



**MESTRADO E DOUTORADO EM DIREITO**  
**PROVA DE LÍNGUA INGLESA INSTRUMENTAL – 2011.2**

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**Sri Lanka: Rights group urges UN investigation into alleged war crimes**

By Ashley Hileman

Wednesday, September 07, 2011

<http://jurist.org/paperchase/2011/09/>

Amnesty International (AI) criticized Sri Lanka's investigation into allegations of war crimes committed during its 26-year civil war with the Liberation Tigers of Tamil Eelam (LTTE) and urged the UN to conduct an independent investigation to ensure justice for the victims and their families. The report argues that the Lessons Learnt and Reconciliation Commission (LLRC), established by the country's president in 2010 to address allegations of human rights violations during the last months of the war, is ineffective in nearly every way and does not meet international standards on commissions of inquiry. Instead, AI contends that the above Commission exists merely to "deflect international pressure and silence internal critics". It is further alleged that it has failed to investigate witness testimony that would help to establish the identities of perpetrators as well as protect the witnesses from threats and retaliation.

As a result, due to such shortcomings, AI desires an independent investigation for two other reasons, which it deems crucial: (1) to protect the global principle of accountability for international crimes and prevent the establishment of a negative precedent for other States that may emulate Sri Lanka's attempt to flout international law so egregiously; and (2) to help the process of reconciliation inside Sri Lanka through findings issued by a neutral outside body, free from perceptions of bias, that can establish the truth and provide justice for the crimes committed by all sides, including the LTTE, government forces and their affiliates. Furthermore, AI's Asia Pacific Director as well as members of Human Rights Watch warned that the international community "must not be deceived into viewing the LLRC as a credible replacement for an international inquiry" and that this is the only way the process of post-conflict reconciliation can begin to move forward.

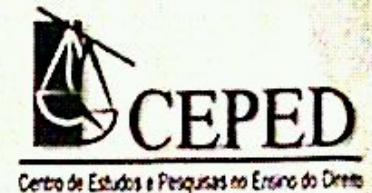
Last month, the Sri Lankan government announced that it will not take responsibility for alleged violations of the laws of war. The Ministry of Defense released a report, entitled "Humanitarian Operation Factual Analysis", where for the first time it is admitted that the military caused civilian deaths near the end of the civil war. The report detailed numerous alleged abuses of LTTE against civilians including using them as human shields. Sri Lanka says it took reasonable steps to avoid civilian casualties. Secretary of Defense, in releasing the report said: "The false claims and allegations made by Tamil Diaspora together with the LTTE international network will be laid to rest with the release of the factual analysis reports".

International human rights organizations all over the world rejected the report for its lack of discussion over the military's responsibility for alleged war crimes such as frequent indiscriminate shelling of civilian areas and executions of LTTE fighters. Nevertheless, the Sri Lankan government, despite admitting civilian losses during the conflict's final months, unconvincingly claims no





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responsibility. This is just the latest and glossiest effort to whitewash mounting evidence of government atrocities during the fighting.

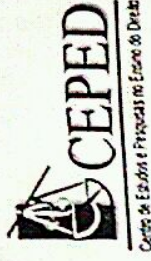
#### QUESTIONS:

- I. Describe the reaction caused by the Sri Lankan war-crimes investigative process on international human rights advocates and the national government's standpoint on the issue. (3 pts)
- II. Indicate the procedural flaws detected by members of AI and justify their claim for an external non-biased investigation. (3 pts)
- III. Establish the relationship between the repercussions of the Humanitarian Operation Factual Analysis report and the idea conveyed by the last sentence in the text: "This is just the latest and glossiest effort to whitewash mounting evidence of government atrocities during the fighting". (4 pts)





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Mergers and Acquisitions by Foreign Companies in China  
August 24, 2010  
By MMLC Group - MMLC Murphy Wang  
<http://www.hg.org/article.asp?id=19619>

Since China's adoption of the "Open Door" policy and entry into the World Trade Organization (WTO), merger and acquisition activities in China have become an increasingly attractive alternative to foreign investors as compared to foreign direct investment. Despite the global economy crisis, China is still Asia's largest merger and acquisition market. Therefore, foreign investors are increasingly using merger and acquisition transactions to establish or expand their Chinese business operations.

