the relevant provisions of the Constitution, discuss the circumstances under which courts can intervene to quash a criminal trial
(15 marks)

QUESTION 6

On what account and how does an accused person appeal against a conviction by a subordinate court to the High Court?

PROPERTY
2016

Intellectual Property
FLB 309

QUESTION ONE

In January 2016, the Kenya Copyright Board raided a residential flat in Eldoret. They arrested ten suspects. The suspects included the owner of the building, the caretaker and two tenants. More than 10-satellite decoders and receivers, a fibre optic transmitter, 13 encoders and 5 modulators were confiscated during the raid. The raid targeted some identified potential pirates in and around campus hostels. The suspects allegedly used Kenya Power transmission cables and poles to distribute DSTV, Zuku, Star Times and GoTV broadcasting signals to a large number of university students. Mr X, one of the arrested suspects, is estimated to have been serving over 250 clients. Mr X told journalists: 'I thought "sambaza" is legal!' He added that the Board should have put up legal notices to warn them of the potential illegality.

The Board said that the arrest came as pay-television operators claimed that they are losing millions of shillings to illegal distribution of broadcast signals. However, one of the arrested students claimed that 'the high cost of pay-TV services has created the underground business that charges comrades a fee ranging between Sh100 to Sh500 per month, which pales in comparison to the DSTV charges of Sh10000 for its premium content monthly.'

The suspects are due to be arraigned before an Eldoret court, charged with copyright infringement.

(25 Marks)

Advise them on the legal position.

QUESTION TWO

Joni and Karo are in the business of fashion. Both own and run companies that specialise in ladies shoes. Joni's shoes have a red outer sole and a contrasting upper. Her company seeks to register a trademark that comprises the outer red sole. Karo's company has objected to the application claiming that the mark would be invalid because

- (i) the feature does not impact cost and quality,
- (ii) confusion was likely to arise, and
- (iii) the grant of the trademark would put newcomers or competitors at a commercial, in contrast to a reputational, disadvantage.

Advise the parties on the likely defences to claims of confusion and, therefore, infringement in this case.

2019

FLB 300

QUESTION 1

Scuba is a tropical island in the South Pacific. Two years ago, an internal conflict arose between the government of Scuba and a political movement, called 'For the People of Scuba Movement' (FPSM). The state of Rico is known to support the FPSM by providing financial support and arms to the FPSM and by providing military training to the members of the FPSM. It has been established that the FPSM has participated in illegal activities, such as assassinations of government officials of the state of Scuba.

- a) You are asked to provide the government of Scuba with legal advice on the question of whether the acts of the FPSM can be attributed to the state of Rico. Please provide the advice below. (10 points)
- b) In response to the support that the state of Rico provides to the FPSM, a group of students from Scuba has organized a protest in front of the embassy of Rico in Scuba. During the protest, the atmosphere turns violent and the premises of the embassy end up being seriously damaged by the students. On the same day the Prime Minister of the state of Scuba endorses the actions of the students. You have been asked to provide the state of Rico with legal advice and to assess whether the acts of the students can be attributed to the state of Scuba

(15 marks)

QUESTION 2

Suppose that the states of Azoria, Bafu, Cimora, Dimaan, Erdonia and Fulencia are parties to a multilateral treaty banning trade barriers with regards to all dairy products. The state of Bafu informs the other five states that it does not consider itself bound by the provision of the treaty regarding the compulsory settlement of treaty-related disputes by the International Court of Justice. The states of Azoria, Cimora and Dimaan do not respond to the statement. The state of Erdonia agrees with the statement. The state of Fulencia objects to the statement. The treaty does not mention anything on reservations.

Discuss the legal effects of the statement made by the state of Bafu and the reactions thereto by the other five states. (15 marks)

QUESTION 3

Discuss whether the way international law is made through treaty and customary international law reflects the nature and needs of the international legal system. (15 marks)

QUESTION 4

The International Court of Justice (ICJ) has no so-called compulsory jurisdiction.

- a. Explain under what circumstances the ICJ has jurisdiction to settle an inter-state dispute. (7 marks)

OPPO A5 2020

CRIMINAL
29 APRIL 2019
FLB 302
...member of the Commission on Revenue
...Chief Magistrates Court at Ujunga for an offence of insult to
...Court released him on bail on condition that he can only
...Sec of the Director of Public Prosecutions and the
...businesses who work at the Commission are
...2018, the consultations have been
...to approach you so that
...king. His wife
...Citing

- b. Explain whether or not in the view of the ICJ its "provisional measures" are binding.

