

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

NEW YORK UNIVERSITY SCHOOL OF LAW
TAKE-HOME

Final Examination – Spring 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 **3000** words. The computer word count for your whole exam should be included. 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., L for Lilliputia, T for Tino Toman).

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, congratulations to those graduating, and best wishes to all for the summer!

QUESTION ONE (70% OF TOTAL MARKS)

In February 2005 the Federation of Ruris and Lillis (FRL) disintegrated, and was dissolved into two states, Ruritania and Lilliputia. The 2005 Treaty of Friendship between the two states, signed on July 4, 2005, provides in relevant part (only Articles 7, 16, and 17 are relevant):

Treaty of Friendship between Ruritania and Lilliputia

Article 7: “1. Either Party may request that any person it suspects of committing a serious crime and who is found in the territory of the other Party be handed over at the border without delay, and such request shall be granted, save in the circumstances set forth in paragraphs 2 and 3 below.

2. Neither Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.

3. If extradition is not granted pursuant to paragraph 2 of this Article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense.

4. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party, be surrendered or transferred by any means to any other entity or third country.

5. For purposes of paragraph 4, ‘persons’ are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.”

Article 16: “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 17: “This Treaty shall enter into force 3 months after both instruments of ratification are filed.”

On October 4, 2005, Ruritania sent to Lilliputia its instrument of ratification of the Treaty, containing a reservation stating: “Notwithstanding Article 7 of the Treaty, Ruritania reserves the right to transfer any person other than a government agent to a third state if national security so requires.” Lilliputia made no comment on this, and sent its instrument of ratification, containing no reservations, on the same day. There is no clause in the Treaty addressing the topic of reservations. The Treaty duly entered into force on January 4, 2006.

A terrorist bombing was committed in Lilliputian territory on January 1, 2006, targeting some members of the American community living there. One week later, Lilliputian police arrested Ms Sam Sasson, a Ruritanian national. As is now proven, she was thereupon tortured by Lilliputian authorities, although no foreign government personnel

knew this at the time. Ms Sasson then signed a written statement purporting to confess her involvement in the bombing, and implicating Mr Cass Caram (who is a Ruritania national) as a supporter of the group who perpetrated the bombing. Relying in part on the information in her statement, the United Kingdom authorities have detained him in London, England. As regards Sam Sasson, Ruritania protested possible mistreatment of her, and demanded that Lilliputia hand Sam Sasson over to Ruritania at the border. Instead, US law enforcement personnel, concerned that Ms Sasson might have information about another impending bomb attack against US civilians in Lilliputia and that any formal request to the government for her transfer might be leaked to the bombers, traveled without the permission of the Lilliputian government to Lilliputia. There they took custody of Ms Sasson by agreement with their friends among low-level officers in the Lilliputian military, and detained her for 12 hours in Ruritania, before bringing her against her will to the USA, where she was detained lawfully on suspicion of having committed acts of terrorism. But US authorities later released her, once they discovered compelling evidence that she had no involvement at all with the bombers. She then made a public denunciation of her torture, and soon thereafter was murdered in Chicago, Illinois by Tino Toman, an employee of Air Lilliputia (AL), the airline owned by the Lilliputian government, which operates a commercial passenger service between Chicago and Lilliputia. Toman, who was acting under orders from unnamed senior members of the Lilliputian military, has fled to Ruritania. Ms Sasson's husband, a Lilliputian national, now proposes to file in US federal court a civil suit against Lilliputia, Air Lilliputia, Tino Toman, the United States Government, and the persons who brought her to the United States.

Assume that the United Kingdom, the United States, Lilliputia and Ruritania have all since no later than June 2005 been parties without reservation to the United Nations Convention Against Torture of 1984, and have by legislation incorporated it fully into domestic law. The states and governments of Lilliputia and Ruritania are recognized by the US and the UK, as well as by each other. Lilliputia was admitted to membership of the United Nations on January 18, 2006. But Ruritania's status is that the United Nations Security Council and General Assembly both resolved in October 2005 that "The Claim by Ruritania to continue the UN membership of the Federation of Ruris and Lillis (FRL) has not been generally accepted", and advised Ruritania to submit a new application for membership in the United Nations, which it has not yet done.

You are asked by the US State Department to write a memo on the issues of international law, and of national law relating to international law matters, that may arise from these facts, to the extent (and only to the extent) that these were covered in your International Law course. You are not expected to address the national law of Lilliputia or Ruritania at all. (Lilliputia and Ruritania are fictitious countries, and you have no information about them other than what is provided in the exam question. As regards the UK and 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 approach of the United States Supreme Court to issues of international law been satisfactory? Make your argument by reference to any *three* US Supreme Court decisions included in the course materials. Do not discuss at length any cases 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 based on the three cases you address.)

END OF EXAM