

Legal Profession Admission Board**September 2013****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

State jurisdiction in criminal matters. The five bases of jurisdiction in state practice. Territorial principle; nationality principle; protective (security) principle; universality principle; passive personality (passive nationality) principle.

Piracy jure gentium. UN Convention on the Law of the Sea 1982 Articles 101, 105. *Institute of Cetacean Research v. Sea Shepherd Conservation Society* (2013). Offences against Australians. Criminal Code Act 1995 (Com) Division 104 – “Harming Australians”.

Question 2

Doctrines of incorporation and transformation. *R v. Keyn* (1876); *Chung Chi Cheung v. R* (1939); *The Paquete Habana* (1900). Crimes under customary international law. *Pinochet* (1999); *Nulyarimma v. Thompson* (1999); *R v. Jones* (2006).

Question 3

Individual responsibility for crimes against public international law. Evolutionary development through state practice, Security Council resolutions (establishing the ad hoc tribunals for the former Yugoslavia and Rwanda) and decided cases noting that individual responsibility extends to offences committed in internal, as well as international, armed conflict. Concept of crimes against public international law e.g. genocide, crimes against humanity, war crimes and state torture. Elements of these offences e.g. genocide and crimes against humanity have no necessary nexus with armed conflict. Decided cases requiring discussion and analysis include *Kanyabashi* (1997); *Flick* (1947); *Rutaganda* (2003); *Bisengimana* (2006); and *Eichmann* (1961). Establishment of the International Criminal Court (1998).

Question 4

- (a) Heads and former heads of foreign state. *Charles Taylor* (2004); *Gaddafi* (2001); *Pinochet* (1999); *Tatchell v. Mugabe* (2004); *Thor Shipping v. The Ship "Al Duhail"* (2008); *Zhang v. Zemin* (2010).

Minister for foreign affairs and other ministers of central government. *Arrest Warrant* (2002); *Re Mofaz* (2004); *Re Bo Xilai* (2005).

- (b) State responsibility for expropriation of foreign owned property. International minimum standard. "Hull formula": prompt, adequate and effective compensation. Public purpose related to the internal needs of the expropriating state. Non-discrimination against nationals of a particular foreign state. Role of UNGA resolutions and bilateral investment treaties.

Decided cases requiring discussion and analysis: *Starrett Housing* (1983); *Amoco International Finance* (1987); *Princess Paley Olga v. Weisz* (1929); *The Rose Mary* (1953); *Kuwait Airways v. Iraqi Airways (Nos 4 and 5)* (2002).
