

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2006

TITLE OF PAPER: PUBLIC INTERNATIONAL LAW

COURSE CODE: L406/L501

TIME ALLOWED: THREE HOURS

- INSTRUCTIONS:**
- 1 ANSWER ANY FIVE (5) QUESTIONS. MARKS ALLOCATED TO A QUESTION INDICATE THE TIME TO BE SPENT ON THE ANSWER**
 - 2 REFER THROUGHOUT TO LEGAL AUTHORITY TO SUBSTANTIATE YOUR STATEMENTS**

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THE INVIGILATOR**

QUESTION 1

- A** Traditionally international legal personality has been restricted to states. However, this is no longer the case in contemporary public international law.

Define what you understand under the concept of international legal personality and *explain* the extent to which this status is enjoyed by *states* and entities *other than states* in modern public international law. (Note: Do *not* discuss the requirements for statehood.) (15)

- B** *Define* “act of state” and *explain* its significance in international relations. (5) [20]

QUESTION 2 (ANSWER EITHER A OR B)

- A** (i) *Discuss* custom as a source of public international law (10)

(ii) *Contrast* the requirements set for custom with those for:

(a) General principles of law recognised by civilised nations (5)

(b) *jus cogens* (5) [20]

- B** (i) *Define* a treaty and *evaluate* the importance of treaties as a source of modern international law. (10)

(ii) *Discuss* the making of treaties with specific reference to:

(a) Ratification of a treaty; (4)

(b) Reservation to a treaty (6) [20]

QUESTION 3 (ANSWER EITHER A OR B)

- A** *Discuss* the criteria for statehood as contained in the Montevideo Convention of 1933 and *explain* whether these requirements still meet the demands of the international community. [20]

- B** *Discuss critically* collective recognition and non-recognition of an entity as a state. [20]

QUESTION 4

- A** As a result of the 1967 Six Day War, Israel annexed East Jerusalem and the Golan Heights territory which had previously been under Palestinian control. When challenged, Israel responded that its actions were valid under international law as it had been acting in self-defence. Write an *essay* on this statement, also paying attention to the following issues:

(i) The validity of the Israeli annexation;

(ii) The basis for and validity of Israel’s claim that its actions were in self-defence and therefore justified in terms of public international law;

(iii) Whether it would have made any difference if Palestine had ceded the territory to Israel? (10)

B Define state liability and *illustrate* under which circumstances a state would incur direct and indirect responsibility? (10) [20]

QUESTION 5

A Mrs S, a Swazi national, was held without trial in Lesotho for several months, in a small cell, together with twenty other prisoners, both male and female. Ventilation was poor, sanitary and ablution arrangements primitive, food scarce and coarse, and she was denied any physical exercise. When Swaziland approached Lesotho to complain about the treatment of Mrs S, Lesotho responded that as a prisoner Mrs S was treated in the same way as her fellow Lesotho prisoners.

Swaziland foreign affairs officials approach You, a public international law expert, for a *legal opinion* on this matter. (10)

B Discuss *briefly* the traditional principles governing the acquisition and loss of territory and how the courts have used these principles in resolving boundary disputes. (10) [20]

QUESTION 6

A When sailing on the high seas, the vessel Morning Star (registered in Liberia) collided with a ship Early Dawn (registered in Turkey). The Early Dawn sinks with considerable loss of life. The Morning Star picks up survivors, including the Early Dawn's Captain. The Morning Star sails to Liberia where the Captain is put on trial for culpable homicide. Turkey objects to Liberia exercising jurisdiction, because the collision did not take place in its territory.

You are asked by the Liberian government to furnish a *legal opinion* on whether Liberia has jurisdiction in this case; (15)

B Write a *brief note* on diplomatic immunity. (5) [20]

QUESTION 7

Discuss critically the role of the United Nations in promoting and maintaining international peace and security. [20]

END OF PAPER