The increased pace of foreign merger and acquisition activities has contributed to the restructuring of the Chinese foreign merger and acquisition regulation system. Generally speaking, the Chinese government is taking a positive attitude toward foreign mergers and acquisitions in many areas, depending on the industries involved and related social issues.

Mergers and acquisitions by foreigners in China are examined and approved by a number of different government offices, with the Ministry of Commerce being the main approval office involved. Legal regulations on Strengthening the Approval, Registration, Foreign Exchange Control and Taxation Administration of Foreign-funded Enterprises apply to all cases where a foreign investor acquires equity in a domestic enterprise, and such domestic enterprise is re-established as a foreign-invested business.

The Catalogue of Industries for Guiding Foreign Investment, revised from time to time, divides industries into three basic categories: *encouraged*, *restricted*, and *prohibited*. Foreign-invested enterprises investing in an area listed as an "encouraged" industry are often allowed to establish wholly foreign-owned companies. Industries related to environmental and energy-saving technologies, for example, feature in the encouraged category.

To take over a domestic enterprise, a foreign investor must satisfy the requirements of the laws, administrative regulations and rules concerning the qualifications of investors, and comply with the provisions of the Industry, Land and Environmental Protection Law (ILEPL). When a foreign investor intends to establish a foreign-funded enterprise by merging a domestic enterprise, the deal, prior to analysis by the ILEPL enforcement agents, will be subject to approval by the Examination and Approval Office. If, on the other hand, the takeover of a domestic enterprise by a foreign investor involves the transfer of state-owned property rights and management of state-owned property rights, a set of additional rules will come into play.

Many foreign investors looking at acquiring a Chinese business are often initially daunted by the web of regulations and maze of government approvals required, in order to be able to actually take control and commence controlling the company's business activities. However, foreign investors need to realize that these are well-trodden paths which are becoming more transparent and predictable nowadays. Nevertheless, early communication with legal and accounting advisers, as well as key government officials, is vital for the approval of a deal with avoidance of mine fields.

**QUESTÕES**

- I. Identifique o objetivo do artigo e seu público-alvo, e descreva a posição do autor em relação ao assunto, exemplificando-a através de informações contidas no texto. (3 pts)
- II. Explique como a Lei Chinesa trata das transações comerciais feitas por estrangeiros e estabeleça a diferença na aplicação das leis corporativas pelo Governo chinês em relação a empresas privadas e a estatais. (4 pts)
- III. Explícite a idéia expressa no trecho abaixo. (3 pts)  
*Nevertheless, early communication with legal and accounting advisers, as well as key government officials, is vital for the approval of a deal with avoidance of mine fields. (cf. linhas finais do artigo).*





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**Clean Water Restoration Act Unconstitutional?**

*By Alex Basilevsky*

The Pacific Legal Foundation recently issued a press release putting forth the argument by attorney Reed Hopper that the Clean Water Restoration Act (CWRA) is unconstitutional. Mr. Hopper is the Principle Attorney for the Pacific Legal Foundation. Is Mr. Hopper correct? Mr. Hopper raises two compelling questions in his testimony: 1) whether the inclusion of non-navigable waters within the CWRA exceeds Congress' authority under the Commerce Clause; and 2) whether the definition of "waters of the United States" which extends "to the fullest extent that these waters are subject to the legislative power of Congress under the Constitution." is an effective abdication by Congress of its legislative responsibilities. As Mr. Hopper points out, the Supreme Court has held:

10 *We have identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce.*

15 Under which of these three categories, if any, do non-navigable intrastate waters (and activities that effect them) fit? Mr. Hopper contends that they do not fall within either of the first two categories and thus must fall within the third – that they "substantially affect" interstate commerce – for the CWRA to be constitutional. Therefore, Mr. Hopper makes a compelling case that they do not, as they have nothing to do with interstate economic activities or any other thing of the sort.

20 The discussion over the constitutionality of the CWRA focuses on water as a means of conveyance, like a road or rail line. This is understandable in the context of the Clean Water Act's reference to "navigable" waters. But ever increasingly water is considered – first and foremost – a resource. Further, it is a resource that is regularly shipped across state lines by a multi-billion dollar bottled water industry. It is also a resource that the States themselves are fighting over, sometimes to the point of litigation. Water has become a commodity. And it is a commodity that is critical to innumerable industries.