QUESTION 5

(8 marks)

Mr. Zelaya was removed from office as President of Honduras by the army and judiciary of Honduras. Subsequently, elections were held and President Porfirio Lobo was elected. A large Honduran community lives in Nicaragua supporting Zelaya. This community disagrees with the removal of Mr. Zelaya from office and with the outcome of the recent election. As a response, they have been demonstrating peacefully in front of the Honduran Embassy for 5 days. The police have been monitoring the demonstrations. However, at one point the crowd becomes more violent and they manage to enter the premises and cause substantial damage. The day after the Nicaraguan authorities decide to send extra forces to the Embassy to stop the violence and arrest the protesters.

Can Nicaragua be held responsible under international law for the damages caused to the Honduran Embassy?

(15 marks)

QUESTION 6

It has been argued that former heads of state or government as well as certain former high-ranking ministers should be more careful when they travel abroad as a result of the rulings by the House of Lords in the Pinochet case and the International Court of Justice in the Arrest Warrant case.

Discuss the potential difficulties that such persons might encounter during their travels as exemplified by these two cases.

(15 marks)

2019

Public International

FLR 300

QUESTION 1

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(10 points)
- b) In response to the support that the state of Rico provides to the FPSM, a group of students from Scuba has organized a protest in front of the embassy of Rico in Scuba. During the protest, the atmosphere turns violent and the premises of the embassy end up being seriously damaged by the students. On the same day the Prime Minister of the state of Scuba endorses the actions of the students. You have been asked to provide the state of Rico with legal advice and to assess whether the acts of the students can be attributed to the state of Scuba.

(15 marks)

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Suppose that the states of Azoria, Bafu, Cimora, Dimaan, Erdonia and Fulencia are parties to a multilateral treaty banning trade barriers with regards to all dairy products. The state of Bafu informs the other five states that it does not consider itself bound by the provision of the treaty regarding the compulsory settlement of treaty-related disputes by the International Court of Justice. The states of Azoria, Cimora and Dimaan do not respond to the statement. The state of Erdonia agrees with the statement. The state of Fulencia objects to the statement. The treaty does not mention anything on reservations.

Discuss the legal effects of the statement made by the state of Bafu and the reactions thereto by the other five states.
(15 marks)

QUESTION 3

Discuss whether the way international law is made through treaty and customary international law reflects the nature and needs of the international legal system.

(15 marks)

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The High Court's intervention during a trial before the Chief Magistrates Court can be invoked at any time and for any reason. Explain the basis for this claim and the circumstances under which the High Court's intervention may be invoked. (15 marks)

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QUESTION 6

On what account and how does an accused person appeal against a conviction by a subordinate court to the High Court? (15 marks)

QUESTION TWO

Taifa Bank Limited, a commercial bank registered under the Banking Act of Kenya, had incorporated subsidiaries, under section 12 of the Act, to engage in investment banking, insurance business and retirement benefit business. It has lately had problems of liquidity and hazard, borrowing from the lender of last resort facility at Central Bank of Kenya, and on compensation of the bank's depositors, should it be placed under statutory management.

As a lawyer in the Bank's legal department, write a well reasoned memorandum addressing the concerns of the Board of Directors.
(15 marks)

QUESTION THREE

Jami Ndogo Bank Ltd, a commercial bank registered under the Banking Act of Kenya wishes to open branches in Kenya, and in several countries abroad. Jacob, the Managing Director knows that while the local branches have to be opened in accordance with the Banking Act, the foreign branches have to be opened in accordance with both the Banking Act and the foreign host country banking regulatory laws. He, however, does not know why this is so.

As a lawyer in the bank's outside counsel firm, write a well reasoned advisory opinion explaining the manner in which the Banking Act and host banking regulatory laws address the opening of branches locally and abroad, respectively.
(15 marks)

QUESTION FOUR

Peter has an account with XYZ Bank Limited. On a Monday morning, after a particularly busy weekend of booming business, he took the weekend collections to the bank. While in the bank, robbers wearing masks stormed the banking hall and ordered all the customers to hand over the money they had. Peter, who had handed over the cash to the cashier, had no money to hand over and was shot in the leg for that. The cashier had counted the money, and written and stamped the pay-in slip showing the total deposit of Ksh.20 million, and had handed it over to Peter.

At the end of the robbery, the bank informed Peter that it was not liable as the cashier had made a mistake in handing him the pay-in slip in duplicate, without first ensuring that the bank had secured the money. The manager then demanded that Peter returns the pay-in slip upon which Peter refused. He was then detained and forcefully snatched the pay in slip, but as he had separated the original from the duplicate copy, he retained the later.

