

Course Code: L406 (S) 2005

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 2005

TITLE OF PAPER : PUBLIC INTERNATIONAL LAW

COURSE CODE : L406/L501

TIME ALLOWED : THREE (3) 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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QUESTION 1

(ANSWER EITHER A OR B)

A It is often said that public international law is not really law. Present *an argument* either supporting or refuting this statement. [20]

B Although traditionally international legal personality has been restricted to states, this is no longer the case in modern-day public international law.

Define what you understand by the concept of international legal personality and *explain* the extent to which this status is enjoyed by entities *other than states* in modern public international law. [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) Swazi statutory measures in this context (3)

(b) Ratification of a treaty (5)

(c) Accession to a treaty. (2) (10)

[20]

QUESTION 3

Discuss collective recognition and non-recognition of an entity as a state.

[20]

QUESTION 4

(ANSWER EITHER A OR B)

A *Discuss briefly* the following traditional methods of acquisition of territory in terms of public international law, using practical examples to illustrate your answer. Also *refer* to

the different forms sovereignty assumes in each of these methods:

- (i) Occupation (5)
- (ii) Annexation (5)
- (iii) Cession (5)
- (iv) Prescription (5) [20]

B 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?

[20]

QUESTION 5

(ANSWER EITHER A OR B)

- A**
- (i) What is state liability and when does it arise? (5)
 - (ii) Discuss and illustrate under which circumstances a state would incur direct and indirect responsibility? (15) [20]

B Mrs Simelane, a Swazi national, was held without trial in Botswana 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 Botswana to complain about the treatment of Mrs Simelane, Botswana responded that as a prisoner Mrs Simelane was treated in the same way as her fellow Botswana prisoners.

Swaziland foreign affairs officials approach You, a public international law expert, for a *legal opinion* on this matter. [20]

QUESTION 6

- (i) 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. (10)

- (ii) Write a *brief note* on immunity as an exception to jurisdiction and pay particular attention to diplomatic and consular immunity. (10) [20]

QUESTION 7

State and briefly explain eight enforcement measures of public international law which involve self-help. [20]

END OF PAPER