Question 1

Mr Arar, born in Syria with dual Canadian citizenship, was detained at Kennedy International Airport by US immigration officials. He was on his way home to Canada after concluding business in Cape Town. After two months of enduring hours of interrogation, he was sent on a private jet to Jordan and then to Syria, instead of being extradited to Canada. He was interrogated and tortured by Syrian intelligence and eventually released into Canadian custody. He informs you that whilst in detention, he was repeatedly tortured by being whipped on the palms of his hands with metal cables. Syrian intelligence officers then forced him to sign a confession linking him to Al Qaeda. He was informed that he was held under the US ‘extraordinary rendition’ policy.

He wants to know what “extraordinary rendition” is in the context of international human rights and whether it differs from extradition.

[20 marks]

Question 2

The Lotus Case 1927 PCIJ Reports, Series A no 10 developed the core legal principles around the issues of jurisdiction in International law. Critically discuss the core aspects of the judgment. Include in your answer the issues of subjective and objective territoriality and active and passive personality in the context of universal jurisdiction.

[20 marks]
Question 3

The Foreign States Immunity Act 87 of 1981 grants certain exceptions to the general immunity granted to a foreign state before the South African courts. Briefly discuss each of these exceptions.

[20 marks]

Question 4

A group of alleged mercenaries are caught in Bongonia. The Bongonia Government explains that the mercenaries have been arrested because of information received to the effect that the mercenaries were intending to stage a coup d’etat to overthrow the President of Bongonia. The mercenaries are all South African citizens.

In Bongonia the mercenaries are detained in appalling conditions at the Central Prison. They are required to sleep three-a-bed, and receive little more than dirty water and porridge by way of sustenance. Bongonia’s justice system is notoriously corrupt. The President appoints all the judges, and international newspapers have already reported the President as saying that “my judges” will ensure that “these foul mercenaries intent on overthrowing me will be punished by death.” Bongonia retains the death penalty which it carries out by way of public beheadings.

You are approached by the families of the mercenaries who wish to bring an application to the South African High Court. Your clients wish you to argue that the South African government is under a constitutional duty to provide the mercenaries with “effective diplomatic protection” and to ensure firstly, that the men are detained in a manner that meets internationally accepted standards and are given a fair trial, and secondly, that the men will not face the death penalty if convicted.

Relying on the decision in Kaunda v President of the Republic of South Africa 2005 (4) SA 336 (CC), draft an opinion to your clients concerning the merits of their case.

[20 marks]