

**UNIVERSITY OF FORT HARE**  
**NELSON R MANDELA SCHOOL OF LAW**  
(East London)

**Public International Law**  
**LEP 412E**

**SUPPLEMENTARY DEGREE EXAMINATIONS**

**June 2023**

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**Time:** 3 hours

**Subject:** Public International Law

**Marks:** 100

**This paper consists of five (5) pages including the cover page**

**Internal Examiner**

**Dr. N Ndlovu (UFH)**

**External Examiner**

**Prof R Wandrag (UWC)**

**GENERAL INSTRUCTIONS**

- a. Read questions carefully and answer all the questions as per the instructions provided;
- b. Organise your time efficiently to ensure that you finish within the time allocated;
- c. Randomized questions and Backtracking: Questions may be presented in a random manner, answer questions as they are presented. You have to finalize the question before moving to the next question and you will not be able to return to a question once you have moved to the next question. One question will appear at a time.
- d. Public International Law is a final year LLB Module. The LLB Standard require that you demonstrate the ability to identify and define the relevant issue(s) presented in

the question; select and analyse the most relevant (international, regional and domestic) sources to solve the legal problems, to generate appropriate responses and present reasoned solutions thereto. The essay-type questions (questions 2-4) thus require a reasoned legal opinion from you supported by relevant and reliable authority. There may exist alternative solutions to the issues, which necessitate critical judgment and the determination and presentation of a reasoned choice between the potential alternative solutions. You must use appropriate conventions and terminology of legal discourse within this specialist area.

- e. **It is in your best interest to write clearly, neatly and legibly.**
- f. The allocation of marks for questions should guide you as to what detail is required. Avoid repetition and the inclusion of irrelevant and immaterial information. Essay questions receive an impression mark. Do not repeat the question in your answer.
- g. **NB: No marks will be awarded should you 'copy and paste' and answer from any source.** This may also lead to disciplinary action against you.

**Question 1 (Specific Instructions - Multiple Choice Questions) (20)**

- a. Each question has four (4) possible answers. Select only one option per question by writing the number of the answer selected next to the question number in your answer book i.e. 1.1 - a;
- b. Each questions has a mark allocation of two (2) marks;
- c. Questions where multiple selections are made will be marked as incorrect.

**1.1 A fundamental change in circumstances that existed at the time of the conclusion of the treaty and which changes was not foreseen by the concluding Parties may have the following consequence:**

- a. The Parties to the Treaty will be able to invoke the change in circumstances as a ground for terminating the treaty;
- b. The Parties to the Treaty will not be able to invoke the change in circumstances as a ground for terminating the treaty unless the circumstances was essential to the consent given;
- c. The Parties to the Treaty will be able to demand that the treaty be renegotiated to reflect the new circumstances;
- d. The Parties to the Treaty will be able to claim damages from the party who was responsible for the occurrence of the change in circumstances.

**1.2 The term *Uti Possidetis* means that colonial boundaries should be:**

- a. Re-established due to their arbitrary nature;
- b. Respected even when they are arbitrary;
- c. Respected only where they are practical;
- d. Have no force and effect as they are arbitrary.

**1.3 The extinction of Statehood may take place as a consequence of:**

- a. Absorption;
- b. Annexation;
- c. The dismemberment of an existing State;
- d. All of the above.

**1.4 A derivative subject of international law is:**

- a. A State;

