



INTERNATIONAL CRIMINAL LAW

- EXAM PERIOD WS 2020/21 -

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February 3, 2021

Section A: Multiple-Choice Questions (12 out of 20 points | 1 point per question)

Justify all your answers with up to **three** sentences. Mere reference to the Rome Statute's provisions is not considered a fully justified answer.

1. The material jurisdiction of the *ad hoc* international criminal tribunals (ICTY and ICTR) is identical to the one of the International Criminal Court (hereinafter ICC). Justify your answer providing two examples.
 - a. True
 - b. False
2. In providing the sources of applicable law, Art. 21 of the Rome Statute (hereinafter RS) is identical to Art. 38 of the Statute of the International Court of Justice.
 - a. True
 - b. False
3. International criminal justice is a State-only affair.
 - a. True
 - b. False
4. The ICC does not have jurisdiction over war crimes committed by children-soldiers.
 - a. True
 - b. False
5. In State A, the official government adopts a strict anti-communist policy, which involves *inter alia* the imprisonment of those holding public offices and being supporters of communism. Juan, who is a teacher

in a public school and a prominent member of the communist party, gets so angry, once the government announces that plan, that he decides to set fire to the warehouse of a company that belongs to one of the government's ministers. Once Juan sets the fire, one of the minister's guards, who happens to be in proximity and is a great supporter of the anti-communist policy, shoots at Juan's head. Juan falls dead and the guardian claims that he acted so to protect the minister's property. Is this a valid ground to exclude his liability in the light of the RS?

- a. Yes
- b. No

6. A successful investigation, which is initiated by the ICC prosecutor on his/her own initiative, does not automatically lead to the prosecution of the persons involved in the situation concerned.

- a. True
- b. False

7. Hakim is a member of the high-level hierarchy of the military forces in State A, which is involved in an armed conflict with the neighbouring State B. While participating in a peace negotiation mission, he is arrested trying to put a bomb in the cathedral of the capital city of State B. Does Hakim's action fall into the protective scope of the RS?

- a. Yes
- b. No

8. The proceedings before the ICC are always open to the public.

- a. True
- b. False

9. Should a revision against an ICC decision be successful, the previously convicted person is to be directly acquitted and subsequently released.

- a. True
- b. False

10. Intoxication is an absolute ground upon which liability is to be excluded in the light of the RS.

- a. True
- b. False

11. The jurisdiction of the ICC over States, which are not Parties to the RS, can only be activated by the UN Security Council.

- a. True
- b. False

12. The principle of legality works differently in International Criminal Law compared to the national one.

- a. True
- b. False

Section B: Exercise (8 out of 20 points)

State X and State Y have been involved in a violent armed conflict since 2015 – with both of them aiming to gain control over the so-called ‘Yellow Valley’, an area in the southern-east borders of those countries with rich natural gas sources. During the hostilities, both parties to the armed conflict have arrested and kept under control enemy soldiers. Damian and Hiba, who belong to the military forces of State Y and are also a couple, get arrested in August 2016. While being in captivity, they are not allowed to communicate with each other – in spite of the fact that the authorities of State X are aware of their family situation. Hiba, who cannot tolerate this situation and particularly the lack of communication with her husband and the rest of her family, attempts to escape in March 2017. Her attempt remains unsuccessful, but at the same time, it frustrates Kazim, the director of the prison, where she is kept. To prevent any similar incidents, Kazim decides to paradigmatically punish Hiba by keeping her in absolute isolation. Hiba not only is not allowed to communicate with anybody (as before her attempt to escape), but she is also denied access to any sanitary equipment. Besides this, she is allowed to visit the toilette only once per day. After she gets released in March 2018, she suffers among other things from a severe infectious disease on her genitalia.



In March 2018, Amani takes command of the camp, where Damian is still kept. At this time, the armed forces of State X are being massively defeated on the battlefield. Amani cannot accept the possibility of a future victory of State Y – fact that makes him furious towards the camp residents. In that context, he threatens them, including Damian, that their families would be blatantly executed, unless they accept to serve in the forces of State X. The majority of the camp residents – being hopeless about the fate of their families – complies with Amani’s orders. Besides this, Amani, who is also a member of the high-level hierarchy of State X’s military forces, gives a very passionate speech in December 2018 to his subordinates, during which he actively orders them to block all the food transportations to State Y that pass through their territory. This is a measure that predominantly affects villages of civilians in State Y, which are close to the Yellow Valley.

Asim, a soldier of Amani, is responsible together with other soldiers for borders controls. As such and following the orders of Amani, he destroys the wheels of food trucks, the drivers of which attempt to cross the borders and reach the State Y. This happens for a period of three months, namely until March 2019. Amani, being an experienced soldier himself, feels anxious about the outcome of those orders, as they have implications on civilians.

Evaluate the actions of Kazim, Amani and Asim in the light of the Rome Statute considering that State X has signed and ratified the latter, but State Y not. To solve this exercise, please also take into account the following provisions of the Third Geneva Convention:

Art. 29 — The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps, and to prevent epidemics. Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them. Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Art. 92 — A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.



A prisoner of war who is recaptured shall be handed over without delay to the competent military authority. Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

Art. 130 — Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Good luck/Boa Sorte!