

THIS EXAM HAS 4 PAGES.
THIS EXAM HAS 2 QUESTIONS.

NEW YORK UNIVERSITY SCHOOL OF LAW
TAKE-HOME

Final Examination – Fall 2006
Cover Sheet

Course Title:	International Law
Course No. and Section:	L05.3001.001
Professor:	Kingsbury
Time Allowed:	24 hours
Materials Allowed:	You may use the course materials, the Evans 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 **3200** words. 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., R for Ruritania).

Format and Allocation of Marks:

The exam consists of two questions. Answer all questions. Question 1 is 70% of total marks. Question 2 is 30% 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. Read the questions carefully to be sure you focus on what you are requested to do (e.g., to advise a particular entity). Do not put your name 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 to all for the holiday season!

QUESTION ONE (70% OF TOTAL MARKS)

In February 2006, the “Worzel”, a privately-owned commercial ship registered in the United States and flying the US flag, was innocently sailing 26 miles off the coast of Ruritania. This is in an area of gentle curvature of Ruritania’s coast known as the Beautiful Bay (BB). Ruritania has recently claimed this area as its internal waters. On that basis, the Ruritania navy intercepted the “Worzel”, and forced it into a Ruritanian port. There, Ruritanian military personnel acting in accordance with Ruritanian law seized from the ship Mr. Sam Sentoso, a United States national, and took him to a military jail. There he was tortured, and subsequently tried by a Ruritanian Military Commission consisting of a single military officer who conducted the trial in twenty minutes without providing any opportunity for Sentoso to present his factual and legal arguments, and convicted Sentoso mainly on the basis of a confession obtained from him by torture. He has been sentenced to 30 years in jail. The Ruritanian Government has stated that the Military Commission had jurisdiction because Ruritania is engaged in a war in the remote northern part of Ruritania with the Free Ruritania Front (FRF), and that Ruritania believes Sentoso is a financial supporter of the FRF. The US government has very strong evidence that the perpetrator of the torture was Ms Mildred Malo, who was and is an inspector in the Ruritanian police and has no contacts of any kind with the US. The US has asked Ruritania to transfer Malo to the US, but Ruritania has thus far denied it has any legal obligation to do so.

Sentoso, who is 65 years old, worked briefly for the US State Department after graduating from Law School 40 years ago, and since then has been in private legal practice. He is wealthy, and a couple of years ago purchased numerous 30-year Ruritanian government bonds on the secondary market at a very good price, in a lawful deal which nevertheless made him unpopular with the Ruritanian government. These bonds pay interest quarterly in New York upon physical presentation of a coupon on the specified date. However, Sentoso had hidden the bonds somewhere in New York, and is not able to communicate their whereabouts or physically to present the coupons while in jail. You should assume there is no way in US law around the physical presentation requirement, and that these coupons will become worthless if not presented on time.

Sentoso’s spouse has now filed a civil tort suit in US federal court against Ruritania in relation to his torture and trial, and to seek payment of the interest on the bonds. Ruritania has no assets in the US.

The 2002 Treaty of Friendship between the US and Ruritania, signed on January 4, 2002, provides in relevant part (only Articles 9, 15, 17 and 18 are relevant):

Treaty of Friendship between the USA and Ruritania

Article 9: “Freedom of commerce and navigation between the territories of the States Parties shall be guaranteed and respected by the States Parties. The vessels of either State

Party shall have the right freely to travel with their cargoes to and from all ports, places and waters of such other State Party.”

Article 15: “1. In criminal proceedings in the territory of a State Party that involve issues concerning the national security of that State Party, evidence of any kind shall be admissible, regardless of how it was obtained, except where the national law of the State Party provides otherwise.

2. Nationals of one State Party present in the territory of the other shall conclusively be deemed to have subjected themselves to the jurisdiction of that State Party with respect to issues concerning the national security of that State Party; but this shall not apply to persons referred to in paragraph 4.

3. Neither State Party shall be required to transfer any person referred to in paragraph 4 to the other State Party.

4. For purposes of paragraphs 2 and 3, the ‘persons’ referred to are current or former Government officials, employees, or military personnel of a State Party.”

Article 17: “Disputes arising out of the interpretation or application of this Treaty shall lie within the jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application by either Party to this Treaty.”

Article 18: “This Treaty shall enter into force 3 months after instruments of ratification are exchanged between the Parties.”

The US followed all proper procedures under US law, and sent its instrument of ratification to Ruritania on July 4, 2002. The Ruritanian government announced on the same day that its instrument of ratification had also been sent, so that the Treaty would enter into force on October 4, 2002. The United States Secretary of State issued a statement on October 4, 2002 saying that the US had not in fact received Ruritania’s instrument of ratification, but that the US accepted Ruritania’s statement and would not make any difficulty with regard to this question, and that the Treaty therefore entered into force on October 4, 2002.

The US Secretary of State in October 2006 publicly expressed concern about Ruritania’s conduct, indicated that important points of principle were also at stake, and announced that if Sentoso was not released and allowed to return to freedom in the US very quickly, all exports from Ruritania to US ports would be prohibited with effect from January 1, 2007. Ruritania replied on November 4, 2006 that this was an outrageous threat, that Ruritania was terminating the 2002 Treaty of Friendship for all purposes with immediate effect, and that Ruritania would itself prohibit all exports from Ruritania to US ports beginning in February 2007.

You are asked by the US State Department to write a memo which:

1. advises on the US government’s legal options in relation to Ruritania (the use of force and abduction have already been ruled out, so you are told not to consider those); and

2. assesses any other issues of international law, and of US law relating to international law matters, that arise from these facts, including matters in which the US executive branch is not directly involved.

You are instructed that your Memo should address these legal questions to the extent (and only to the extent) that they were covered in your International Law course. You are not expected to address the national law of Ruritania at all.

Assume that the United States and Ruritania have been since no later than June 2001 parties without reservation to the United Nations Convention Against Torture of 1984, and by legislation at that time incorporated it fully into domestic law. They are also longstanding parties to the four Geneva Conventions of 1949 concerning international humanitarian law issues, and to the Statute of the International Court of Justice. You are instructed that no other treaties in force for the two states are directly applicable to these facts. The state and government of Ruritania has long been recognized by the US, and vice versa. Their relations have been friendly, and the US has never designated Ruritania as a state sponsor of terrorism or otherwise subjected Ruritania to special measures in US law.

(Ruritania is a fictitious country, and you have no information about it other than what is provided in the exam question. As regards the USA, you have such information about legal matters as was covered in the course materials and class discussions, but that is all. The answers to this exam question do not call for or expect any knowledge at all beyond the course and course materials.)

QUESTION TWO (30% OF TOTAL MARKS)

Has the “Foreign Office” model of international law now been eclipsed? Support your argument by in-depth analysis of a few selected issues and materials covered in the course. Do not discuss at length any materials or doctrines you have discussed in your answer to Question One. (Please refer *only* to materials covered in the course. Do not try to be comprehensive – the aim is to make a thoughtful, distinctive and well-supported argument and tie it to the specific materials you address.)

END OF EXAM