

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

PUBLIC INTERNATIONAL LAW

Time: Three Hours This paper consists of **four** questions.

All questions are of equal value.

Candidates are required to attempt all **four** questions.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Friends of Patagonian Toothfish Inc (“the Friends”) is an environmental action organisation incorporated under the law of Oregon, U.S.A. The mission statement of the Friends is to use all means to prevent the commercial fishing of Patagonian toothfish in the Southern Ocean. To this end, the *Nellie*, a ship operated by the Friends, rammed and sank on the high seas in the Southern Ocean a Chilean registered trawler, the *Santa Cruz*, which was engaged lawfully in the commercial fishing of Patagonian toothfish. In this incident, an Australian citizen who was a member of the crew of the *Santa Cruz* was killed.

Several years after this incident, engine problems compelled the *Nellie* to dock for emergency repairs at Hobart, Tasmania.

Assuming the captain and crew of the *Nellie* are the same persons as those involved in the incident with the *Santa Cruz*, explain the principles of state jurisdiction by reference to which Australian authorities may assert criminal jurisdiction over the captain and crew of the *Nellie* in respect of that incident.

Question 2

In *West Rand Central Gold Mining Co v. R* [1905] 2 KB 391, Lord Alverstone CJ made the following observation (at p 406) in the context of a consideration of the relationship between customary international law and municipal law:

It is quite true that whatever has received the common consent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant.

With reference to the decided cases, comment on this observation and give specific examples of occasions on which a municipal court may need to decide a question to which customary international law is relevant.

Question 3

Henry L Stimson, former United States Secretary of State, described the trial conducted by the International Military Tribunal (Nuremberg) in the period 1945-1946 as “a proceeding whose magnitude and quality make it a landmark in the history of international law.” (“The Nuremberg Trial: Landmark in Law”, 25 *Foreign Affairs* 179 (1947)).

Comment on this description in light of subsequent developments in the concept of individual responsibility for crimes against public international law.

(Question 4 follows)

Question 4

Answer part (a) and part (b). The parts are worth equal marks.

(a) “One area of uncertainty is the extent to which ministers of central government may claim similar personal immunities to those of a serving head of state.” (Sir Ivor Roberts (ed), *Satow’s Diplomatic Practice*, 6th edn, 2009, p 184).

Discuss this statement with particular reference to the jurisdictional immunity of ministers for foreign affairs and other ministers of state (collectively “ministers of central government”). In your answer also comment on the jurisdictional immunity of former heads of state and former ministers of central government.

(b) “There is no doubt that under international law, expropriation of alien property is legitimate. This is not disputed. However, certain conditions must be fulfilled.” (M N Shaw, *International Law*, 6th edn, 2008, p 828).

Comment on this statement. What are the conditions for lawful expropriation of foreign owned (alien) property under public international law? What are the consequences of unlawful expropriation of such property?

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