25 It is not hard for me to imagine that activities that affect apparently "intrastate" bodies of water or wetlands would have a deleterious effect on the availability of water within a State, and thus affect the pattern of commerce relating to – or dependant on – water. Any individual instance may have a negligible impact overall, but that is irrelevant. If water is viewed as a pervasive commodity, then an argument can be made that a regulatory statute governing its treatment bears a "substantial relation" to commerce.





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QUESTIONS:

- I. Describe, in a single paragraph (up to 10 lines), Mr. Hopper's view on the Clean Water Restoration Act. (3 pts)
- II. Relate Mr. Hopper's reasoning with the ruling by the Supreme Court. (4 pts)
- III. Explain Mr. Basilevsky's standpoint in relation to the issue. (3 pts)



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DETERMINING THE APPLICABLE LAW

I. INTRODUCTION

§ 3.1 Whenever state, and not federal,<sup>1</sup> law is applicable to a case, the choice-of-law rule determining which state's law is to be used, ordinarily<sup>2</sup> is a rule of the law of the forum. Even if federal law governs the cause of action, state law,<sup>3</sup> including state conflicts law,<sup>4</sup> may apply to the case as a result of a reference to, or incorporation of it by the federal law.

§ 3.2 In determining the applicable law, the court's analysis will include—expressly or by implication—a number of steps which are pervasive to the entire field of conflict of laws and to resolving its problems. An initial step involves the *characterization*<sup>1</sup> of the *subject matter* of or the issues in the case (e.g. tort or contract, interspousal immunity as raising issues of tort or family law) and of the nature of each *issue* and whether it raises a problem of procedure or of substantive law. The inquiry will then seek to determine whether the issue to be resolved presents a true conflict or whether a “false conflict” exists

with respect to the potentially applicable foreign rule of law so as to make the use of local law appropriate.<sup>2</sup>

Assuming that the forum's choice-of-law rule<sup>3</sup> on the issue refers to the law of another state or country, the possibility exists that the latter's choice-of-law rules refer back to the forum or to yet a third state or country. The court of the forum must at this point decide whether to follow or otherwise consider this further reference, *renvoi*, or to ignore it and apply the local law to which its own, i.e. the forum's, choice-of-law rule initially referred.

The foreign law to which the forum's choice-of-law rule refers, may occasionally differ substantially from that of the forum on the issue. When this difference is so fundamental as to offend the forum's notions of justice, the so-called “*public policy*” exception may lead to a refusal to apply the foreign law. Mere differences between the law of the forum and the foreign law are not enough to refuse application; in fact, if there were no differences, it would be likely that the case presents a “false conflict.” One area, however, where a difference may be relevant, even though it does not violate the forum's public policy, concerns the rare case in which the forum lacks the judicial machinery or remedy<sup>4</sup> to apply the foreign law. The proper disposition of these types of cases raises difficult questions, for instance whether it is more appropriate to dismiss the action without prejudice in anticipation of a proceeding elsewhere or whether there should be an adjudication on the merits by application of local law and local remedies to approxi-



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PROVA DE LÍNGUAS – INGLÊS  
QUESTÃO ÚNICA: TRADUZA O TEXTO ABAIXO

CRETNEY, S. M. e MASSON, J. M. *Principles of Family Law*. London: Sweet & Maxwell, 1997, p. 575/577

The Children Act 1989 defines a child as "a person under the age of eighteen",<sup>11</sup> but neither all its provisions<sup>2</sup> nor other laws relating to children are linked to the age of majority.<sup>3</sup> Indeed, there is little consistency in the age below which legislation concerning children applies. Children under 18 may not be tattooed,<sup>4</sup> or enter betting shops,<sup>5</sup> those under 17 may not buy crossbows<sup>6</sup> and those under 16 may not enter brothels<sup>7</sup> or buy fireworks<sup>8</sup> or National Lottery tickets.<sup>9</sup> At common law<sup>10</sup> and by statute<sup>11</sup> a child's capacity to act may depend not on age<sup>12</sup> but maturity so that there is no simple way adults can know what adolescents may lawfully do.

