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International Law  
Professor Moore  
Final Exam  
Friday, December 12, 2003  
9:00-11:00 AM

**INSTRUCTIONS**

1. This is a two-hour exam, in three sections. You should spend approximately 40 minutes on each section. Section I includes seven short answer questions of which you must answer **four**. (You must answer short answer question #1, and then you may choose between #2 and #3, between #4 and #5, and between #6 and #7.) Section II includes one essay question. Section III includes one fact-based question. You must complete both Sections II and III.
2. This is a **MODIFIED OPEN BOOK EXAM**. You may bring into the exam the Dunoff text, a treaty supplement (or printouts from the Dunoff treaty website), class handouts, and any class notes and outlines that you have prepared *yourself or in conjunction with others in the class*. Other texts and commercial outlines are not allowed.

**GOOD LUCK AND HAPPY HOLIDAYS!**

**I. Short Answer Section (40 minutes total, worth 40% of total exam points)**

Spend 10 minutes on each question. You will answer four in all, with the following choices and requirements: Answer question 1 (**required**), and questions 2 **OR** 3, 4 **OR** 5, and 6 **OR** 7. Spend a total of 40 minutes on this section. I recommend that you STOP at 9:40 even if you have not completed all four questions. You will need the remaining time for the next two sections of the exam. You can then go back and finish this section as time allows. *Please write your answers to these short answer problems, legibly, in the space provided below. Word processors may not be used for section I. You may also use the reverse sides of pp. 2&3 of your exam, but not your blue books.*

1. **(REQUIRED)** Define a subject of international law, including the full range of potential attributes of international legal personality. Give two examples of international actors, and specify which attributes of international legal personality they in fact possess, and which they do not. (Continue on reverse side if necessary.)

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**ANSWER 2 OR 3** (select *either* to answer; continue on reverse side if necessary):

2. Set forth in brief the primary sources of international law. Describe the interrelationships between these sources of law. Give two examples of norms that arise from two or more primary sources of law.

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3. Please define “soft law. Give two examples of soft law that may also evidence “hard” international law. (Skip #3 if you answered #2.)

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**ANSWER 4 OR 5** (select *either* to answer; continue on reverse side if necessary):

4. Contrast monism and dualism. Give one example of both systems and *briefly* explain how international law functions at the municipal level within both systems.

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5. Define and contrast territoriality and nationality as bases for the exercise of prescriptive jurisdiction. Give one example of both. (Skip if #4 answered)

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**ANSWER 6 OR 7** (select *either* to answer; continue on reverse side if necessary):

6. Define and contrast the exercise of prescriptive, judicial and executive jurisdiction. Give one example of each.

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7. What is sovereign immunity? What jurisdictional principle is qualified by sovereign immunity? What is the difference between absolute and qualified sovereign immunity? Give one example of a court's application of qualified sovereign immunity. (Skip #7 if you answered #6.)

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**II. Essay question (40 minutes, worth 30% of total exam points)**  
*(Please answer question II in your blue books or by word processor.)*

International law has been challenged on grounds of legitimacy (lack of consent, representativeness or accountability), relevance (lack of compliance or enforcement mechanisms) and justice (enduring or worsening conditions of violence, oppression and poverty in various regions of the world). Give one example of a contemporary or historical international law “situation” (e.g., a war, an international criminal prosecution, an international law claim brought in municipal court, a Security Council enforcement action, a famine, etc.). Be specific as to place, time and legal issues posed. Then identify *one* of these three challenges that might be brought against the international legal response to the problem. Explore *both* sides of the issue.

For example, how might the action (or war, or prosecution, etc.) be seen as illegitimate and how might it be seen as legitimate? **OR**, alternatively, how might it illustrate the irrelevance of international law and how might it suggest its relevance? **OR**, finally, how might socio-economic justice be frustrated and how might it be furthered?

You may take an example from our materials, or from your own experience or knowledge base. Be sure, however, to include your own creative analysis.

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**III. Fact-based question (40 minutes, worth 30% of total exam points)**  
*(Please answer question III in your blue books or by word processor.)*

Hassan Bubakar is a West African who was apprehended in Afghanistan in January 2002, and has been detained in the U.S. naval base on Guantanamo Bay, Cuba since that time, in the context of the so-called “War against Terrorism.” Mr. Bubakar has not been charged with any crime, nor has he been scheduled for a hearing before a U.S. military tribunal. He has been unable to communicate with his family in Senegal or the United States (where he has a U.S. resident alien brother) since his detention. However, when Amnesty International visited Guantanamo Bay in September of 2003, they photographed Hassan, and his picture was

published in the New York Times. Hassan's brother, Ibrahim Bubakar, a sociology major at UNM, saw the photograph, recognized his brother, and contacted the American Civil Liberties Union in Albuquerque. You are the local ACLU cooperating attorney assigned to interview Ibrahim and to develop his brother's case.

Ibrahim is outraged that his brother is being treated as a purported terrorist, despite the lack of formal charges or evidence against him. Ibrahim explains that Hassan was attending an Islamic school in Kandahar, Afghanistan at the time of his capture, and has no political, military or paramilitary affiliation. Ibrahim is also concerned about his brother's health, as Hassan appeared emaciated and pale in the photograph. Ibrahim would like you to bring a lawsuit in U.S. District Court against the U.S. government, challenging the basis for his brother's detention, as well as the conditions of that detention. What procedural options are open to Ibrahim on his brother's behalf? (Identify at least one.) What claims will he raise? (Raise two.) What international sources of law will Ibrahim use to claims that his brother's rights are being violated? (Explore two.)

This problem raises numerous issues. You are not expected to iron out all these complexities, given that advocates and courts in the U.S. are only beginning to do so. What is essential is that you ask yourself what may be illegal about the basis for and conditions of Hassan's detention. Having identified two possible legal challenges, you will then need to point out two specific treaty provisions and/or customary norms that support his claims. Procedurally, you then need to establish the mechanism or mechanisms by which these claims could be raised in U.S. courts. I.e., what statute and/or Constitutional provisions provide the basis for a cause of action in U.S. District Court on Hassan Bubakar's behalf?

**EXTRA CREDIT** (up to 5%): Discuss the main defenses that the U.S. government would set forth in its response to a lawsuit challenging Hassan's detention. On what basis or bases (one or two are sufficient) would the U.S. argue that Hassan's detention is lawful?