

## RESOLUTION 4-01-2002

### DIGEST

#### Bar Examination: Treaty Law

Requires the Committee of Bar Examiners to include a question in each bar exam relating to the provision in the U.S. Constitution, Article VI, paragraph 2, that treaties are a part of the supreme law of the land.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### Reasons:

This resolution requires the Committee of Bar Examiners to include a question on each bar examination relating to the provision in the U.S. Constitution, Article VI, paragraph 2, that treaties are a part of the supreme law of the land. This resolution should be disapproved because it tests knowledge only of a specialized area of law and would interfere with the committee's control over the content of California's bar examination.

The resolution unnecessarily limits the Committee of Bar Examiners' ability to design bar examinations by requiring that the committee include a question regarding treaty law in every exam. The committee currently has discretion to test knowledge of areas of law that include changes or additions made by treaties. Treaty law, standing on its own, is merely a collection of specialized laws. It is not an area of law unto itself and does not need to be tested every time the bar examination is offered. The resolution should be rejected as injecting undue inflexibility into the administration of the California bar examination.

### SECTION/COMMITTEE REPORT

THE STATE BAR OF CALIFORNIA (Committee of Bar Examiners)

Recommendation: DISAPPROVE

#### Reasons:

There is no need to take a position on the resolution since it is not binding. The Committee of Bar Examiners of The State Bar of California welcomes input as to the scope of the California Bar Examination from all interested parties, and it will give appropriate consideration to this recommendation in the course of its review of the scope of the examination.

However, if the resolution is read to place a requirement on the Committee of Bar Examiners, it would recommend disapproval for several reasons:

- There is no universally recognized topic of "Treaty Law" and students would not know how to prepare for the topic.

- There has been no discussion with the California legal education community about the addition of this topic on the California Bar Examination and its addition may have a significant impact on the law schools' legal education programs as the addition of treaty law as a topic on every administration of the bar examination is likely to generate a demand for classes in treaty law, and that might adversely impact other course offerings given the limited number of hours available in three-year programs of education.
- There has been insufficient demonstration of the need for this topic. To the extent that a treaty changes a particular area of substantive law, the changes can be covered by examination in that area.
- A requirement that any particular topic be included in every administration of the bar examination would limit the discretion of the Committee of Bar Examiners to examine in areas that it in its professional judgment deems most appropriate for examination and would elevate that topic to a level of importance above that of other topics.

#### **TEXT OF RESOLUTION**

RESOLVED that the Conference of Delegates recommends to the Committee of Bar Examiners that every bar examination include a question that requires knowledge that under the United States Constitution, Article VI, paragraph 2, treaties are part of the "supreme law of the land," and the possible effect thereof on the answer to the examination question.

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

#### **STATEMENT OF REASONS**

Existing Law: Knowledge of the status of treaty law is not a requirement for passing the examination administered by the Committee of Bar Examiners.

This Resolution: Would require the Committee of Bar Examiners to include a question on every bar examination that requires knowledge of treaty law.

The Problem: Treaties affect many areas of civil, administrative, criminal and military law, state and federal. Failure to recognize and research this possibility may, therefore, affect the outcome of a litigated case, proceeding or negotiation.

Commercial treaties such as GATT (free trade) and NAFTA (tariffs and trade) are well known to lawyers engaged in transnational transactions.

Less well known are numerous treaties affecting individuals and even small domestic business, in civil, administrative and criminal matters; e.g., family, inheritance, property title, education, buy-and-sell agreements, and other areas of state and federal law. These treaties include the several Vienna Conventions and the UN Charter and Covenants and Conventions entered into under the UN aegis.

UN examples ratified by the United States include "Civil and Political Rights," "Elimination of all Forms of Racial Discrimination," "Against Torture and other Cruel, Inhuman or Degrading Treatment," and "International Sale of Goods," which affects private and commercial transactions.

Other UN treaties signed by the United States, but not ratified, include "Elimination of All Forms of Discrimination Against Women," "Economic, Social and Cultural Rights," and "The Rights of the Child".

Under the "Vienna Convention on the Law of Treaties" (1969), treaties once signed require the signatories to refrain from violating the object and purpose of the signed treaty, regardless of reservations or other announced impediments.

Teaching and testing of knowledge of treaty law will improve the quality of legal representation in California and will improve the general practice of law by California lawyers in the United States and in other nations.

#### IMPACT STATEMENT

This proposed resolution does not affect any law, statute, or rule.

AUTHOR/PERMANENT CONTACT: Doris Brin Walker, P.O. Box 77643, San Francisco, CA 941072 (415) 282-3240

RESPONSIBLE FLOOR DELEGATE: Richard P. Koch