Much of the law relating to children is based on paternalistic principles. Children are viewed as potential victims; Parliament has sought to protect the young from the exploitation of unscrupulous adults and from their presumed inability to make wise decisions.<sup>13</sup> There are many statutes which deny children access to things<sup>14</sup> which may be equally damaging for adults but it is thought unacceptable (or impracticable) to restrict the liberty of adults in a democratic society. In recognition of the investment children represent for society paternalistic provisions have been enacted which are intended to help young people reach their full potential<sup>15</sup> and to protect them from the worst consequences of their own failings.<sup>16</sup> Young people are also seen as threats and have been controlled for the good of adults in the belief that they are dangerously irresponsible or because their labour might lead to a reduction of adult wage rates.

Most children<sup>17</sup> live for at least part of their childhood with their parents; parents are able to control the actions and determine the experiences at least of young children. The relationship between parents and the state, *i.e.* the extent to which the law allows parents freedom to choose how their children grow up is important. Originally parents' control of young children was recognised by the common law, subject only to criminal penalties for abuse.<sup>18</sup> However, parental failure to protect children from harsh employment conditions in the nineteenth century led to the introduction of legislation which protected children and consequently limited parental action.<sup>19</sup> Further legislation enabled children to be removed from parents who ill-treated them.<sup>20</sup> Although it is accepted that the state has a role in child protection, the grounds for state intervention have been repeatedly debated.<sup>21</sup> The Children Act 1989 now provides that the state may intervene to protect children where they are suffering (or likely to suffer) significant harm.<sup>22</sup> The development of the welfare state had an impact on the lives of children making improvements in health and nutrition available to all.<sup>23</sup> Changes in the social security system in the 1980s, restrictions on local government expenditure and economic decline have impacted severely on children.<sup>24</sup> More children than ever before are now experiencing the consequences of the breakdown of their parents' relationship and the poverty and disruption this often brings.<sup>25</sup> Children's lives are thus shaped by their parents and by the state which controls and supports them and their parents. The law sets the balance between the state and the family and also, within the family, between the parents and the child.

The extent to which children have been recognised and treated as different from adults has varied over time and between social classes.<sup>26</sup> In medieval times, children beyond infancy worked and socialised alongside adults so that it has been suggested that childhood did not exist at this time.<sup>27</sup> Later, changes associated with the Renaissance and the Reformation led to children being placed in "a sort of quarantine"<sup>28</sup> for education and indoctrination before they were considered fit to join adult society. Industrialisation initially brought children into factories working alongside their parents but the danger to their health and the threat they posed to adult employment led to campaigns which resulted in their exclusion from the workforce.<sup>29</sup> The complexity of modern life and society's expectations of young people increased the



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### Access to Justice: The Problem Defined

When people talk about "access to justice", they may mean many different things. But every discussion assumes a goal called "justice", and assumes further that some group or type of person living in a society finds the door to justice closed, or at least too stiff to move on its hinges. The ways in which justice is denied are various - justice costs too much, or is, for whatever reason, too difficult, too alien, or too slow for the group or type shut out. The sufferers may be, in general, the poor, or the lower-class, or some other disadvantaged part of the population. In some societies, it is a racial minority that is said to be cut off from justice. Or it may be an ethnic group, foreigners, "*Gastarbeiter*", or simply the working class. Many people, in recent years, have also come to feel the problem extends as well to the more "diffuse" interest groups - the general consumer, or the man and woman on the street. This last idea, that "diffuse" or general interests have trouble reaching for the levers of the law, is one of the root ideas underlying the "public interest" law movement in the United States.

In theory, any class or group can be denied access to justice. In dictatorships or terror states, ordinary people do not have the right to speak out and claim justice against those in power, not without running terrible risks. In some countries, almost nobody has full access to what at least the liberal states would define as justice; even the courts can be toadies of the state. Justice, we must remember, is a word of many meanings. In some countries, the norms themselves may be wrong or unjust - one recalls the infamous Nuremberg laws of Hitler's Germany, or the laws of apartheid in South Africa. It is hard to draw the line between failure of justice in the procedural sense and failure of justice in the substantive sense. Most of the plans, schemes and reforms (...) are about *procedural* justice, and this is the central concern of most of the studies. But substantive reform is not completely neglected; sometimes the two are bound closely together, as when divorce law is simplified and reformed to make it easier both in rule and in process.

