

考试科目：国际法学 2005
招生专业：国际法学

Read the following carefully and answer in CHINESE, unless otherwise instructed.

PART ONE: Public International Law (50 marks)

I. Please Explain the Following Definitions (12 marks)

1. res nullius 2. pacta sunt servanda 3. Calvo Clause 4. International Humanitarian Law

II. Provision Analysis (10 marks)

The following provision is quoted from an important treaty:

“ARTICLE 38

- (1) The Court, whose function is to decide in accordance with international law such

disputes as are submitted to it, shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) subject to the provisions of Article 59, judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."

1. Please answer the following questions:
2. Which treaty is the provision quoted from?
3. Can you explain the meaning of this provision briefly?
4. Can you make any comment on this provision?

III. Please briefly tell the difference between state responsibility and international criminal liability. (12 marks) IV. Please analyze Humanitarian Intervention from the perspective of International Law. (16marks)

PART TWO: Private International Law

1. In recent years, Chinese academic circles consistently give impetus to the codification of China's private international law. Do you think it is possible for the National People's Congress to accept this legislative mode? Why? (20 marks)
2. Please analyse the deficiency of the provisions concerning jurisdiction stipulated in Chapter Four of China's Civil Procedure Law. (20 marks)
3. Briefly illustrate the new development of *lex personalis*. (10 marks)

PART THREE: International Economic Law

I. Give the full term of the following abbreviations in English, translate into Chinese and explain briefly: (20 marks, 4 marks each)

1. OECD
2. FOB
3. TRIPS
4. L/C
5. SDR

II. Briefly describe the following: (22 marks)

1. Source of the dispute settlement procedure under WTO. (8 marks)
2. The concept of fundamental breach under UN Convention on Contracts for the International Sales of Goods. (6 marks)
3. The major amendments of China's Foreign Trade Law in 2004. (8 marks)

III. Analyze the following case. (8 marks)

Company A is a company engaged in foreign trade and located at Waigaoqiao Tax Bond Area in Pudong District, Shanghai. In April 2004, Company A signed a Cooperation A-

greement of 5 years with Company B, a company in Jiaxing City, Zhejiang Province. The Agreement provided, among other things, that Company A was to buy from Company B sportswear; the order would be sent each time with the size, color, number of sportswear and price indicated in the order. The order would also instruct Company B to ship the goods to a foreign receiver. The Agreement also provided that when Company B had no foreign trade rights, it would entrust another foreign trade company (Company C) to handle the export process and the payment would be made from Company A to Company B through Company C. The Agreement provided that any disputes between, arising out or relating to the Agreement would be resolved through consultation. If consultation failed, either party had the right to bring the matter to CIETAC.

5 orders were sent to Company B, all of them were fulfilled. Company A paid money to Company C, which Company B admitted that it had received. Company B claimed that Company A had not made full payment and brought the dispute to arbitration. Company A made the following defense: CIETAC had no jurisdiction over this case because the Agreement between Companies A and B was invalid due to Company B's lack of right to do foreign trade. The price was not mentioned in the orders but in a separate foreign trade contract between Company A and Company C, who made no claim. Company B asked the arbitration tribunal to dismiss the case.

It was found through the arbitration hearing that neither the Agreement nor the orders contained any clause of price. The agreement between Company B and Company C was an agency agreement, where no price of the goods was mentioned either. It was found that a contract between Company A and Company C contained price of the goods. The price was paid in full and was forwarded by Company C to Company B, which Company B had received.

Comment on the defense of Company A and give your opinion on how to decide this case.