

111年公務人員特種考試外交領事人員及外交行政人員、
國際經濟商務人員、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、Regarding to Vienna Convention on the Law of Treaties (VCLT), please answer the following question: State A has been a party to the VCLT since 3 September 1995, while State B has ratified the VCLT on 10 March 2009. On 15 March 2009, A and B conclude a treaty on the common use and regulation of transboundary water sources, which is called the Water Treaty. Is the VCLT applicable to this Treaty? (25 points)
- 二、Two States, F and W, have a dispute concerning the violation by F of a commercial treaty concluded in 1980 and entered into force on 26 June 1980. They have decided to submit their case to the International Court of Justice. F is a member of the United Nations. W is not a member of the U.N.. But W is a party to the Statute of the ICJ and participates to pay the expenses. Both of these states have made optional clause declaration in conformity with Article 36 paragraph 2 of the ICJ Statute. Please verify the competence of the ICJ to hear this dispute. (25 points)
- 三、Taiwanese B recruits Filipino A through B's local agent in the Philippines to work as a domestic helper in Taipei, Taiwan. A and B executed a standard employment contract designed by the Philippine Overseas Workers Administration (POEA) for overseas Filipino workers in the Philippines. It provided for her employment at a salary of US\$1,000.00 a month during the employment period. It was submitted to and approved by the POEA. However, when A arrived in Taipei and set domicile in Taipei, A was asked to sign another contract by B, which reduced A's salary to only US\$400.00 a month. Having no other choice, A reluctantly signed the contract. However, B has not paid any salary for six months after starting employment. A sued against B and its local agent for the full monthly salary of US\$1,000.00 for totaling US\$6,000.00. Both B and its local agent claimed that the second contract is valid under the laws of R.O.C., and therefore binding on A. Assuming there is no express agreement of the applicable law in the two contracts. How does the applicable law in this case apply? What are "public order" principles? Is there any application of public order principle in this case? Is B's allegation correct or reasonable? (25 points)

乙、測驗題部分：（25 分）

代號：7112

(一)本試題為單一選擇題，請選出一個正確或最適當答案。

(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 (ICJ) is generally recognized as the most important provision regarding the sources of international law. Which of the following descriptions is correct?
 - (A) International conventions are rules made by the General Assembly or the Security Council of the United Nations.
 - (B) International customs are evidence of State practices accepted as law by civilized nations.
 - (C) The general principles of law are international rules recognized by the member States of the United Nations.
 - (D) Subject to the provisions of Article 59 under ICJ Statute, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law.
- 2 Which of the followings enjoys the status as a domestic law in the R.O.C.?
 - (A) United Nations General Assembly Resolutions.
 - (B) United Nations Security Council Sanctions List.
 - (C) Convention on the Rights of Persons with Disabilities.
 - (D) Award of the Arbitration on South China Sea.
- 3 According to Vienna Convention on the Law of Treaties, which of the following statements concerning “interpretation of treaties” is correct?
 - (A) A special meaning shall always be given to a term.
 - (B) The context for the purpose of the interpretation of a treaty shall not consider its preamble.
 - (C) The terms of the treaty shall be interpreted in good faith and in the light of the treaty’s object and purpose.
 - (D) The context for the purpose of the interpretation of a treaty shall not consider the treaty’s annexes.
- 4 Which of the followings is NOT on the United Nations list of Non-Self-Governing Territories?
 - (A) Cayman Islands (B) East Timor (C) Guam (D) Bermuda
- 5 The International Court of Justice delivered its advisory opinion on the Kosovo’s declaration of independence in 2010. Which of the followings about this opinion is correct?
 - (A) The advisory opinion was made upon the request of Serbia to the International Court of Justice.
 - (B) The International Court of Justice ruled that Kosovo’s declaration of independence did not violate international law.
 - (C) The International Court of Justice ruled that the right of self-determination of all peoples also applied beyond the colonial context.
 - (D) The International Court of Justice ruled that the recognition of Kosovo as a State by other States had a retroactive effect back to the date of its declaration of independence.
- 6 Which of the following principles applies when the requested country transfers the offender to the requesting country via the extradition procedure, the requesting country can only prosecute or punish the crime contained in the extradition request?
 - (A) Principle of reciprocity.
 - (B) Principle of re-extradition.
 - (C) Principle of specialty.
 - (D) Principle of double criminality.
- 7 Which of the following rights in the exclusive economic zone may a coastal State exercise?
 - (A) Sovereignty.
 - (B) Rights limited to explore and exploit, conserve and manage living natural resources only.
 - (C) Rights limited to explore and exploit, conserve and manage non-living natural resources only.
 - (D) Rights to produce energy from winds.

