A. Outline:

IV. Immunities from jurisdiction
   1. Meanings
   2. Immunity and other concepts distinguished
      a. Privileges
      b. ‘Act of State’
      c. Non-justiciability
      d. Forum non convenience
   3. Different types of immunities from the jurisdiction of national courts
      a. State immunity
      b. Personal immunity of State representatives
         (1) Heads of State
         (2) High-ranking government officials
         (3) Diplomatic agents
         (4) Consular agents
         (5) Members of special missions
         (6) Members of the armed forces
      c. Immunity of intergovernmental organizations and their officials
      d. Immunity of international courts and their officials
   4. State immunity
      a. Sources
      b. Historical development
      c. Legal basis
      d. Beneficiaries of State immunity
         (1) The State, its organs and officials
         (2) Subdivisions of the State
         (3) State-owned/-controlled enterprises
      e. Immunity from adjudication
         (1) Scope of immunity
            (a) The doctrine of restrictive immunity
            (b) Distinguishing acta jure imperii and acta jure gestionis
            (c) The approach of the SIA 1978 and the ECSI 1972
            (d) Problematic exceptions to immunity
               (i) Tortious conduct
               (ii) Expropriation
               (iii) Human rights violations
               (iv) Acts of terrorism
         (2) Effects of immunity from adjudication
(a) Service of process
(b) Default proceedings

f. Immunity from execution
   (1) Scope of immunity
   (2) Conditions for execution
      (a) Enforceable decision
      (b) No immunity from adjudication
      (c) Connection between property to be attached and claim
   (3) Limits on objects of execution
      (a) State officials
      (b) Property serving sovereign purposes
         (i) Property
         (ii) Proof of use for sovereign purposes
      (c) Special problems
         (i) Mixed bank accounts
         (ii) Property forming part of the State’s cultural heritage
         (iii) State interest in third party property

(g) Waiver of immunity
   (1) Mode of waiver
   (2) Conditions
      (a) By the State
      (b) Unequivocal and certain
      (c) Separate waiver for adjudication and execution

5. Immunity of public officials from jurisdiction of national courts
   a. Public officials in office
   b. Former public officials
      (1) Scope of immunity
         (a) Immunity ratione personae
         (b) Immunity ratione materiae
      (2) Limits to immunity ratione materiae from criminal jurisdiction
         (a) Exclusion of acts violating jus cogens
         (b) Waiver of immunity by treaty
            (i) Express
            (ii) Implied

6. Immunity of State officials from jurisdiction of international criminal courts
   a. No immunity from the jurisdiction of the court
   b. Respect for obligations under international law with respect to State or diplomatic immunity
   c. Legality of the US “immunity agreements” with parties to the Rome Statute

V. Obstacles to the exercise of adjudicative (criminal) jurisdiction
   1. The traditional rule: Male captus, bene detentus
   2. Possible obstacles to jurisdiction
      a. Forcible abduction
      b. Violation of an extradition treaty
      c. Seizure from foreign vessel on high seas without flag State consent
      d. Luring out of the country by means of trickery
   3. Legal basis for the obstacle
a. National law
   (1) Right of due process of law
   (2) Rule of law

b. Customary international law
   (1) State (court) practice and opinio juris
   (2) Determining factors of the rule
      (a) Seriousness of the crime to be prosecuted
      (b) Nature of the breach of international law
         (i) Violation of a State’s sovereignty
         (ii) Violation of the accused’s human rights
      (c) Proportionality Test

B. Basic Reading:

(a) Treaties and Other Documents

(i) Treaties and Documents Available in Blackstone’s International Law Documents:

– 1945 Charter of the United Nations, Art. 105
– 1972 European Convention on State Immunity and Additional Protocol
– 1978 UK State Immunity Act

(ii) Other Relevant Documents


(b) Cases

(1) International Court of Justice


(2) International Criminal Tribunal for the Former Yugoslavia

(3) European Court of Human Rights


(3) National Courts

(i) Germany

– German Federal Constitutional Court, Order of 5 November 2003 (Extradition to the United States of America), available in English at: http://www.bverfg.de/entscheidungen/frames/rs20031105_2bvr150603en

(ii) United Kingdom

– Al-Adsani v. Government of Kuwait, Court of Appeal, 12 March 1996: 107 ILR 536
– R v Bow Street Metropolitan Stipendiary Magistrate and others ex parte Pinochet Ugarte Amnesty International and others intervening (No 3), [2000] 1 AC 147; International Legal Materials 38 (1999), 581
– Jones v. Saudi Arabia, High Court, Queen’s Bench Division, 30 July 2003: available on Westlaw, 2003 WL 22187644

(iii) United States of America

– Altmann v. Republic of Austria, 317 F.3d 954 (CA 9th Cir. 2002) [case currently before the Supreme Court]

(c) Literature

(i) General Textbooks

The following general textbooks contain suitable chapters on Jurisdiction:


(ii) **Cases and Materials**


C. **Specialist Monographs and Articles:**


Lloyd Jones, David, Article 6 ECHR and Immunities arising in Public International Law, *International and Comparative Law Quarterly* 52 (2003), 463-472


Voyiakis, Emmanuel, Access to Court v State Immunity, *International and Comparative Law Quarterly* 52 (2003), 297-332