If some group lacks access to the legal system, reform can therefore come about in many ways. Sometimes the public lacks the *information* it needs to reach the palace of justice. If so, the obvious remedy is to give that knowledge to the public (...). Second, the structure of legal process can be changed to make access easier. Procedures can be simplified, costs driven down, if justice were cheap enough, the poor or disadvantaged could open the doors of justice by themselves. There are many plans and schemes of procedural reform. Some are general, some specific to certain courts or institutions. Third, without particularly reforming its procedure, the government (or private charity) can try to provide special help for the poor. The poor can be given privileges - excused from costs and expenses, for example. (...) The state can also provide intermediaries - lawyers for the most part - who will bring lawsuits for the poor, or defend their rights. In the second category we can put the various schemes to destroy the old, stiff, formal processes and replace them with looser lay justice; in the third category we can put the many plans to



2

provide lawyers for poor people charged with crime, the various legal aid bureaus, programs to bring legal services to the citizen, and the provision of representation for group and public interests, including, somewhat more subtly, the development of the so-called "public interest law".

1 Another approach to reform is to combine legal services and procedural reform, and to go beyond these to the deeper causes and cures of the ailment. Cappelletti (1976) and his associates call this the *access-to-justice* approach, in which one examines "the full panoply of institutions and devices, personnel and procedures used to process, and even prevent, disputes in modern societies". We can also describe a still more thoroughgoing approach, which we might call the *power* approach. Many reformers are dissatisfied with the way power and wealth are distributed in their societies, and some think that only by changing this distribution can one effect real reform. To make access to justice "meaningful", Ralph Nader (1976) has recently written, "it has to be part of a general redistribution of legal, political, social, and economic power... otherwise... it may be creating expectations that are betrayed when they come up against reality".

(Excerpted from *Access to Justice: Social and Historical Context* by Lawrence M. Friedman - Professor of Law, Stanford University)

- 1) No primeiro parágrafo do texto, o autor tece comentários sobre o difícil acesso à justiça. Indique a base ideológica da recente mobilização nos EUA para a facilitação do processo. (2,5 pts.)
- 2) Com base na informação contida no fragmento do segundo parágrafo: "*Most of the plans, schemes and reforms... are about procedural justice (...). But substantive reform is not completely neglected (...)*", explique a coligação dos dois âmbitos. (2,5 pts.)
- 3) Referindo-se ao empenho do governo em minimizar os custos do judiciário (parágrafo 3), o autor oferece soluções práticas. Enumere-as e justifique como as mesmas promoveriam uma reforma eficiente. (2,5 pts.)
- 4) Compare o "*access-to-justice approach*" com o "*power approach*" descritos no parágrafo 4. (2,5 pts.)



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### LEGITIMACY AND POLICING

A core function of the police is to bring the behavior of citizens into line with the law. This is true both in personal encounters between members of the public and the police, during which officers make decisions about what is appropriate conduct that people need to accept and follow, and in the case of people's everyday compliance with the law in the absence of legal supervision. The need for legal authorities to secure ready compliance with both specific instructions and voluntary obedience in everyday life has been widely noted by legal scholars and social scientists. It is also widely assumed that the ability of democratic legal systems to function depends on gaining voluntary compliance with the law. Whether such voluntary compliance is, in fact, necessary for social regulation, it is unquestionably true that legal authorities benefit when the public is generally motivated to follow the law. If many or most of the people in a society voluntarily follow the rules, police are able to direct their coercive efforts against a smaller subset of community members who do not hold supportive internal values.

One major factor that explains why people voluntarily obey the law builds on human motivations that are instrumental or "rational" in character. In this view, individuals minimize their personal costs and maximize their rewards. This conception underlies deterrence, sanctioning, or social control models of social regulation. These all emphasize the ability of legal authorities and institutions to shape people's behavior by threatening to deliver or by actually delivering negative sanctions for rule-breaking. To implement deterrence strategies, police officers carry guns and clubs and can threaten citizens with physical injury, incapacitation, or financial penalties. Their goal is to establish their authority in the effort to gain control of the situation. The police seek to control the individual's behavior by manipulating an individual's calculus regarding whether 'crime pays'. Judges similarly shape people's acceptance of their decisions by threatening fines or even jail time for failure to comply. Research suggests that the ability to threaten or deliver sanctions is generally effective in shaping people's law-related behavior. In particular, a number of studies on deterrence suggest that people are less likely to engage in illegal behaviors when they think that they might be caught and punished for wrongdoing.

