

14:00

08.01.07

SHUUDH

EXAMS OFFICE
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS368/355

Course topic names(s)
Paper Number & title

PUBLIC INTERNATIONAL LAW

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

JANUARY 2007
DEFERRED/SUPPLEMENTARY

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)

PROF G ABRAHAM	X 78459
MS W AGHERDIEN	X 78425
MR A FRIEDMAN	
MR A SIPONDO	X 78458
MS M SWART	X 78490

External examiner(s)

MS SHANNON BOSCH

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

Time allowance

Course no: LAWS368 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

**THE EXAMINATION
CONSTITUTES 100 % OF THE
FINAL MARK FOR THIS COURSE.
READ THE INSTRUCTIONS ON
PAGE ONE OF THE EXAMINATION
PAPER**

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

PUBLIC INTERNATIONAL LAW
(LAWS 368 | Laws 355).

Supplementary / Deferred Examination
January 2007

The examination constitutes 100 % of the final mark for this course. Students are required to answer **FOUR** questions – **ONE** from Section A, **ONE** from Section B, **ONE** from Section C, and an additional question from either Sections A, B or C. Answer each Section in a different answer book. On the cover of the answer book, please mark clearly mark whether Section A, B or C. Please also ensure that you have written the name of your lecturer on the front cover of each of the answer books.

Section A

- 1 Write a note on the treaty making process in South Africa under the final Constitution. During the course of your note, you should canvass issues such as: whose function it is to conclude treaties on behalf of the Republic of South Africa; what role, if any, Parliament has in the treaty making process; and, how treaty provisions are incorporated into South African municipal law. [10]

- 2 “The concepts of obligations erga omnes and jus cogens norms are vague and unworkable. Furthermore, the idea of jus cogens norms undermines the consensual basis of international law. While these concepts seek to promote important ideals, they bring more problems than benefits and are best accepted as not forming part of international law.” Discuss this statement critically. [10]

Section B

- 3 In 1858 a French naval officer cruised to a small unpopulated guano island situated in the Pacific Ocean about 670 miles southwest of Mexico. The French naval officer

made detailed geographic notes and landed some members of his crew on the island. Subsequently, it was noted in the *Clipperton Island Arbitration* (2 UN Rep Int'l Arb Awards 1105, 26 AJIL 390 (1931):

'The party left no sign of sovereignty on the island, but notified French and Hawaiian officials in Honolulu, and had a declaration of sovereignty published in a Honolulu journal. No further action was taken by France or any other state until 1897, when France protested to the United States the presence on the island of three persons who had raised an American flag at the approach of a French vessel. The United States disclaimed in 1898 any interest in the island, but meanwhile Mexico had sent a gunboat to the island and had had the Mexican flag raised. Mexico claimed that it had always enjoyed sovereignty over Clipperton by virtue of Spanish discovery, or in the alternative, that French occupation from 1858 to 1897 had been ineffective and that the island was in 1897 *terra nullius*.'

Relying on your knowledge of relevant principles of public international law in this regard, who enjoys a greater legal claim to the island? Discuss with reference to the principle of 'intertemporal law'. [10]

- 4 "If a state does not enjoy recognition it is irrelevant whether the requirements of the Montevideo Convention have been satisfied. Without recognition, statehood is meaningless and the requirements of the Montevideo Convention are, at best, a guide to determine whether recognition ought to be granted." Discuss this statement critically. [10]

Section C

- 5 You are an attorney working in Johannesburg. A representative of the government of Hungary approaches you for assistance. A South African national, who routinely conducts business in Hungary and who has been operating a clothing factory there for years, has instituted action in the WLD against representatives of the Hungarian government. His cause of action is that, while in Hungary, low-ranking government officials assaulted him at his place of work. Furthermore, they returned a week later

and seized his factory, claiming that they were authorized to expropriate the factory. Although they claimed that compensation would be forthcoming, none ever was.

The South African national has instituted an action against the Hungarian government, claiming R1 000 000 in damages for the various violations of his rights. The representative of the Hungarian government wants to know whether there are any procedural defences his government could raise. Advise him. [10]

- 6 Does the traditional dichotomy between international and non-international armed conflicts in international humanitarian law still exist? Discuss [10]

TOTAL MARKS [40]