

|       |            |      |     |
|-------|------------|------|-----|
| 招生學年度 | 九十九        | 招生類別 | 碩士班 |
| 系所班別  | 財經法律研究所碩士班 |      |     |
| 科目    | 專業語文測驗     |      |     |
| 注意事項  | 滿分為 60 分   |      |     |

壹、名詞解釋 (10%)

1. Lex loci delicti commissi
2. In personam
3. statute of limitation
4. Quid pro quo
5. De novo trial

貳、中翻英(10%)

1. 發回更審
2. 禁止訴外裁判
3. 時效完成
4. 善意
5. 既判力

參、英翻中

1. (15%)

Article 52 of the Constitution provides that the President shall not, without having been recalled, or having been relieved of his functions, be subject to criminal prosecution unless he is charged with having committed an act of rebellion or treason. The said provision is so formulated as to pay respect to and provide protection for the President, being the head of the State, for his special status as Commander of the Army, Navy and Air Force and assuming other important duties internally, and representing the Republic of China externally. This Court has so opined in Judicial Yuan (hereafter 'J.Y.') Interpretation No. 388.

It has been made clear in J. Y. Interpretation No. 388 that where the President commits a crime other than rebellion or treason, the prosecution for such crime is to be only temporarily withheld, and the application of the Criminal Code or relevant laws which provide for criminal punishment is not permanently excluded. As such, it is merely a temporary procedural barrier, rather than a substantive immunity from any criminal liability on the part of the President. Therefore, the phrase "not...subject to criminal prosecution" as provided for under Article 52 of the Constitution shall be so construed as to mean that the criminal investigation authorities and the trial courts may not treat the President as a suspect or defendant and proceed with any investigation, prosecution or trial against the President during his presidency for any criminal offense committed by him other than rebellion or treason, provided that any measure not directly concerning the esteemed status of the presidency and exercise of the presidential authorities, or prompt inspection and investigation of the crime scene may still be conducted.

The presidential privilege or immunity from criminal prosecution is designed for the office of the President. Therefore, the President is the only person that enjoys such privilege. In principle, the individual who serves as the President may not waive said privilege.

|       |            |      |     |
|-------|------------|------|-----|
| 招生學年度 | 九十九        | 招生類別 | 碩士班 |
| 系所班別  | 財經法律研究所碩士班 |      |     |
| 科目    | 專業語文測驗     |      |     |
| 注意事項  | 滿分為 60 分   |      |     |

2. (15%)

Article 11 of the Constitution guarantees the people's freedom of speech and publication for the purposes of ensuring the free flow of opinions and giving the people the opportunities to acquire sufficient information and to attain self-fulfillment. Whether it is for profit or not, the expression of sexually explicit language and the circulation of sexually explicit material should also be subject to constitutional protection of the freedom of speech and publication. Nevertheless, the freedom of speech and publication is not an absolute right under the Constitution but, instead, should be subject to a different scope of protection and reasonable restraints based on the nature thereof. To the extent that Article 23 of the Constitution is complied with, the State may impose adequate restrictions by enacting clear and unambiguous laws.

In order to maintain sexual morality and social decency, the constitutional interpreters should, in principle, give due respect to the lawmakers in respect of the latter's judgment on the common values held by the majority of the society where the legislative organ designs a law to regulate the subject. However, in order to implement the intent of Article 11 of the Constitution guaranteeing the people's freedom of speech and publication, a minority cultural group's sense of sexual morality and its cognition of social decency regarding the circulation of sexually explicit language or material, should nonetheless be protected except where it is necessary to maintain the common sexual values and mores of the majority of the society by imposing restrictions through the enactment of laws.

3. (10%)

By contrast, the 'Rule of Law' is a fundamental principle of human rights law. Within a State, rights must themselves be protected by law; and any disputes about them must not be resolved by the exercise of some arbitrary discretion, but must be consistently capable of being submitted for adjudication to a competent, impartial, and independent tribunal, applying procedures which will ensure full equality and fairness to all the parties, and determining the question in accordance with clear, specific, and pre-existing laws, known and openly proclaimed.

The application of the Rule of Law is of particular importance for establishing the boundaries of the different human rights. It is a commonplace of both law and experience that the claims of different individuals constantly conflict with each other: indeed, a 'legal right' can usefully be defined as that part of a person's claim in some field which the law invests with sufficient legitimacy to allow and enable it to prevail over the conflicting claims of others. In common with all other specifications of legal rights, therefore, human rights law provides boundaries for the rights which it enumerates. With very few exceptions such as the freedoms from torture and slavery, each human right is made subject to restrictions and limitations in order to accommodate the rights of others. To take just one example, the right to freedom of expression is not drawn so widely as to entitle everyone, with impunity, to defame their neighbours, put life and limb at risk by falsely shouting 'Fire!' in a crowded assembly, or imperil the fairness of a criminal trial by conducting a public press campaign against the accused.