

國立東華大學招生考試試題

共二頁第一頁

招生學年度	九十八	招生類別	碩士班
系所班別	財經法律研究所		
科目	專業語文測驗		
注意事項	本考科滿分為 60 分		

請將以下段落翻譯成中文：

一. (20%)

The concept of international person An international person is one who possesses legal personality in international law, meaning one who is a subject of international law so as itself to enjoy rights, duties or powers established in international law, and, generally, the capacity to act on the international plane either directly, or indirectly through another state (as in the case of a protected state). The concept of international person is thus derived from international law. This law is the body of rules legally binding on states and sovereign independent states are the principal (although not the only) international persons. They are, moreover, the typical international persons in the sense that it is the rights, duties and powers normally possessed by states which are together regarded as constituting international personality of the fullest kind.

However, 'the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community'; an international person need not possess all the international rights, duties and powers normally possessed by states. Some states only possess some of those rights and duties; they are therefore only in those limited respects subjects of international law and thus only possess limited international personality. International organisations also possess only international rights and duties appropriate for their particular situation and they are similarly only to a limited extent subjects of international law and international persons. Nevertheless, such possessors of limited international personality are real international persons. The possession of international rights and duties may, however, be so limited in extent, or the result of such exceptional circumstances, that while the possessor must be regarded as *pro tanto* enjoying a degree of international personality, it would be unrealistic to regard it as a member of the international community or as an international person in anything other than a strictly limited sense.

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二、(20%)

THE RELATION of the individual to the State has always been the main problem of law and politics. That problem has consisted in the reconciliation of two apparently conflicting factors. The first is that the State, however widely its object may be construed, has no justification and no valid right to exact obedience except as an instrument for securing the welfare of the individual human being. The second is that the State as a political institution has come to be recognized as the absolute condition of the civilized existence of man and of his progression towards the full realization of his faculties. It is a matter of absorbing interest to note that in the history of political and legal thought and action the conflict between these two factors has been bridged by the notion, appearing under various disguise, of the fundamental rights of the individual, of the natural, or inherent, or inalienable rights of man. These are the limits which, it has been asserted, the Leviathan of the State must not transgress. That assertion has not been limited to those who, as in Gierke's scathing comment, reduced the State to the level of an insurance society for securing the liberty and the property of the individual.¹ With isolated, though important exceptions, the idea of the inherent rights of man is the continuous thread in the pattern of history in the matter of that weighty issue of the relation of man and State.

三、(20%)

The term "constitution" has various senses. In a general meaning of the word, everything, each man and thing, every business and association, is somehow included in a "constitution," and everything conceivable can have a "constitution." A distinctive concept does not derive from this. A proper understanding requires that the meaning of the term "constitution" be limited to the constitution of the *state*, that is to say, the political unity of the people. In this limited meaning, "constitution" can describe the state itself, and, indeed, an individual, concrete state as political unity or as a particular, concrete type and form of state existence. In this instance, it means the *complete condition* of political unity and order. Yet "constitution" can also mean a closed *system of norms* and, then, in the same way, can designate a unity, however, not a concrete existing unity, but instead a reflective, *ideal one*. In both cases, the concept of the constitution is *absolute* because it expresses a (real or reflective) *whole*. Moreover, a form of expression is dominant today, which calls any series of specially constituted *statutes* a constitution. In the process, constitution and constitutional law are treated as identical. Every *individual* constitutional law can appear as a constitution, so the concept becomes *relative*. It no longer concerns an entirety, an order and a unity. It involves, rather, a few, several, or many individual statutory provisions constituted in a particular way.