Studies of deterrence also point to several factors that limit the likely effectiveness of deterrence models of social regulation. Perhaps the key factor limiting the value of deterrence strategies is the consistent finding that deterrence effects, when they are found, are small in magnitude. This suggests that much of the variance in law-related behavior flows from other factors besides risk estimates. A further possible limitation of deterrence strategies is that, while deterrence effects can potentially be influenced by either estimates of the likelihood of being caught and punished for wrongdoing (certainty of punishment), or by estimates of the likely cost of being caught (severity of punishment), studies suggest that both factors are not equally effective. A difficulty for policy is that the factor that most strongly influences people's behavior is the certainty of punishment, which is also the part of the deterrence equation that is most difficult to effectively change.

In addition, the effectiveness of instrumental means of producing compliance always depends on resource limits. The question is how much society is willing to invest in crime control, and how much power legal authorities will be allowed to have to intrude into people's lives. Resources need to be deployed in strategic and effective ways. In the United States, for example, police resources are typically expended more in response to political pressures than to actual crime threats, with the consequence that the ability of the police to deter crime is less than optimal.

Thus the problem faced by those responsible for the everyday enforcement of law in democratic societies is that deterrent effects are apparently modest, certainty of punishment is low under many circumstances, and there are political constraints on resource allocation. As a consequence, deterrence strategies alone are unlikely to be a sufficient basis for an effective system of social regulation. Deterrence can form the foundation of efforts to maintain the legal order, but it cannot be a complete strategy for gaining compliance.



QUESTIONS:

- I. Establish the relationship between law compliance and policing. (3pts)
- II. Explain the notion of 'instrumental motivations'. (3 pts)
- III. Justify the limiting effects of deterrence strategies. (4 pts)



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Assuming that the forum's choice-of-law rule<sup>3</sup> on the issue refers to the law of another state or country, the possibility exists that the latter's choice-of-law rules refer back to the forum or to yet a third state or country. The court of the forum must at this point decide whether to follow or otherwise consider this further reference, *renvoi*, or to ignore it and apply the local law to which its own, i.e. the forum's, choice-of-law rule initially referred.

The foreign law to which the forum's choice-of-law rule refers, may occasionally differ substantially from that of the forum on the issue. When this difference is so fundamental as to offend the forum's notions of justice, the so-called "*public policy*" exception may lead to a refusal to apply the foreign law. Mere differences between the law of the forum and the foreign law are not enough to refuse application; in fact, if there were no differences, it would be likely that the case presents a "false conflict." One area, however, where a difference may be relevant, even though it does not violate the forum's public policy, concerns the rare case in which the forum lacks the judicial machinery or remedy<sup>4</sup> to apply the foreign law. The proper disposition of these types of cases raises difficult questions, for instance whether it is more appropriate to dismiss the action without prejudice in anticipation of a proceeding elsewhere or whether there should be an adjudication on the merits by application of local law and local remedies to approximate the foreign result.



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na introdução do texto. O autor descreve alguns critérios que determinam a aplicação de leis federais ou de estaduais. Explique a aplicabilidade das leis estaduais. (2,5 pts.)

2. "The inquiry will then seek to determine whether the issue to be resolved presents a true conflict or whether a "false conflict" exists with respect to the potentially applicable foreign rule of law so as to make the use of local law appropriate." Com base na informação contida no fragmento acima (parágrafo 2), descreva a fase final de arbítrio pelo tribunal quanto à aplicabilidade das leis locais. (2,0 pts.)

3. Caso a deliberação do fórum local quanto à escolha da lei a ser aplicada faça referência às leis de outros estados ou países (leis alienígenas), o tribunal terá opções em relação ao processo de arbitragem do caso. Identifique os procedimentos possíveis. (2,0 pts.)

4. Defina o dispositivo legal conhecido como "public policy" exception (parágrafo 4) e explique o impasse criado quando fóruns locais não dispõem de meios para a aplicação de leis alienígenas. (3,5 pts.)



UNIVERSIDADE DO ESTADO DO RIO DE JANEIRO  
MESTRADO EM DIREITO  
PROVA DE LÍNGUA INGLESA INSTRUMENTAL - 2006.2

NOME: \_\_\_\_\_

GRAU: \_\_\_\_\_

- *Leia com atenção o texto abaixo, e responda às questões em Português.*
- *Favor usar caneta e escrever de forma legível.*

**Jury Selection Begins in Terrorism Trial**

*By MIKE ROBINSON*

The Associated Press

Thursday, October 12, 2006; 11:23 PM

CHICAGO — Jury selection began Thursday in the trial of two men charged with bankrolling terrorism aimed at toppling Israel's government. U.S. District Judge Amy J. St. Eve said she hopes to have a jury chosen Monday, with opening statements set for Tuesday or Wednesday.

