

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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Table of Contents Extended 201paper 2 Marking Memo

1. Understanding the eBook Extended 201paper 2 Marking Memo
 - The Rise of Digital Reading Extended 201paper 2 Marking Memo
 - Advantages of eBooks Over Traditional Books
2. Identifying Extended 201paper 2 Marking Memo
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Extended 201paper 2 Marking Memo
 - User-Friendly Interface

4. Exploring eBook Recommendations from Extended 201paper 2 Marking Memo
 - Personalized Recommendations
 - Extended 201paper 2 Marking Memo User Reviews and Ratings
 - Extended 201paper 2 Marking Memo and Bestseller Lists
5. Accessing Extended 201paper 2 Marking Memo Free and Paid eBooks
 - Extended 201paper 2 Marking Memo Public Domain eBooks
 - Extended 201paper 2 Marking Memo eBook Subscription Services
 - Extended 201paper 2 Marking Memo Budget-Friendly Options
6. Navigating Extended 201paper 2 Marking Memo eBook Formats
 - ePub, PDF, MOBI, and More
 - Extended 201paper 2 Marking Memo Compatibility with Devices
 - Extended 201paper 2 Marking Memo Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Extended 201paper 2 Marking Memo
 - Highlighting and Note-Taking Extended 201paper 2 Marking Memo
 - Interactive Elements Extended 201paper 2 Marking Memo
8. Staying Engaged with Extended 201paper 2 Marking Memo
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Extended 201paper 2 Marking Memo
9. Balancing eBooks and Physical Books Extended 201paper 2 Marking Memo
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Extended 201paper 2 Marking Memo
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Extended 201paper 2 Marking Memo
 - Setting Reading Goals Extended 201paper 2 Marking Memo
 - Carving Out Dedicated Reading Time

12. Sourcing Reliable Information of Extended 201paper 2 Marking Memo
 - Fact-Checking eBook Content of Extended 201paper 2 Marking Memo
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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