In newspaper coverage of the incident, the bank manager is quoted as saying that while he regretted the loss of money by some customers, he was disgusted by the conduct of some other

QUESTION ONE

- (a) Bongoman, a local businessman, drew a cheque in favour of his church for the construction of a Pastor's house. On presentation, the cheque was dishonoured with words "Payment stopped." The Pastor returned the cheque where upon regretting this eventuality, Bongoman wrote another cheque in replacement. On presentation it was again dishonoured with remarks, "amount in words differs from amount in figures." On checking, Bongoman found he had written Ksh.12,450/= in figures but in words, he had written "Twelve Thousand Four Hundred only."

(i) Does Bongoman have any legal remedies against the bank? (5 marks)

(ii) Does the Church have any remedies against Bongoman? And the bank? (5 marks)

- (b) Ricardo is an Italian national who recently settled in Kenya as the Sales Manager of Fiat Kenya Ltd. He has been told that the company has a cooperative savings society to which he can become a member.

He, however, knows that in Italy, banks are more secure institutions and would prefer to save his income in a bank. His Sales Director has also been encouraging him to consider saving through mutual funds and on the stock market through securities dealers.

He has come to you for advice on what the operational practices of these investment institutions are, and is more interested in the legal and institutional frameworks protecting his investments therein under Kenyan law.

Write a well reasoned memorandum for Ricardo, advising him on the above. (15 marks)

QUESTION TWO

- (a) The terms "Customer" and "Banker" are well understood in their commercial setting, but statute law has attempted to define them without much success. Who, in the law of banking, is a "Customer" and a "Banker"?

(7 marks)

(b) Case law has helped in the evaluation of the duties of a bank to its customer. Analyse these duties and consider whether there are any limits to such duties and the justification thereof. (8 marks)

QUESTION 3

Destiny is a computer sciences undergraduate with an interest in financial services provision. She forms a company called Destiny Bank Ltd and intends to start offering banking services on-line immediately to students on her programme.

- a) She asks you to explain to her what constitutes 'banking services'. Advise her. [5 marks]
- b) She asks you if there are any banking legal or regulatory issues she should consider before making Destiny Bank Ltd web-site live. What advice will you give her? Among other things, your answer should include the following
- (i) The information she is obliged to provide to the relevant regulatory body
 - (ii) The relevant legislation and
 - (iii) The consequences of ignoring your pieces of advice.

[10 Marks]

QUESTION 4

Describe the genealogical development of banks and banking services in Kenya from the colonial days to date, using the different epochs titled '*Access to Banking in Kenya under the Colonial Rule*', '*Access to Banking in independent Kenya*', and '*Access to Banking in the Millennium*', Discuss five key themes for each epoch and assess how each of them impacted on access to banking services in the country.

[15 marks]

QUESTION 5

Write notes on the following

- a) The *In Duplum* Rule
- b) Letters of comfort
- c) Consideration in contracts of guarantee
- d) Banker's lien
- e) Negative pledge clauses

[3 marks]

[3 marks]

[3 marks]

[3 marks]

[3 marks]

QUESTION 6

FLB 305

customers who wanted to defraud the bank by claiming that they had deposited Ksh.20,million when their accounts has never had any such single deposits.

Peter believes he has been wronged five times by the bank by denial of his deposit of Ksh.20, million, false imprisonment, assault, defamation and breach of the banker's duty of confidentiality. He comes to you for advice.

Citing relevant statutory provisions and case law, advise Peter on the chances of success of his claims

(15 marks)

QUESTION FIVE

Macinda runs the "Busy Bee Salon" chain of hairdressers as a private limited liability company. She now wishes to make it a public company and wonders whether to use an initial public offer or introduction and whether to price the shares through a fixed price, book building or auction methods.

As her legal advisor, prepare a legal opinion that addresses her concerns.

(15 marks)

QUESTION SIX

"It is often said that financial system architecture has two designs, the market oriented financial system and the bank oriented financial system," Anonymous.

Considering how the designs treat insider trading, analyse the relative strengths and weakness of each design.