Muhammad Salah, 53, from suburban Bridgeview, and Abdelhaleem Ashqar, 48, of Alexandria, Va., are charged with operating a 15-year racketeering conspiracy to supply the Palestinian terrorist group Hamas with money to carry out a campaign of murders and kidnappings.

Salah was arrested by Israeli soldiers in January 1993 at a checkpoint as he sought to leave the Gaza Strip. The same day, agents found \$97,000 in cash in his room at a hotel in East Jerusalem. Under interrogation, he admitted that he had visited Hamas military leaders and distributed money to them. He pleaded guilty and served five years in Israeli prisons.

The statements he made in Israel 12 years ago now are a key part of the evidence against Salah. The agents who interrogated him are expected to testify at the new trial in a courtroom cleared of spectators while wearing disguises and using aliases. Prosecutors say the security measures are needed to prevent terrorists from taking reprisals against the two Israeli agents and their families.

But Salah defense attorney Michael E. Deutsch said the admissions his client made were the result of torture and should not be in evidence. "He was tortured for 14 days," Deutsch said. "He was deprived of sleep for 45 of the first 50 hours, tied to a small chair, hooded and isolated."

According to the indictment, thousands of dollars from a number of Ashqar bank accounts was funneled overseas to pay for Hamas operations. Agents also found a cache of Hamas documents when they searched his home.

Ashqar's attorney, William Moffitt, secured the December acquittal of professor Sami al-Arian on a number of charges that he helped lead the Palestinian Islamic Jihad terrorist group.

The Florida jury deadlocked on other charges against al-Arian in what amounted to a stunning defeat for the federal government.

"Not much has been said about Dr. Ashqar's defense, and I'd like to keep it that way for a few more days," Moffitt told a reporter Wednesday. "But I can guarantee you that we're going to have some serious fireworks."



QUESTIONS: (30 pts)

- I. Describe the nature of the indictment against the two men.
- II. Indicate Salah's past charges and his defense attorney's allegations in the present case.
- III. Justify Moffitt's confidence in the acquittal of his client.



QUESTÃO ÚNICA: TRADUZA O TEXTO ABAIXO

CRETNEY, S. M. e MASSON, J. M. *Principles of Family Law*. London: Sweet & Maxwell, 1997, p. 575/577

The Children Act 1989 defines a child as "a person under the age of eighteen" but neither all its provisions<sup>2</sup> nor other laws relating to children are linked to the age of majority.<sup>3</sup> Indeed, there is little consistency in the age below which legislation concerning children applies. Children under 18 may not be tattooed,<sup>4</sup> or enter betting shops,<sup>5</sup> those under 17 may not buy crossbows<sup>6</sup> and those under 16 may not enter brothels<sup>7</sup> or buy fireworks<sup>8</sup> or National Lottery tickets.<sup>9</sup> At common law<sup>10</sup> and by statute<sup>11</sup> a child's capacity to act may depend not on age<sup>12</sup> but maturity so that there is no simple way adults can know what adolescents may lawfully do.

Much of the law relating to children is based on paternalistic principles. Children are viewed as potential victims; Parliament has sought to protect the young from the exploitation of unscrupulous adults and from their presumed inability to make wise decisions.<sup>13</sup> There are many statutes which deny children access to things<sup>14</sup> which may be equally damaging for adults but it is thought unacceptable (or impracticable) to restrict the liberty of adults in a democratic society. In recognition of the investment children represent for society paternalistic provisions have been enacted which are intended to help young people reach their full potential<sup>15</sup> and to protect them from the worst consequences of their own failings.<sup>16</sup> Young people are also seen as threats and have been controlled for the good of adults in the belief that they are dangerously irresponsible or because their labour might lead to a reduction of adult wage rates.

