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International Criminal Law

26 June 2023, 9-11 am

Duration: 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 3 (three) pages and 4 (four) questions.

Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

| | |
|------------|-----------|
| Question 1 | 12 points |
| Question 2 | 8 points |
| Question 3 | 28 points |
| Question 4 | 17 points |

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|-------|-----------|
| Total | 65 points |
|-------|-----------|

Good Luck!



Question 1

- a) How is the principle of legality defined in international law?
- b) Give examples where the principle of legality in ICL has been challenged.
- c) How were such challenges addressed by courts/tribunals? Were they addressed in a convincing manner?
- d) How is the issue of legality dealt with in the Rome Statute of the ICC?
- e) Are historical concerns about the legality of ICL relevant today?

Question 2

A is accused of committing several crimes against humanity. An ICC Prosecutor conducts several interviews with him in his home state, where A is detained in a facility that is infamous for human rights abuses. Later, at the trial stage, A's defence claims that A was tortured in detention by officials of his home state, who gave him instructions on how to answer to the questions of the ICC prosecutor.

- a) Under what circumstances and conditions can the interviews conducted by the ICC Prosecutor be excluded as evidence?
- b) What rationale, if any, prohibits the use of evidence that results from torture?

Question 3

While a war was going on between State A and B in 2015, two soldiers of State B were captured and brought to a City in State A. There, the Military Commander M placed the two prisoners of war under the escort of soldier S and ordered S to walk with the two prisoners to an office in town for interrogation. While soldier S and the three prisoners started walking, M shouted to S: "Do not interfere, if civilians molest the prisoners or try to kill them! They ought to be dead anyway." The gathered civilians, among them X, Y and Z, heard this order (as was intended by M).

When the prisoners were walked through one of the city's main streets, X, Y, Z and other civilians started to hit the prisoners. Some even started to shoot. Soldier S nevertheless followed his order and did not intervene. Even though he knew that soldiers are duty bound to protect Prisoners of War when escorting them. The two prisoners eventually were shot dead on the street (but not by X, Y or Z).

State A and B are both parties to the Rome Statute.

- a) Assess the criminal liability of Soldier S under the Rome Statute
- b) Assess the criminal liability of Commander M under the Rome Statute
- c) Assess the criminal liability of the three civilians X, Y, Z under the Rome Statute



Question 4

A journalist approaches you for a comment on whether Mr. Vladimir Putin could be tried for committing war crimes and aggression. **Write a response.**

Your response should address:

- a) Under what circumstances ICC jurisdiction could be triggered.**
- b) What the obstacles to prosecution before the ICC are.**
- c) Whether other courts could try Mr. Putin for those crimes.**