(15 marks)



MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESEARCH & EXTENSION)

UNIVERSITY EXAMINATIONS 2019/2020 ACADEMIC YEAR THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 306

COURSE TITLE: BANKING LAW

DATE: 10TH DECEMBER, 2019 **TIME:** 2.00 P.M. – 5.00 P.M

INSTRUCTION TO CANDIDATES

- Answer Question ONE (1) and Any THREE (3) Others
- Illustrate your Answers with relevant decided cases and statutory provisions

THIS PAPER CONSISTS OF (3) PRINTED PAGES

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MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESEARCH & EXTENSION)

UNIVERSITY EXAMINATIONS 2015/2016 ACADEMIC YEAR THREE YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 306

COURSE TITLE: BANKING LAW

DATE: 25TH FEBRUARY, 2016 **TIME:** 2.00 P.M. – 5.00 P.M

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWERS WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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QUESTION 1

The exiled house Targaryen of Dragonstone, led by Daenerys Targaryen, which previously ruled one of the seven Kingdoms in the mythical land of Westeros is preparing for a fight to reclaim their royal title to the Iron Throne against House Lannister, at Kings Landings in the heart of the Seven Kingdoms.

House Targaryen manufactures, sells, and currently possesses a fleet of 10,000 fire breathing dragon like fighter jets, which are highly marveled at, and considered critical for battle, but the House lacks the monies needed to pay for the ground troops who are also critical in supporting the onslaught in the event of a successful air raid.

Daenerys Targaryen informs you that her house has resolved to sell at least 3,000 of their fighter jets, which will cumulatively yield at least 300 Trillion Denaristo support the onslaught, but that her house will still have a shortfall of 300 Trillion Denaris.

The Iron Bank of Braavos, the leading bank in Westeros, is willing to lend House Targaryen the sought amount of 300 Trillion Denaris, but requires adequate security before disbursing the monies.

Advise House Targaryen on:

- (a) The type and viability of the security that House Targaryen could offer the Iron Bank of Braavos. [5 Marks]
- (b) Explain the advantages to House Targaryen of the type security identified in (a) above. [10 marks]
- (c) Explain the events that could lead to the crystallization of the security identified in (a) above. [10 Marks]

QUESTION 2

Mr. and Mrs. Jilani opened a joint bank account at Capitol Bank, Baraka Branch. According to the instructions given to the bank any cheques drawn on the account must bear both the signatures of the account holders. On 15th August, Mr. Jilani discovered a shortfall of Kshs. 1,000,000/- On investigations it was revealed that Mrs. Jilani presented and cashed two cheques on 30th June and 16th July totaling a similar amount.

CRIMINAL PROCEDURES

1 MARCH 2016

FLB 302

QUESTION ONE

On 20 October 2012, WASI WASI, a 23 year old third year student at Ufanisi University, was arrested on suspicion of involvement in a bank robbery at Pesa Mingi Bank the previous day. At the police station, WASI WASI was duly informed of his right to an advocate and also his right to remain silent. He acknowledged and waived those rights and agreed to talk. MJANJA, a police constable, interrogated WASI WASI for 24 straight hours without a break. Having failed to yield anything, MJANJA offered WASI WASI a bottle of Chemsha Vodka, his favourite drink, in exchange for his admission that he was involved in the bank robbery. WASI WASI immediately admitted that he was part of the robbery at the offer of Chemsha Vodka.

On 22 October 2012, WASI WASI was placed in an identification parade with five other persons of similar appearance. WASI WASI was not told that he had a right to counsel. The bank teller identified him as one of the robbers.

After the identification parade, WASI WASI was formally charged with the robbery in court. He applied for bail, but the Prosecutor vehemently opposed his bail application on grounds that WASI WASI was likely to abscond since he was facing a serious offence that attracted a severe penalty.

As the presiding magistrate in this case, make rulings on the following issues.

- a) WASI WASI's application for bail. (10 Marks)
- b) The admissibility of the "confessionary" statement taken by constable MJANJA. (8 Marks)
- c) Admissibility of the identification parade report. (7 Marks)

QUESTION TWO

Discuss any three of the following:

- a) Duplicity of charges. (5 Marks)
- b) Joinder of counts. (5 Marks)
- c) Alternative charges. (5 Marks)
- d) Joinder of persons. (5 Marks)

Discuss the relevant issues as you give your advisory opinion to Pororo.

FLB 301

(15 marks)

QUESTION 3

Pursuant to an application by the Society of Atheists in Kenya (SAK), the High Court struck down the Trademarks Act's ban on the registration of marks that 'may disparage persons, living or dead', holding that this ban violated the Constitutional guarantee of free speech. Imani, a self-proclaimed Holy Seer, has applied to the Court of Appeal for a reversal of the decision of the High Court. SAK expects the Appellate court to hold that if you have a constitutional right that protects disparaging marks, you have a similar right that protects vulgar marks as well.

Kenyan trademark owners, think that should the Court of Appeal strike down the ban on immoral and scandalous marks, that will put Kenya at odds with most nations. The majority of jurisdictions forbid the registration of any marks, including vulgar marks, that are 'contrary to morality or public order'.