Most children<sup>17</sup> live for at least part of their childhood with their parents; parents are able to control the actions and determine the experiences at least of young children. The relationship between parents and the state, i.e. the extent to which the law allows parents freedom to choose how their children grow up is important. Originally parents' control of young children was recognised by the common law, subject only to criminal penalties for abuse.<sup>18</sup> However, parental failure to protect children from harsh employment conditions in the nineteenth century led to the introduction of legislation which protected children and consequently limited parental action.<sup>19</sup> Further legislation enabled children to be removed from parents who ill-treated them.<sup>20</sup> Although it is accepted that the state has a role in child protection, the grounds for state intervention have been repeatedly debated.<sup>21</sup> The Children Act 1989 now provides that the state may intervene to protect children where they are suffering (or likely to suffer) significant harm.<sup>22</sup> The development of the welfare state had an impact on the lives of children making improvements in health and nutrition available to all.<sup>23</sup> Changes in the social security system in the 1980s, restrictions on local government expenditure and economic decline have impacted severely on children.<sup>24</sup> More children than ever before are now experiencing the consequences of the breakdown of their parents' relationship and the poverty and disruption this often brings.<sup>25</sup> Children's lives are thus shaped by their parents and by the state which controls and supports them and their parents. The law sets the balance between the state and the family and also, within the family, between the parents and the child.

The extent to which children have been recognised and treated as different from adults has varied over time and between social classes.<sup>26</sup> In medieval times, children beyond infancy worked and socialised alongside adults so that it has been suggested that childhood did not exist at this time.<sup>27</sup> Later, changes associated with the Renaissance and the Reformation led to children being placed in "a sort of quarantine"<sup>28</sup> for education and indoctrination before they were considered fit to join adult society. Industrialisation initially brought children into factories working alongside their parents but the danger to their health and the threat they posed to adult employment led to campaigns which resulted in their exclusion from the workforce.<sup>29</sup> The complexity of modern life and society's expectations of young people increased the period of education needed to prepare for it.<sup>30</sup> In recent years, the lack of



Questões:

1- No primeiro parágrafo do texto, como a autora explica a questão do gênero e o fator determinante do problema das "subclasses"?

(3,5 pts)

2- De acordo com o texto, qual a visão tradicional do papel da mulher na sociedade?

(3 pts)

3- De acordo com a autora, a visão tradicional do papel social dos gêneros não se aplica mais hoje em dia, principalmente no caso de mães solteiras. Qual é o argumento usado pela autora?

(3,5 pts)



**Prova de Língua Inglesa**

United States Court of Appeals, Second Circuit.

**In re UNION CARBIDE CORPORATION GAS PLANT DISASTER AT BHOPAL, INDIA  
IN DECEMBER, 1984.**

This appeal raises the question of whether thousands of claims by citizens of India and the Government of India arising out of the most devastating industrial disaster in history--the deaths of over 2,000 persons and injuries of over 200,000 caused by lethal gas known as (...) which was released from a chemical plant operated by Union Carbide India Limited (UCIL) in Bhopal, India--should be tried in the United States or in India. The Southern District of New York, John F. Keenan, Judge, granted the motion of Union Carbide Corporation (UCC), a defendant in some 145 actions commenced in federal courts in the United States, to dismiss these actions on grounds of forum non conveniens so that the claims may be tried in India, subject to certain conditions. The individual plaintiffs appeal from the order and the court's denial of their motion for a fairness hearing on a proposed settlement. UCC and the Union of India (UOI), a plaintiff, cross-appeal. We(...) affirm that court's orders. (...)

As the district court found, the record shows that the private interests of the respective parties weigh heavily in favor of dismissal on grounds of forum non conveniens. The many witnesses and sources of proof are almost entirely located in India, where the accident occurred, and could not be compelled to appear for trial in the United States. The Bhopal plant at the time of the accident was operated by some 193 Indian nationals, including the managers of seven operating units employed by the (...), who reported to Indian Works Managers in Bhopal. The plant was maintained by seven functional departments employing over 200 more Indian nationals. UCIL kept at the plant daily, weekly and monthly records of plant operations and records of maintenance as well as records of the plant's Quality Control, Purchasing and Stores branches, all operated by Indian employees. The great majority of documents bearing on the design, safety, start-up and operation of the plant, as well as the safety training of the plant's employees, is located in India. Proof to be offered at trial would be derived from interviews of these witnesses in India and study of the records located there to determine whether the accident was caused by negligence on the part of the management or employees in the operation of the plant, by fault in its design, or by sabotage. In short, India has greater ease of access to the proof than does the United States. (...)

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