- b. An international organisation;
  - c. A natural person;
  - d. An insurgent.
- 1.5 International legal personality entitles a subject in international law to:**
- a. Take part in war;
  - b. Contribute to the formation of international customary law;
  - c. Be a party to a case before the International Criminal Court;
  - d. None of the above.
- 1.6 Unilateral acts of States in the form of statements of government officials:**
- a. Cannot create international obligations;
  - b. Always creates international obligations;
  - c. May create international obligations;
  - d. Creates obligations only for the official concerned.
- 1.7 The legislature in South Africa may domesticate treaties into municipal law by way of:**
- a. The treaty may be included in a schedule to a statute;
  - b. Proclamation in the Government Gazette;
  - c. The embodiment of the text into an Act of parliament;
  - d. All of the above.
- 1.8 Failed States are usually:**
- a. Expelled from international organisations and their membership suspended;
  - b. Allowed to continue to function at the international level;
  - c. Terminated and incorporated into existing functioning States;
  - d. Forced to comply with the Montevideo Convention within a reasonable time
- 1.9 Accretion means that a State may:**
- a. Acquire sovereignty over territory as a result of natural forces;
  - b. Obtain possession of territory as a result of a treaty and subsequent payment in terms thereof;
  - c. Not acquire territory by way of aggression;
  - d. The ownership of uninhabited territory is credited to the discovering State.
- 1.10 The main purpose of the United Nations in terms of article 1(1) of the UN Charter is described as:**
- a. The maintenance of international peace and security and to bring about the peaceful settlement of international disputes;
  - b. The development and codification of international customary law;
  - c. The preservation of harmony within domestic jurisdictions to ensure that international security is not jeopardised;
  - d. The continuation of the State system within international law and the exclusion of any factors that may oppose the further development of States.

[20]

**QUESTION 2****(25)**

Some legal scholars have argued that there is a hierarchy of sources in International Law with regards to the respective importance attached to the sources of International Law. The sources of international law has been set out in various international instruments. However, international law is primarily based on consent and these instruments should be evaluated accordingly.

**Required: State and explain the nature and importance of the general sources of international law. You are also required to refer to the ‘new’ sources of international law, soft law and those sources that arguably do not require consent due to their importance for the maintenance of international peace and security. Fully evaluate the meaning and importance of all the sources. Lastly you are required to evaluate whether the sources listed in various international instruments differ from each other especially those instruments that list the sources to be applied during the adjudication of international disputes.**

**QUESTION 3****(20)**

The consent of a State, based on the sovereignty of States and the will of those negotiating, constitutes a mechanism through which a treaty comes into being as a juridical act and whereby a State, as a result, becomes bound by a treaty. This consent may be expressed in various forms as per the provisions of the Vienna Convention on the Law of Treaties, 1969.

**Required: Evaluate the rules and proper application concerning the expression of consent of a State to be bound by a treaty to ensure that the formal conditions for the validity of the treaty is complied with.**

**QUESTION 4**

**(25)**

Merchant vessels of State A had for years passed through the territorial waters of State B on route to the port in State A. On 1 October 2019, a merchant ship struck a sea mine and sank with the loss of all persons on the ship. State A thereafter sent two war ships to inspect the area. State B targeted these war ships with missiles while they were inside the territorial waters of State B. State A did not respond to this attack but formally protested to State B, stating that passage through that area is a right recognized by international law. State B replied that foreign war and merchant vessels had no right to pass through its territorial waters without prior authorization. State A indicated that it would retaliate with military force should any further attacks be directed at its ships by State B. State A thereafter sent a formal Note to State B announcing its intention to sweep the routes that its ships used while passing through the territorial waters of State B. State A argued that there exists a generally admitted principle that States, in time of peace, have a right to send their warships through territorial waters used for international navigation, provided that the passage is innocent. However, State B replied that any such action would be a violation of its sovereignty. State A proceeded with the sweep shortly thereafter and several moored mines were cut. The origin of these mines could not be established. It was suggested by State A that the mines were either placed by State B or on her instructions but the origin of the mines laid in Albanian territorial waters remains a matter for conjecture. State B never stopped shipping, nor were any warnings sent out, after the first mine incident in October 2019.

**Required: Provide a legal reasoned opinion on the responsibility, under international law, of State B for the explosion and damage to the ship of State A and the possible legal consequences thereof within International Law, including the payment of compensation. Refer to relevant international law and case law in your answer.**

**QUESTION 5**

**(10)**

State A intends to become a party to a human rights Convention that contains no provision either permitting or allowing for reservations to certain provisions of the treaty. However, State A is concerned about its ability to remain party to the treaty if such a reservation is made.

**Required: Evaluate the difference, in terms of permissible reservations, incompatible / impermissible reservations, procedural rules & legal effect, between the reservation to treaties of a general nature & human rights or humanitarian treaties. Refer to relevant treaty law, case law and/or advisory opinions and other applicable authority in your answer.**

[100]