SAK thinks that the analysis by Imani and the trademark owners is a fiction and inappropriate to modern conditions.

On balance, what is the Court of Appeal likely to decide and why?

(15 marks)

QUESTION 4

In 2018, Rununu Electronics' lawyer sent Kadogo, the owner of a small electronics repair shop in Eldoret, a letter demanding that she immediately stop using aftermarket Rununu screens at her repair business and that she pay the company a settlement.

Kenya's customs officials had seized a shipment of 200 Rununu replacement screens on their way to Kadogo's shop from China and alerted Rununu, who alleged that the screens were counterfeit.

In order to avoid being sued, Rununu asked Kadogo for 'copies of invoices, product lists, order forms, payment information, prints from the Internet and other relevant material regarding the purchase of the screens, including copies of any correspondence with the supplier'.

QUESTION 1

Kotoke, a foreigner whose nationality was unknown and who could not speak any of the known languages in Kenya was arrested after having been suspected of having committed the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. Without any legal representation, he was arraigned in court 12 months after his arrest and the charges against him and the particulars were read to him in Kiswahili for which he nodded, seemingly in the affirmative. The prosecutor was then called upon to read the facts of the case for which he responded "the facts as per charge sheet". The judge entered a plea of guilty, and reasoned that since death is the only sentence prescribed by law, he proceeded to sentence him to death without listening to any mitigation from Kotoke as in his opinion, "the same is unnecessary as it will not affect the sentence." Kotoke appealed against conviction and sentence. You have been appointed as counsel for Kotoke.

Discuss the grounds you will rely on in the appeal against both conviction and sentence.
(25 Marks)

QUESTION 2

Elkana was charged with the offence of stealing by servant contrary to section 281 of the Penal Code. The particulars of the offence were that while being in the employment of Mavuno Ltd., he stole a computer, printer and photocopier, the property of Mavuno Ltd.

After five (5) witnesses had testified, the prosecutor applied to amend the charge sheet to include two items alleged to have been left out, namely TV and mobile phone.

Discuss the legal position on each of the following points:-

- (a) Whether the charge can be amended at that stage of the proceedings? (5 Marks)
- (b) What procedure the court should follow when faced with the application for amendment of the charge; and (5 Marks)
- (c) With the assistance of case law, discuss the consequences of not following the procedure discussed in (b) above. (5 Marks)

QUESTION 3

"I think it is quite clear that the only way of preventing a person being illegally done away with and illegally treated is to uphold to the fullest extent the right of every person to have any of his friends come and see him who choose to do so. I am not now dealing with solicitors, I am thinking of the ordinary question of friends. I think to prevent the access of friends to any person is a most serious infringement of the liberty of any person."

This was said in the South African case of *Li Kut Yu -v- Superintendent of Labourers* 1906 TS at 181

Of the above statement, critically discuss the following:-

The Nyuki are a community of hunters and gatherers living in Nandi Forest. They are well known for the production of Nandi white honey. The originality of Nandi white honey depends on the unique ecosystem of the forest in which it is made.

In Nandi County, forest apiculture has been practiced for centuries. Instead of managing beehives in one location, those practicing apiculture in this region move their beehives to select points in the forest. They do this instead of keeping all of the beehives in one location because of the specific geographical features and ecosystem of the County and the forest, which harbor plants that when pollinated by the bees result in honey that yields unique characteristics.

The forest has over 1000 plant species and the amount of rainfall, sunlight, temperature, altitude, and soil quality in the forest all serve to influence the end product. There are two plants that yield white flowers in particular and work in combination with the environment to help give Nandi white honey its unique properties, especially its creamy white color. The effects of these two plants help create an exceedingly rare (according to several studies) and sweet, white, creamy honey that is slightly acidic with hints of grape juice and citrus.

Beyond these two species, the bees pollinate many other flowers in the forest that have been used by the local population for centuries, bringing additional beneficial properties to these plants that are used in medicinal or herbal capacities, thus making them more effective and desirable.

Discuss the relevant geographical indications protection issues that arise in this case.

(25 marks)

QUESTION 2

In a certain case, Mary sued Tom for copyright infringement (Tom had imbedded Mary's image on his web page. The High Court held that Tom's web page is displaying an image only if a copy of the image is stored on his servers. If Tom's page merely links to the image, the image itself does not appear on the page, so there is no infringement).

Tom appealed the decision. The Court of Appeal decided that web pages can infringe ^{Mary's} ~~Tom's~~ rights by embedding a copyrighted image without authorization.