- 8 According to the Vienna Convention on Diplomatic Relations, which of the following statements is correct if a diplomatic agent is a national of the receiving State?
- (A) A diplomatic agent is not obliged to give evidence as a witness.
 - (B) A diplomatic agent shall enjoy immunity from any criminal jurisdiction of the receiving State.
 - (C) A diplomatic agent shall, in principle, enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.
 - (D) A diplomatic agent shall not be liable to any form of arrest or detention.
- 9 According to Article 4 of the 1963 Tokyo Convention (Convention on Offences and Certain Other Acts Committed on Board Aircraft), a contracting State may exercise its criminal jurisdiction over an offence committed on board on condition that the offence has been committed against a national or permanent registration of such State. Which of the following jurisdiction principles shall be applied?
- (A) Protective jurisdiction.
 - (B) Passive nationality jurisdiction.
 - (C) Active nationality jurisdiction.
 - (D) Territorial jurisdiction.
- 10 Which of the following statements regarding “State Responsibility” is NOT correct?
- (A) Pursuant to Art. 4 of Articles on Responsibility of State for Internationally Wrongful Acts of 2001, “the conduct of any State organ shall be considered an act of that State under international law” regardless of the character of that organ and whatever functions it exercises.
 - (B) If a State directly infringes upon the interests of another State, the former shall bear State responsibility.
 - (C) A State can plead its own law, including its constitution, in answer to an international claim.
 - (D) Art.11 of Articles on Responsibility of State for Internationally Wrongful Acts of 2001 provides that, “the State only becomes responsible if and to the extent that the State acknowledges and adopts the conduct in question as its own.”
- 11 Regarding the peaceful settlement of international disputes, which of the following statements is NOT correct?
- (A) There is no obligation for a State to resort to dispute settlement under the international law.
 - (B) Initiation of the procedures for dispute settlement are consensual in principle.
 - (C) International Court of Justice has not yet confirmed that peaceful settlement of international disputes is part of customary international law.
 - (D) There has been an emergence of dispute settlement mechanisms with compulsory jurisdiction.
- 12 Which of the following international criminal court or tribunals have not been established?
- (A) International Criminal Tribunal for the former Yugoslavia.
 - (B) International Criminal Tribunal for Myanmar.
 - (C) International Criminal Tribunal for Rwanda.
 - (D) International Criminal Court.
- 13 Which of the following agreements is a plurilateral agreement under the World Trade Organization?
- (A) Agreement on Rules of Origin.
 - (B) Agreement on Subsidies and Countervailing Measures.
 - (C) Agreement on Government Procurement.
 - (D) Agreement on Technical Barriers to Trade.
- 14 Which of the followings is the treaty body of the International Covenant on Civil and Political Rights?
- (A) United Nations Human Rights Council.
 - (B) Human Rights Committee.
 - (C) Office of the United Nations High Commissioner for Human Rights.
 - (D) United Nations Secretariat.

- 15 Which of the following descriptions on the legal sources of private international law is NOT correct?
- (A) The legal sources of private international law include treaties, international customs, legislation, and precedents.
 - (B) In common law countries, precedents have become the main source of private international law. On the other hand, in civil law countries which adopt statutory law, precedents are not regarded as a source of private international law.
 - (C) In order to resolve conflicts on the rules of private international law among various countries, international conferences have been held to achieve the goal of unifying private international law through international treaties since the 19th century. Therefore, treaties are an important source of private international law.
 - (D) International judicial institutions when they are dealing with private international law cases, if there is no treaty between the two parties and if their private international laws are not applicable, the general principles of private international law, such as the principle of *lex rei sitae*, and the principle of *locus regit actum*, are preferred because of their supranational nature.
- 16 Taiwanese A and American B are a married couple. The two makes a separation agreement due to their difficult relationships. Before long, B obtains a divorce judgment rendered by the Court of Hawaii and seeks recognition from the Taipei District Court. Which of the followings is NOT a ground to be considered by the court regarding its possible rejection?
- (A) No mediation is attempted prior to the lawsuit.
 - (B) The content of the judgment violates the public order or *boni mores* of the R.O.C.
 - (C) The proceedings violate the public order or *boni mores* of the R.O.C.
 - (D) There exists no mutual recognition between the foreign country and the R.O.C.
- 17 Which of the followings is NOT a theory for determining the criteria for qualification (characterization) in private international law?
- (A) Theory of *lex fori*.
 - (B) Theory of *lex loci*.
 - (C) Theory of *lex causae*.
 - (D) Theory of jurisprudence.
- 18 Which of the following descriptions regarding the application of foreign law is NOT correct?
- (A) The contents of the foreign law shall comply with the public order or *boni mores* of the R.O.C.
 - (B) The foreign law may still be applied except the result of the application of which leads to violation of the public order or *boni mores* of the R.O.C.
 - (C) Judges possess discretionary power to determine whether the application of the foreign law violates the public order or *boni mores* of the R.O.C.
 - (D) The term “public order” refers to the practices of the founding spirits and basic national policies of the R.O.C.
- 19 What does the term “*lex rei sitae*” mean?
- (A) The law of the place where the party is present in person.
 - (B) The law of the place where the party is domiciled.
 - (C) The law of the place where the act is conducted.
 - (D) The law of the place where the immovable property is situated.
- 20 According to the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements, which shall apply to the law of the country of the parties’ nationality and if the law of the country is chosen, but the country has sub-national regions, which law shall be applied?
- (A) The law of the domicile of the party concerned.
 - (B) The most closely connected law of the place of the disputed legal relationship.
 - (C) The law of the capital of the country of the party’s nationality.
 - (D) The rules on choice of law of the country of the party’s nationality.