

110年公務人員特種考試外交領事人員及 外交行政人員、民航人員及原住民族考試試題

考試別：外交人員考試

等別：三等考試

類科組別：外交領事人員類科英文組二

科目：國際法（含國際公法與國際私法）（以英文命題及作答）

考試時間：2小時

座號：_____

※注意：禁止使用電子計算器。

甲、申論題部分：（75分）

(一)請以英文作答，不必抄題，作答時請將試題題號及答案依照順序寫在申論試卷上，於本試題上作答者，不予計分。

(二)請以藍、黑色鋼筆或原子筆在申論試卷上作答。

一、Both A and B are contracting parties of the Vienna Convention on Diplomatic Relations (VCDR). Mr. X is State A's Ambassador to State B. In July 2021, Ambassador X was speeding in his car when it crashed, killing a sixteen-year-old boy. Because of his diplomatic status, Ambassador X is immune from State B's criminal jurisdiction. State A does not intend to recall its Ambassador X and prosecute him in State A's court. Meanwhile, State B plans to send Mr. Y to be its ambassador to State A.

Please answer the following questions based upon the Vienna Convention on Diplomatic Relations:

- (一) Can Ambassador X waive his immunity by himself?(5 points)
- (二) State B is considering to notify State A that Ambassador X is *persona non grata*. Please provide relevant rules regarding *persona non grata* to B's Ministry of Foreign Affairs for consideration.(15 points)
- (三) Can State A reject Mr. Y as State B's Ambassador to State A without giving reasons?(5 points)

二、Please answer the following questions based upon the Charter of the United Nations.

- (一) Regarding the admission of new Members to the United Nations, what is the difference of voting procedure between the General Assembly and the Security Council.(10 points)
- (二) Which "principles" are set out in Article 2 of the Charter of the United Nations for observance by both the United Nations and the member States?(15 points)

三、Mr. A, a R.O.C. national, made a will in the year of 2000 at some attorney-at-law office while lived at his Hong Kong temporary (non-habitual) residence. In his will, he stipulated that when he passes away, his real property located in Taiwan will be delivered as a gift to Mr. B, a Hong Kong national. No applicable law provisions in the will. Mr. A died at Hong Kong in 2008, and in 2012 his legal heirs brought civil litigation at the R.O.C. court against Mr. B arguing that the respective will Mr. A made in Hong Kong is void, due to its lack of required formalities. Please answer the following questions based upon above facts:

- (一) Explain the legal procedure and applicable law which the R.O.C. court uses to characterize the subject matter of the adjudicated case.(10 points)
- (二) Explain which law shall be applied in terms of choice of law rules(10 points), and if there is any possibility a *renvoi* rule could be applied in the adjudicated case.(5 points)

乙、測驗題部分：(25 分)

代號：7110

(一)本測驗試題為單一選擇題，請選出一個正確或最適當的答案，複選作答者，該題不予計分。

(二)共 20 題，每題 1.25 分，須用 2B鉛筆在試卡上依題號清楚劃記，於本試題或申論試卷上作答者，不予計分。

- 1 Article 38 of the Statute of the International Court of Justice stipulates the sources of international law. Which of the following statements is NOT correct?
 - (A) There is no hierarchy of sources explicitly mentioned in Article 38.
 - (B) Judicial decisions are a means for the determination of the rules of law.
 - (C) Custom is evidence of a general practice accepted as law.
 - (D) *Ex aequo et bono* is an important example of the “general principles of law” in Article 38.
- 2 According to the Vienna Convention on the Law of Treaties, which of the following statements regarding the termination of the operation of treaties is correct?
 - (A) In principle, a treaty which contains no provision regarding its termination is valid forever.
 - (B) A breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty.
 - (C) A party may not invoke the impossibility of performing a treaty as a ground for terminating it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty.
 - (D) The severance of diplomatic or consular relations between two States automatically leads to the termination of all treaties between them.
- 3 Based on the neutralization practices of Switzerland, which of the followings is correct?
 - (A) A State may become a neutralized State via a unilateral declaration of permanent neutrality.
 - (B) The neutralized status of a State is guaranteed by the relevant powers via treaties.
 - (C) The neutralized status of a State is subject to approval by the United Nations General Assembly.
 - (D) A neutralized State shall not participate in any international organizations.