The Court of Appeal's decision is a matter of general public importance particularly because it threatens to undermine the interests of Internet users who disseminate viral memes by doing things like embedding.

Perojo, an avid Internet user and founder of Annex Meme Mums, has requested you to advise her.

confidence the crucial idea of another clip, whose main characteristic was an adjustable nose bridge bracket. The managers stated that they were not interested in the idea. However, after negotiations over the Macho Clip collapsed, FHH developed its own face mask clip which turned out to embody the very idea of Macho One's alternative. Macho One alleges breach of confidence against FHH.

Advise Macho One.

(15 marks)

Question Four

Kasuku has brought proceedings opposing Mwewe's registration of the word trade mark 'Bhati' to be applied on, inter alia, video film cassettes. Kasuku argues that Mwewe's mark infringes its earlier trade mark (Bati), registered in Kenya in respect of, inter alia, video recorders. The registrar of trade marks has determined on the evidence, that the two signs in question are phonetically equivalent, the 'Bati' mark has reputation and the goods by both Kasuku and Mwewe are not perceived by the public to come from the same manufacturer.

Advise the Registrar as to whether Mwewe's mark is registrable

(15 marks)

Question Five

Distinguish between distinctness and uniformity in reference to plant breeders' rights.

(15 marks)

Question Six

By giving examples distinguish between traditional knowledge and cultural expressions.

(15 Marks)



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OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESEARCH & EXTENSION)

UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 306

COURSE TITLE: BANKING LAW

DATE: 17TH AUGUST, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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(ACADEMICS, RESEARCH & EXTENSION)

UNIVERSITY EXAMINATIONS
2019/2020 ACADEMIC YEAR
THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF
BACHELOR OF LAWS

COURSE CODE: FLB 301

COURSE TITLE: INTELLECTUAL PROPERTY LAW

DATE: 17TH DECEMBER, 2019 **TIME:** 9.00 A.M. - 12.00 NOON

INSTRUCTION TO CANDIDATES

- Answer Question ONE (1) and Any THREE (3) Others
- Illustrate your Answers with relevant decided cases and statutory provisions

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~~The letter, sent by Rununu's lawyer, included a settlement agreement that also notified him the~~
screens would be destroyed. The settlement agreement said that Kadogo agrees 'not to manufacture, import, sell, market, or otherwise deal with any products that infringe Rununu's intellectual property,' and required him to pay KShs. 500,000/- in full settlement out of court.

Kadogo refused to settle out of court. Rununu sued but Kadogo won. Rununu is contemplating appealing the decision to a higher court.

Advise Rununu.

(15 Marks)

QUESTION 5

With the aid of appropriate illustrations, explain the meaning and importance of the concept of prior art in reference to patents.

(15 marks)

QUESTION 6

While describing the utilitarian legal theory, show how it might be used to explain and justify the (following new plant variety protection criteria)

(a) Distinctness

(b) Uniformity

(c) Stability

(15 Marks)

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FLB 306: BANKING LAW

COURSE C

COURSE

DATE: 10th

INSTRU

- Answer
- Illustrate

Discuss the similarities and differences between Islamic banking and conventional banking.
[15 marks]

FLB 306

Mr. Jilani has demanded that the joint account be credited with the amount missing. The bank has refused claiming in a letter to him "you must have known". Mr. Jilani has since threatened to sue the bank.

Advise the bank.

[15 Marks]

QUESTION 3

You have been recently employed to work as a legal officer for World Motors Ltd, an Eldoret based company that imports cars from Japan, Dubai, and the United Kingdom and sells them locally.

You have been briefed the company while paying for the last import of 50 cars from Japan two months ago, the company lost over Kshs. 50 million that was purportedly wired to the accounts of the sellers. The suppliers of the cars in Japan claimed not to have received the payment.

To prevent any such future losses, World Motors Ltd requests your advice on the best ways of ring-fencing international payments.

Advice World Motors Ltd.

[15 Marks]

QUESTION 4

a) Outline the characteristics of a negotiable instrument.

[5 Marks]

b) State and discuss briefly the duties of a banker towards his customers.

[10 Marks]

QUESTION 5

Discuss the exceptions to the rule in *Tournie v. National Provincial and Union Bank of England* (1924) 1 KB 461.

[15 marks]

QUESTION 6

Central banks play important roles in a country's banking, fiscal and monetary interplay, servicing directly the individual banks, the government, and the country's citizenry. With examples, discuss five roles of central banks in a modern economy.

