

第一題：(本題 50 分)

(1)請以下列三個命題：可分離命題(separability thesis)、來源命題(source thesis)、社會事實命題(social fact thesis)，來討論界定何謂法實證主義？(請注意區分不同種類的法實證主義；亦可結合其他的命題，如 non-cognitive, conventionality 等來討論)

(2)請就下列兩個角度，並結合我國法體制下的例子，來檢討批判或肯定支持法實證主義的主張：

1. 法律的解釋適用。
2. 服從法律的義務。

第二題：(本題 50 分)

請仔細閱讀底下摘錄的文字，然後回答下列問題。

(1)這段文字引自當代某位著名法理學家的論述，請問此段文字最可能出於那一位學者筆下？(提示：為 R. Alexy, R. Dworkin, L. Fuller, H. L. A. Hart, Hans Kelsen, J. Rawls, J. Raz 其中一位)並說明你如此判斷的理由。(10%)

(2)這位學者在此分析了法理學(法哲學)的三個核心問題，請分別就這三個核心問題——說明其重點和內涵，以及它們之間的相關性為何。(20%)

(3)最後，你是否同意這位學者對如何定義、分析或解釋「法律的本質(性質)」的觀點？並請說明理由。(20%)

“Philosophy is general and systematic reflection about what there is, what ought to be done or is good, and how knowledge about both is possible. Legal philosophy raises these questions with respect to the law. In so doing, legal philosophy is engaged in reasoning about the nature of law. The arguments addressed to the question of the nature of law revolve around three problems. The first problem addresses the question: In what kinds of entities does the law consist, and how are these entities connected such that they form the overarching entity we call ‘law’? The answer is that law consists of norms as meaning contents which form a normative system. The second problem addresses the question of how norms as meaning contents are connected with the real world. This connection can be grasped by means of the concepts of authoritative issuance and social efficacy. The latter includes the concept of coercion or force. The third problem addresses the correctness or legitimacy of law, and, by this, the relationship between law and morality. To ask about the nature of law is to ask about necessary relations between the concepts of normative meaning, authoritative issuance as well as social efficacy, and correctness of content.”