- 4 The concept of Occupation in international law is an important mode of territorial acquisition. Which of the following statements is NOT correct?
- (A) The concept of Occupation in international law originates from the concept of “prescription” in domestic private laws.
- (B) After discovering *terra nullius*, effective control is still needed for a State to acquire territorial sovereignty.
- (C) The actual, continuous and peaceful display of State functions is one of the essential elements of Occupation.
- (D) Discovery gives the State an inchoate right to effectuate Occupation after the lapse of a reasonable period of time.
- 5 Which of the following grounds regarding a person afraid of being persecuted to be qualified as a refugee is NOT enumerated in the 1951 Convention Relating to the Status of Refugees?
- (A) Nationality. (B) War.
- (C) Membership of a particular social group. (D) Political opinion.
- 6 According to the United Nations Convention on the Law of the Sea, which of the following statements is correct?
- (A) An island is a naturally formed area of land which is surrounded by and above water at high tide. An artificial island or man-made island therefore shall not have territorial sea of its own.
- (B) Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has territorial sea of its own.
- (C) Ships of all States enjoy the right of innocent passage through the territorial sea. The coastal State may not adopt laws and regulations relating to innocent passage through the territorial sea.
- (D) The criminal jurisdiction of the coastal State shall be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage.
- 7 Which of the following statements concerning “nationality” is NOT correct?
- (A) A State may exercise personal jurisdiction over the people with its nationality.
- (B) All States have the same rules governing the acquisition of nationality in their domestic laws.
- (C) Nationals are entitled to the protection of their States and enjoy the benefits relevant to nationality prescribed under international law.
- (D) In principle, it is for each State to determine under its own law who are its nationals.
- 8 According to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, every internationally wrongful act of a State bears the international responsibility of that State. Which of the followings is usually NOT considered a way to release the international responsibility of that State?
- (A) Restitution. (B) Compensation. (C) Satisfaction. (D) Countermeasure.
- 9 According to Article 51 of the Charter of the United Nations, which of the following statements regarding self-defense is NOT correct?
- (A) Article 51 recognizes the States’ inherent right of individual or collective self-defense.
- (B) The premise of self-defense is that a State is under an armed attack.
- (C) The right of self-defense as part of customary international law originated from the 1986 International Court of Justice Nicaragua Judgment.
- (D) The criteria for determining whether an “armed attack” occurs include the “scale and effects” of the attack.
- 10 According to Article 19 of the Vienna Convention on Diplomatic Relations, if the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, which of the following positions shall act provisionally as head of the mission?
- (A) Chargé d’affaires ad interim. (B) Doyen of the diplomatic corps.
- (C) Chargé d’affaires. (D) Ambassador-at-large.

- 11 According to the Marrakesh Agreement Establishing the World Trade Organization, in principle, which voting method should the World Trade Organization give priority to when making decisions?
(A) By simple majority vote. (B) By consensus.
(C) By two-thirds majority vote. (D) By three-fourths majority vote.
- 12 Which of the following statements about International Court of Justice is NOT correct?
(A) The Court shall consist of fifteen members, no two of whom may be nationals of the same State.
(B) Except for the ten judges among those elected at the first election, the members of the Court shall be elected for nine years and may be re-elected.
(C) Only States may be parties in cases before the Court.
(D) A State which is not a member of the United Nations may not be a party to the Statute of the International Court of Justice.
- 13 Which of the following statements concerning “international humanitarian law” is correct?
(A) International humanitarian law does not regulate the use of weapons.
(B) International humanitarian law does not protect the prisoners of war.
(C) In an armed conflict, all parties must distinguish between civilian and military targets at any time.
(D) International humanitarian law consists of only the four Geneva Conventions of 1949.
- 14 In order to mitigate global warming, by how many degrees does the Paris Agreement under the United Nations Framework Convention on Climate Change hope to control the global average temperature rise below the pre-industrial level?
(A) 1.5 °C. (B) 2 °C. (C) 2.5 °C. (D) 3 °C.
- 15 Which of the followings is NOT subject to qualification (characterization) in the process of private international law?
(A) Connecting factors. (B) Categorization of legal concepts.
(C) Rules on the selection of applicable law. (D) International jurisdiction.
- 16 Which of the followings is NOT among the source of law for private international law?
(A) The Statute of the International Court of Justice.
(B) International conventions.
(C) The Act Governing the Choice of Law in Civil Matters Involving Foreign Elements.
(D) The Enforcement Act of the Part of General Principles of the Civil Code.
- 17 According to the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements, which law shall be applied when the national law applied contains different laws of subnational regions?
(A) The law of the capital of the country.
(B) The law of the country which bears closest connection with the party in dispute.
(C) *Lex fori*.
(D) The law as indicated by the rules on choice of law of that national law.
- 18 X, who is 18 years old and has domicile in country C, possesses the nationality of country A. X entered into a contract with Y, a national of country B, in the R.O.C. Assuming that the law of country A adopts the doctrine of *lex domicilii* on issues of personal law, which of the following laws should the R.O.C. court apply on the issue of X’s behavioral capacity?
(A) The law of country A. (B) The law of country B.
(C) R.O.C. law. (D) The law of country C.
- 19 Regarding the recognition and enforcement of foreign judgments, which of the followings is a ground for rejection according to the R.O.C. Code of Civil Procedures and the Compulsory Enforcement Act?
(A) The application of law in the foreign judgment is patently mistaken.
(B) Recognition of the judgment will lead to a violation of the international public order or *boni mores* of the R.O.C.
(C) There is no enforceable property of the defendant in the R.O.C.
(D) The country which rendered the judgment has no formal diplomatic relations with the R.O.C.
- 20 Japanese national X and R.O.C. national Y entered into a contract in Korea for warehousing services. The contract contains no applicable law clause. The warehouse and the warehousing services provided by Y are in Singapore. What law shall govern in case if there is a breach of the contract?
(A) R.O.C. law. (B) Korean law. (C) Singaporean law. (D) Japanese law.