

Legal Profession Admission Board

March 2014

Public International Law

Examiner's comments

This is a guide to the issues and primary materials relevant to answering the questions in the examination. Overall, candidates displayed a sound understanding of the principles of public international law and the application of those principles to the questions.

Question 1

Doctrines of incorporation and transformation. *Chow Hung Ching v. R* (1948) per Latham CJ; *West Rand Central Gold Mining Co v. R* (1905); *R v. Keyn* (1876); *Chung Chi Cheung v. R* (1939); *Thakrar v. Secretary of State for the Home Department* (1974); *Trendtex Trading Corporation v. Central Bank of Nigeria* (1977).

Customary international law in the United States. *The Paquete Habana* (1900).

Crimes under customary international law. *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 3)* (1999); *Nulyarimma v. Thompson* (1999); *R v. Jones* (2006).

Construction of statutes and customary international law. *Mortensen v. Peters* (1906); *Polites v. The Commonwealth* (1945).

Question 2

In public international law, nationality is the principal personal connecting factor between an individual (and a corporation) and a sovereign state.

State jurisdiction in criminal matters. Nationality principle. *R v. Kelly* (1982); Crimes (Aviation) Act 1991 (Com); Crimes (Foreign Incursions and Recruitment) Act 1978 (Com); *XYZ v. The Commonwealth* (2006).

Passive personality (passive nationality) principle. “*Lotus*” (1927); *United States v. Benitez* (1984); *United States v. Fawaz Yunis* (1991); offences against Australians legislation (2002).

State responsibility. Mistreatment of foreign nationals. Diplomatic protection and the nationality of claims principle. *Nottebohm* (1955); *Barcelona Traction Light and Power Company* (1970).

Question 3

This question required candidates to explain the definition and context of genocide, crimes against humanity and war crimes as crimes against public international law.

With reference to genocide: see Convention on the Prevention and Punishment of the Crime of Genocide 1948; Criminal Code Act 1995 (Com) ss 268.3-268.7.A-G (*Israel*) v. *Eichmann* (1961).

With reference to crimes against humanity and war crimes: see *International Military Tribunal (Nuremberg)* (1946); *Polyukhovich v. The Commonwealth* (1991); *Re W97/164 and Minister for Immigration* (1998); *Sryyy v. Minister for Immigration* (2005); *The Prosecutor v. Paul Bisengimana* (2006); *Rutaganda v. The Prosecutor* (2003).

Statutory vesting of universal jurisdiction in relation to crimes against humanity and war crimes. See War Crimes Act 1945 (Com); Geneva Conventions Act 1957 (Com); Criminal Code Act 1995 (Com) ss 268.8-268.23.

Question 4

Immunity from jurisdiction. Heads of foreign state. See Foreign States Immunities Act 1985 (Com) ss 3(3)(b), 36; *Gaddafi* (2001); *Tatchell v. Mugabe* (2004); *Thor Shipping v. The Ship "Al Duhail"* (2008).

Ministers of state of foreign state. See *Arrest Warrant of 11 April 2000* (2002); *Re Mofaz* (2004); *Re Bo Xilai* (2005).

Foreign government officials. See Foreign States Immunities Act 1985 (Com) s 3(2); *Pan v. Bo* (2008); *Zhang v. Zemin* (2010).

Diplomatic agents and consular officers. See Vienna Convention on Diplomatic Relations 1961; Vienna Convention on Consular Relations 1963.