

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

PUBLIC INTERNATIONAL LAW

Time: Three Hours This paper consists of **four** questions.

All questions are of equal value.

Candidates are required to attempt all **four** questions.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

On 5-6 January 2013, *The Sydney Morning Herald* published the following report:

UK arrest on suspicion of Nepal torture

London: Police have arrested a man living in St Leonards, in southern England, on suspicion of committing acts of torture during the civil war that divided Nepal between 1996 and 2006.

Officers from the London Metropolitan Police's counterterrorism command arrested the 46-year-old man at a house in the East Sussex town shortly after 7am local time on Thursday in relation to allegations of torture committed in Nepal in 2005, a year before the war between Maoist extremists and the government ended.

The man, who has not been named, was taken to a police station, where he remained in custody while detectives searched a home in the town.

The "man" referred to in the above report subsequently was identified as Colonel Kumar Lama, a serving officer in the Nepalese army, who was remanded in custody by an English magistrate to appear at the Old Bailey in London on 24 January 2013 to answer criminal charges of torture allegedly committed by him as a public official at army barracks in Nepal in 2005.

With reference to principles of state jurisdiction and immunity from jurisdiction, comment on the above case. What would be the position if Colonel Lama had been found in Australia? In that event, what would be the position if Colonel Lama's presence in Australia was in his capacity as a diplomatic agent representing Nepal or as a Nepalese consular officer? What would be the position if Colonel Lama was found in Australia while on a visit to members of his family? What would be the position if the victim of the alleged torture in Nepal in 2005 wished to bring civil proceedings for damages against Colonel Lama in an Australian court?

Question 2

Discuss, with reference to the decided cases, the concept of individual criminal responsibility under public international law. In your answer, comment on the contribution of the Alien Tort Claims Act 28 United States Code s 1350 (1789) to the development of the concept of individual and corporate responsibility for violations of public international law.

(Question 3 follows)

Question 3

Answer part (a) and part (b). The parts are worth equal marks.

- (a) “It has become received wisdom that the common law approach to customary international law is that of ‘incorporation’, under which customary rules are to be considered ‘part of the law of the land’ provided they are not inconsistent with Acts of Parliament.” (J Crawford, *Brownlie’s Principles of Public International Law*, 8th edn, 2012, p 67)

Comment on this statement with particular reference to the decided cases and the relationship between customary international law and Australian law.

- (b) With regard to the relationship between treaties and Australian law, Campbell JA in *Samootin v. Shea* [2012] NSWCA 378 made the following observation (at [33] citations omitted):

International treaties that have been ratified by the Australian government do not as such form part of our domestic law or operate as a direct source of individual rights and obligations under that law.

Explain this statement and give particular examples of treaties ratified by the Australian government which have become part of domestic or municipal law.

Question 4

Answer part (a) and part (b). The parts are worth equal marks.

- (a) In *Flores v. Southern Peru Copper Corporation* 43 ILM 196 (2004), a decision of the United States Court of Appeals, Second Circuit, Cabranes J observed (at p 205):

In determining whether a particular rule is a part of customary international law ... courts must look to concrete evidence of the customs and practices of States.

With examples from the decided cases, explain this observation. Are “the customs and practices of States” sufficient to create a rule of customary international law?

- (b) **In the context of state responsibility for the mistreatment of foreign nationals, explain the concept of imputability or attribution with examples from the decided cases.**

END OF PAPER