

International Economic Law

Class B

Final Written Exam

09.06.2017

Duration: 120 minutes

I.

Please provide succinct answers to TWO of the following questions:

1. What is the principle of diplomatic protection?
2. What is the international minimum standard?
3. What is the legal status of the Charter on Economic Rights and Duties of States?

II.

Please provide a reasoned comment on the following topics:

1. What are the effects of WTO law in the jurisdiction of its members? Does it produce direct or indirect effects? Please provide examples from the WTO case law.
2. What are the goals and the scope of the national treatment principle? Is there a difference between national treatment under the GATT and the GATS?

Group I: 3/20 each answer;

Group II: 7/20 each answer.

On-exam materials: students can consult the legal texts of the WTO Agreements.

Evaluation criteria

Group I – The student must demonstrate knowledge of the following:

I.1.

- Situate this principle in the system of state responsibility;
- The nature of the principle of diplomatic protection as an extension of sovereignty, i.e., the transformation of private claims by a national into international law claims;
- The inter-state nature of most international dispute settlement mechanisms (e.g., the WTO);
- Outstanding answers cover all the points above and also refer to the case-law (e.g., Barcelona Traction) on the legal issues of the nationality of claims and refer to the domestic systems of the US and the EU to enforce international claims before the WTO (e.g. Section 301).

I.2.

- Identify the origins of the international minimum standard and clarify that it deals with the general issue of the protection due to aliens lawfully admitted to the host state;
- Qualify the international minimum standard as a customary rule of international law;
- Outstanding answers will demonstrate the capacity to discuss briefly more complex issues, namely the content of the international minimum standard and its relationship with the national treatment principle as well as provide examples of how this principle relates to standards used in international investment law (full protection, etc.).

I.3.

- The answer must demonstrate knowledge of the Charter and its approval process, as well as its legal nature as a UN General Assembly resolution;
- The legal nature of the Charter as soft law should be clearly identified;
- Outstanding answers should also deal briefly with the role of the Charter in identifying areas of consensus (or lack thereof) in the formation of new customary rules.

Group II – The student must demonstrate knowledge of the following:

II.1.

- The duty of WTO members to implement the WTO agreements under the Vienna Convention on the Law of Treaties and taking into account article XVI of the WTO Charter;
- The arguments in favour and against direct effect of WTO Law, including the non-conditionality argument used by the European Court of Justice;

- The role of the so-called indirect effect as admitted in the Section 301 Panel Report;
- Outstanding answer should demonstrate the ability to combine different legal theories on the implementation of the WTO agreements and point to the potential consequences for the lack of direct effect on the effectiveness of WTO law.

II.2.

- The general aim of the national treatment principle (ensuring equality of conditions of competition);
- The scope of the national treatment principles (the measures subject to this standard, e.g., taxation and commercial regulations);
- The general scope of article III should be distinguished from that of article XVII as the latter only applies where members have made specific commitments;
- Outstanding answers will also address the issues raised by the distinction between the scope of the GATT and the GATS and discuss the legal principles applied by the Appellate Body.