

PIL Class Test, 31 August 2023 – Marking Memorandum

- Please note that this is a guide to the lecturers. Lecturers had discretion especially when it comes to theory questions depending on the response given by the student on a particular question.
- Student responses must be clear, complete, understandable and appropriate.
- If just partial aspect of the question was accurately stated, or an incomplete but partly accurate definition was provided, a student was given ½ mark instead of the full mark.
- It is important to always read over your response closely to eliminate any errors/incorrect spellings. Incorrect spelling that indicates a different meaning/is not related to the intended word implies loss of marks.
- Students should study the memo carefully so that you come prepared for any consultation on the test with the lecturer that marked your script (*Questions 1, 2, 3 – Prof Meyersfeld; Questions 4, 5, 6 – Ms Sithole; Questions 7, 8, 9, 10 – Prof Chenwi*).
- The course coordinator WILL NOT deal with scripts/questions marked by colleagues (i.e. to discuss their scripts with the students).
- If there is an error with calculation of your total marks, consult/take the script to Prof Chenwi.
- **Students have until Tuesday 17 October 2023 to consult on the class test scripts**, after which the test script consultation period closes and PIL lecturers will no longer be in a position to consult on the test script.
- **Please read** any comments by the lecturer in your scripts carefully and work towards addressing the limitations in the way you respond to questions, so that you do not repeat same mistakes and lose marks in subsequent assessments.

1. Can the doctrine of *stare decisis* be invoked to oppose the application of a new rule of customary international law in South Africa? Explain your answer. [2 marks]

Any two of the following to be clearly and completely stated to get full marks (1 mark each)

- Doctrine of *stare decisis* cannot be invoked to oppose application of a new CIL rule.
- IL knows no rule of *stare decisis*.
- New rule of CIL will replace a previous rule of CIL that is inconsistent with it.
- Authority for this is *Kaffraria Property Co (Pty) Ltd v Zambia 1980*: considered the relationship between IL & municipal law, and whether rule of *stare decisis* exists in IL.

½ mark if the following is completely stated: Customary international law rule must be consistent with Constitution and that will trump previous customary international law rule if inconsistent with the Constitution

2. What are the three principal methods which the legislature may use to incorporate a treaty into South African law? [3 marks]

- Provisions of treaty can be embodied in the text of an act of parliament (1 mark)
- The treaty can be included as a schedule to a Statute (1 mark)
- Through proclamation or notice in the Government Gazette (1 mark)

3. What is the role of the South African parliament in the treaty making process in terms of section 231 of the Constitution of South Africa 1996? [3 marks]

- Parliament must approve by resolution international agreements (treaties) signed by the national executive. (1 mark)

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Ensheng Dong



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