

## 第一題（本題 50 分）

請由後述三位學者：Radbruch, Gustav(賴德布魯赫); Kelsen, Hans(凱爾森); Dworkin, Ronald(德沃金) 的學說，說明比較他們對於下列問題的理論，並論述說明你認為哪一位學者的見解比較正確：

- (1) 法律的規範性(the normativity of law)
- (2) 法律的解釋(the interpretation of law)
- (3) 服從法律的義務(the duty or obligation to obey the law)

## 第二題（本題 50 分）

請仔細閱讀底下的文字，然後回答下列問題。

"Hart's interest in internal statements was partly a result of his view that a legal system is in force in a certain community only if at least the officials of the system and normally many others in the community accept its laws and follow them, such acceptance being characteristically manifested by the use of internal statements. His dichotomy between external and internal statements tends, however, to obscure from sight the existence of a third category of statements. Their existence was realized by Kelsen for it is crucial to anyone holding his view on the meaning of 'validity' and rejecting natural law at the same time." (Joseph Raz, *The Authority of Law*, p. 155)

- (1) 這段文字出自英國法哲學家 Joseph Raz 的著作 "*The Authority of Law*"，這本書已有中文譯本。請問 Raz 出版此書的年代背景大約為何？(5%)
- (2) 在上述引文中，Raz 對 H. L. A. Hart 的批評為何？(10%)
- (3) Raz 關於法律效力有獨到的見解，請就你的了解，說明他在上文所稱的第三種陳述 ("a third category of statements") 究竟指的是什麼？(15%)
- (4) 請扼要說明 Raz 如何分析「法律規則」，並請根據他的分析，說明他所代表的分析法實證主義與傳統的法實證主義是否有明顯不同？並請說明，Raz 引進上述第三種對法律效力的陳述觀點，是否有助於說明何以人們可以由性別、種族、政治等觀點批判法律？為什麼？(20%)