

**INTERNATIONAL LAW EXAM FALL 2003**

**Exam Arrangements:** This is a 24-hour take-home exam. It may be collected on any day December 8-18 inclusive. Students using ExamSoft should follow the Law School's standard instructions with regard to completion and submission of take-home exams on the ExamSoft system. Students collecting and returning the exam in person must do so between 10am-12 noon or 2pm-5pm on the particular day. Return **two copies** of exams (together with the question paper) no later than 24 hours after collection. In order to be fair to everyone, exams returned more than 24 hours after collection will be noted as late and graded accordingly. Papers should be collected from, and returned to, Shelley Bogen in VH-314 Monday-Friday inclusive - on Saturday and Sunday exams should be collected from, or returned to, the Law School's designated room (probably VH 208).

**Materials:** You may use the course materials in printed or electronic form, the Akehurst book, any materials distributed in this class, and any notes, outlines etc made by any students in this class. You may consult language dictionaries if necessary. Other materials (electronic material included) may not be used during the exam.

**Word Limit:** Your exam may not exceed a total of **3000** words. The computer word count for your whole exam should be included at the end of your final answer. You are urged to be concise and to the point. Arcane digressions or speculative elaborations of the facts as given should be avoided. Nothing will be gained by elaborate citation styles or lengthy quotations. You are welcome to use any intelligible abbreviations (e.g. P for Petra Portales, Q for Quidditch.)

**Format and Allocation of Marks:** The exam consists of two questions. Answer all questions. Question 1 is 60% of total marks. Question 2 is 40% of total marks. You are advised to allocate time and words roughly in the same proportion as the marks are allocated, but this is up to you. Do allocate time carefully -- you are strongly urged to focus on identifying and analyzing the main issues quickly and succinctly, and not to spend excessive time on any one question. Read the questions carefully to be sure you focus on what you are requested to do (e.g. to advise a particular party). Do not put your name on the exam. **Don't forget to put your ID number on the exam!**

**Discussion:** The exam is an individual effort. Discussion with or assistance from anyone else is not permitted. Once you have taken the exam, it is important to refrain from any discussion of it which might affect those who have not yet taken it.

Good luck, and best wishes for the holiday season!

**QUESTION ONE (60% of total marks)**

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Petra Portales, a Mexican national, used most of her savings to purchase and operate a fish retail store located in the coastal town of Quidditch, in the US state of Maine, very close to the border with Canada. In 1996, she entered into a contract with Hermione Hogwarts, a Canadian national, to purchase Hogwarts's pizza retail store in the same town for \$30,000. Hogwarts subsequently said at a public meeting that she should not have sold to a Mexican, and refused to accept the money or proceed with the contract. Portales sued Hogwarts in the local state court in Quidditch. Hogwarts's lawyers argued to the jury that Mexicans are taking over Quidditch and dealing unfairly with local business owners, and that Hogwarts's failure to proceed with the contract was a patriotic act by people of the North to stand up against a Mexican takeover. The judge during the trial overruled objections Portales made to these statements. In September 1997 the jury decided, contrary to the clear weight of the evidence, that there had been no breach of contract, so Portales' civil suit failed. She filed an appeal, but before it was litigated, the following events intervened to prevent her from pursuing it, and her appeal was dismissed with finality in February 2001. In March 1998 Portales was on a fishing trip with friends in a Canadian-registered fishing vessel at a point 15 miles from the nearest land (the coast of Maine) but within a very pronounced indentation in the US coast. The vessel she was navigating collided with a US-registered fishing vessel owned and navigated by a US national who happened to have been one of the jurors in the earlier case. He died in the collision. When the Canadian vessel was blown ashore in a desperate storm on a very remote Canadian beach just across the border from Quidditch, off-duty US police in plain clothes rushed to the rescue, but upon hearing what had happened at sea, arrested Portales on a murder charge, informed her of her US Constitutional "Miranda" right to remain silent, and took her back to the US. She was tried and convicted of murder, although throughout she has plausibly asserted her innocence. Her state court appeals and federal court review processes are all now exhausted, and she is serving a sentence of life imprisonment. She never received useful advice about her legal rights during the criminal proceedings, as by then she had no income with which to pay a lawyer due to inability to operate her store while in jail, so her only legal assistance came from a regrettably ineffectual and incompetent court-appointed lawyer. The Canadian government protested the arrest and prosecution of Portales. The US replied, correctly you may assume, that the arrest and prosecution were clearly lawful under US law, but apologized to Canada for any impropriety in the police action.

The Mexican government until now (December 2003) has had no involvement with these matters, but following press reports and public clamor for action in Mexico, the government has turned to a prominent New York law firm for advice. You have just started work at the firm, and the responsible partner, hearing that you have studied international law, asks you to write a memo analyzing the international law issues arising from these facts. You are asked not to consider issues of US law except in so far as they bear directly on international law questions, and not to consider the possibility of bringing new proceedings in US courts, as these aspects are being dealt with by others in the firm. You are expected to refer to and use only materials included in this course.

**QUESTION TWO (40% of total marks)**

Should the "Foreign Office" model of international law be abandoned? What if anything should or could replace it? Discuss with reference to:

- a) US Court decisions covered in the course relating to the US President's powers on foreign affairs issues;
- b) The Pinochet and Yerodia cases; and
- c) The International Criminal Court.

(In Question Two, try to write a single essay presenting a unified line of argument. It is certainly not necessary to divide it into sub-parts for items a), b), and c), although if you wish you may do so. Do not try to be comprehensive. Avoid lengthy description of what the law *is* on these matters. The questions are normative: "should", not "is"; and normative/speculative "should or could", not "will". There is no "right" answer. The aim is to present your own argument, and to meet objections to your argument where relevant.)

**END OF EXAM**