[15 Marks]

QUESTION 1

FLB 301

The Nyuki are a community of hunters and gatherers living in Nandi Forest. They are well known for the production of Nandi white honey. The originality of Nandi white honey depends on the unique ecosystem of the forest in which it is made.

In Nandi County, forest apiculture has been practiced for centuries. Instead of managing beehives in one location, those practicing apiculture in this region move their beehives to select points in the forest. They do this instead of keeping all of the beehives in one location because of the specific geographical features and ecosystem of the County and the forest, which harbor plants that when pollinated by the bees result in honey that yields unique characteristics.

The forest has over 1000 plant species and the amount of rainfall, sunlight, temperature, altitude, and soil quality in the forest all serve to influence the end product. There are two plants that yield white flowers in particular and work in combination with the environment to help give Nandi white honey its unique properties, especially its creamy white color. The effects of these two plants help create an exceedingly rare (according to several studies) and sweet, white, creamy honey that is slightly acidic with hints of grape juice and citrus.

Beyond these two species, the bees pollinate many other flowers in the forest that have been used by the local population for centuries, bringing additional beneficial properties to these plants that are used in medicinal or herbal capacities, thus making them more effective and desirable.

Discuss the relevant geographical indications protection issues that arise in this case.

(25 marks)

QUESTION 2

In a certain case, Mary sued Tom for copyright infringement. Tom had imbedded Mary's image on his web page. The High Court held that Tom's web page is displaying an image only if a copy of the image is stored on his servers. If Tom's page merely links to the image, the image itself does not appear on the page, so there is no infringement.

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... of national public importance particularly because it

screens would be destroyed. The settlement agreement said that Kadogo agrees 'not to manufacture, import, sell, market, or otherwise deal with any products that infringe Rununu's intellectual property,' and required him to pay KShs. 500,000/- in full settlement out of court.

Kadogo refused to settle out of court. Rununu sued but Kadogo won. Rununu is contemplating appealing the decision to a higher court.

Advise Rununu.

(15 Marks)

QUESTION 5

With the aid of appropriate illustrations, explain the meaning and importance of the concept of prior art in reference to patents.

(15 marks)

QUESTION 6

While describing the utilitarian legal theory, show how it might be used to explain and justify the (following new plant variety protection criteria)

- (a) Distinctness
- (b) Uniformity
- (c) Stability

(15 Marks)



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UNIVERSITY EXAMINATIONS 2018/2019 ACADEMIC YEAR THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 301

COURSE TITLE: INTELLECTUAL PROPERTY

DATE: 26TH APRIL, 2019 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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QUESTION THREE

'The argument for the conflict [between patents and the right to health] is that patent protection limits the enjoyment of the right to health because of the high cost of patented medicines. [P]atent laws have intrinsic limits, which normally allow them to respect human rights. They are namely: Excluded subject matter, ... protection requirements ..., exceptions ... and term.'

(Torremans PLC (ed) *Intellectual Property and Human Rights: Enhanced Edition of Copyright and Human Rights* 2008 Kluwer Law International, BV, The Netherlands at p147).

Discuss the above statement with reference to the Kenya Industrial Property Act 2001.

(15 marks)

QUESTION FOUR

Describe the tests that can be used to rectify the balance between intellectual property rights and other human rights.

(15 marks)

QUESTION FIVE

With the aid of illustrations, discuss the internationally recognised requirements for the grant of plant breeders rights.

(15 marks)

QUESTION SIX

While explaining the protection criteria for each of the following intellectual property rights, evaluate their relevance to Kenya:

- (a) Traditional knowledge
- (b) Cultural expressions

(8 marks)

(7 marks)

1. LAW

18 JUNE 2021

FLB 300: PUBLIC INTERNATIONAL LAW

QUESTION ONE

C, a citizen of State T, is kidnapped and severely beaten by a member of the secret police of State T during official interrogation in the state prison of T. Unfortunately this is a common practice in State T which has neither ratified the International Covenant on Civil and Political Rights (ICCPR) nor the Convention against Torture (CAT) or any other international human rights treaty.

C seeks justice before domestic criminal courts of State U where the member of the secret police who carried out the beating is currently residing. The criminal code of State U contains a provision that allows the exercise of jurisdiction "in accordance with international law".

