

08:30

15/11/05

F. HALL

EXAMS OFFICE
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS368

Course topic names(s)
Paper Number & title

PUBLIC INTERNATIONAL LAW

Examination / Test* to be held during
month(s) of (*delete as applicable)

NOVEMBER 2005

Year of study
(Art & Science leave blank)

Degrees / Diplomas for which this course is prescribed
(BSc (Eng) should indicate which branch)

LLB

Faculty/ies presenting candidates

COMMERCE, LAW AND MANAGEMENT

Internal examiner(s)
and telephone extension
number(s)

MR S GUMEDZE

(X 78463)

External examiner(s)

PROFESSOR H A STRYDOM

Special materials required (graph/music/drawing
paper maps, diagrams, tables, computer cards, etc)

Time allowance

Course no: 368 Hours: 2

Instructions to candidates
Examiners may wish to use this space to indicate,
inter alia,
the contribution made by this
examination or test towards the year mark, if
appropriate

**PLEASE ENSURE THAT YOU HAVE
WRITTEN THE NAME OF YOUR
LECTURER ON THE FRONT
COVER OF YOUR EXAMINATION
SCRIPT.**

**THE EXAMINATION
CONSTITUTES 100 % OF THE
FINAL MARK FOR THIS COURSE.**

**STUDENTS ARE REQUIRED TO
ANSWER ANY FOUR QUESTIONS.**

**Internal Examiners or Heads of
Departments are requested to sign
the declaration overleaf**

Please ensure that you have written the name of your lecturer on the front cover of your examination script.

The examination constitutes 100 % of the final mark for this course.

Students are required to answer any FOUR of the following questions:

1. What are the sources of public international law? Give at least two examples of each source mentioned. [10]

2. Section 232 of the final Constitution holds that ‘customary international law is law in the Republic. ...’ The implication of this provision is that the common law is now subordinate to international law – the pre-Constitutional common law precedents will now have to give way to customary international law. Knowledge of customary international law is thus relevant to judges, magistrates and practitioners in our municipal courts. How should a judge in a South African municipal court decide which rules of customary international law to apply? How ought the existence of such a rule be established? [10]

3. According to Article 1 of the *Montevideo Convention on the Rights and Duties of States* (1933), what are four qualifications that need to be met for a state to enjoy international legal personality? In considering each qualification, your answer should make reference to the examples of particular states and, where relevant, to decided case law. [10]

4. Professor John Dugard, commenting on the legal effect of acts of unrecognized states and governments, submits that:

For the purposes of municipal law recognition is constitutive: it creates the state or government. In the absence of recognition no effect will be given to the legislative, executive, or judicial acts of a foreign sovereign. The orthodox view is well illustrated by the leading case on the subject, *Luther v Sagor* (J Dugard, *International Law: A South African Perspective* 2ed (2000) at 106).

Write a note on what the orthodox view is, and then explain when municipal courts have generally regarded themselves as being competent to deviate from this orthodox position (in other words, when a municipal court may justify relaxing the fairly strict rule expounded in *Luther v Sagor*). **[10]**

5. The National Security Adviser to the American Bush administration, Condoleezza Rice has said: 'History is littered with cases of inaction that led to very grave consequences ... We have to ask how many dictators we should have stopped'. Under what circumstances – if any - recognised in terms of contemporary international law, might America launch an attack against the Iraq of Saddam Hussein? **[10]**

6. 'The influence of English decisions on South African courts in the field of international law is no more evident than in the field of sovereign immunity, in which South African courts slavishly followed English decisions upholding the absolute doctrine until the abandonment of this approach in *Trendtex* [*Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529 (CA)]. Thereafter both courts and legislature endorsed the restrictive approach.'

(J Dugard *International Law: A South African Perspective* (2004) 182)

With reference to South African case law and legislation, fully discuss the evolution of the restrictive approach in respect of sovereign immunity in South Africa. **[10]**

[TOTAL 40]