Does the criminal court of State U possess jurisdiction in this matter? (25 marks)

QUESTION TWO

Identify and discuss the primary sources of international law according to the ICJ Statute. (15 marks)

QUESTION THREE

In regard to the concept of recognition of states in international law, discuss the holdings in Luther v Sagar, [1921] 1 K.B. 456 and Tinoco Arbitration (Great Britain v Costa Rica) 1 RIAA (1923) 369. (15 marks)

QUESTION FOUR

Identify and discuss the different ways in which jurisdiction over a dispute between States might be conferred on the International Court of Justice (ICJ). (15 mark)

QUESTION FIVE

State A and State B (both members of the UN) share a common border but their relation is tense. One day, three border guards of State A provoke the border guards of State B by using heavy weapons across the border, injuring one soldier of B. As a consequence State B launches a counter attack that leads to a bloody one-month armed conflict. In the end, State A is completely defeated. State B then insists that State A signs a peace treaty (a) to end all armed activities between A and B, and (b) to cede a certain part of A's territory to State B.

Is this peace treaty in all its parts legally valid? (15 marks)

QUESTION SIX

State sovereignty, the fundamental tenet of the international system requires that States apply the Act of State Doctrine.

Discuss.

(15 marks)



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UNIVERSITY EXAMINATIONS 2017/2018 ACADEMIC YEAR THIRD YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 302

COURSE TITLE: CRIMINAL PROCEDURE

DATE: 18TH JULY, 2018 **TIME:** 9.00 A.M. - 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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UNIVERSITY EXAMINATIONS 2018/2019 ACADEMIC YEAR THIRD YEAR FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 300

COURSE TITLE: PUBLIC INTERNATIONAL LAW

DATE: 16TH APRIL, 2019 **TIME:** 2.00 P.M. – 5.00 P.M.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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2019

FLB 300

QUESTION 1

Scuba is a tropical island in the South Pacific. Two years ago, an internal conflict arose between the government of Scuba and a political movement, called 'For the People of Scuba Movement (FPSM)'. The state of Rico is known to support the FPSM by providing financial support and arms to the FPSM and by providing military training to the members of the FPSM. It has been established that the FPSM has participated in illegal activities, such as assassinations of government officials of the state of Scuba.

- a) You are asked to provide the government of Scuba with legal advice on the question of whether the acts of the FPSM can be attributed to the state of Rico. Please provide the advice below. (10 points)
- b) In response to the support that the state of Rico provides to the FPSM, a group of students from Scuba has organized a protest in front of the embassy of Rico in Scuba. During the protest, the atmosphere turns violent and the premises of the embassy end up being seriously damaged by the students. On the same day the Prime Minister of the state of Scuba endorses the actions of the students. You have been asked to provide the state of Rico with legal advice and to assess whether the acts of the students can be attributed to the state of Scuba (15 marks)

QUESTION 2

Suppose that the states of Azoria, Bafu, Cimora, Dimaan, Erdonia and Fulencia are parties to a multilateral treaty banning trade barriers with regards to all dairy products. The state of Bafu informs the other five states that it does not consider itself bound by the provision of the treaty regarding the compulsory settlement of treaty-related disputes by the International Court of Justice. The states of Azoria, Cimora and Dimaan do not respond to the statement. The state of Erdonia agrees with the statement. The state of Fulencia objects to the statement. The treaty does not mention anything on reservations.

Discuss the legal effects of the statement made by the state of Bafu and the reactions thereto by the other five states. (15 marks)

QUESTION 3

✓ Discuss whether the way international law is made through treaty and customary international law reflects the nature and needs of the international legal system. (15 marks)

QUESTION 4

The International Court of Justice (ICJ) has no so-called compulsory jurisdiction.
a. Explain under what circumstances the ICJ has jurisdiction to settle an inter-state dispute. (7 marks)

- b. Explain whether or not in the view of the ICJ its "provisional measures" are binding. (8 marks)

QUESTION 5

Mr. Zelaya was removed from office as President of Honduras by the army and judiciary of Honduras. Subsequently, elections were held and President Porfirio Lobo was elected. A large Honduran community lives in Nicaragua supporting Zelaya. This community disagrees with the removal of Mr. Zelaya from office and with the outcome of the recent election. As a response, they have been demonstrating peacefully in front of the Honduran Embassy for 5 days. The police have been monitoring the demonstrations. However, at one point the crowd becomes more violent and they manage to enter the premises and cause substantial damage. The day after the Nicaraguan authorities decide to send extra forces to the Embassy to stop the violence and arrest the protesters.

Can Nicaragua be held responsible under international law for the damages caused to the Honduran Embassy? (15 marks)

QUESTION 6

It has been argued that former heads of state or government as well as certain former high-ranking ministers should be more careful when they travel abroad as a result of the rulings by the House of Lords in the Pinochet case and the International Court of Justice in the Arrest Warrant case.

Discuss the potential difficulties that such persons might encounter during their travels as exemplified by these two cases. (15 marks)