

考試科目	社會議題分析	所別	法學院碩士在職專班	考試時間	2月24日(日)第3節
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請參考以下新聞：

<http://www.nownews.com/2011/03/05/545-2693951.htm>

社會中心／台北報導

法務部今(5)日表示，槍決5名死囚前都已詳細閱卷審核，排除誤殺可能，與空軍士兵江國慶案全然不同，希望外界別再消費江國慶案，做為批評法務部依法執行死刑的理由。

鍾德樹、管鐘演、王國華、莊天祝及王志煌5名死囚昨晚伏法，反死刑團體表達抗議，指「馬政府左手簽人權公約，右手繼續殺人」、「馬總統人前撫慰江國慶的家屬，轉身卻指揮槍決可能冤枉的死刑犯」；另有媒體報導「槍決時機，引發政治聯想」，也有媒體批評「馬總統才說要減少死刑使用，法務部卻立即執行5人死刑，讓人感到前後矛盾」。

法務部聲明指出，聯合國兩人權公約雖明白揭示生命權為首要人權，但沒明文規定廢除死刑，也不否定未廢死前，依法執行死刑的合法性，台灣依法執行死刑，沒有違反兩公約，何來「左手簽人權公約，右手繼續殺人」的批判。聲明說，減少死刑使用是指法制上減少使用死刑，及在判決死刑時謹慎量刑，不表示經法院判處死刑定讞案件都不能執行。現行法制既未廢除死刑，自應依法行政，總統英九宣示減少使用死刑，與法務部依法執行死刑，沒有牴觸、矛盾。法務部表示，去年槍決4死囚後，最高法院又判5人死刑定讞，法務部依法審核，執行時間沒有政治、選舉考量。本次依法執行之5名受刑人，均是歷經詳實偵審程序而認求其生不可得，方判決死刑定讞。其中更有經法院更審六次以上或於等候執行期間，多次提起再審、非常上訴等救濟程序者，其等訴訟權益已獲保障。

法務部說，死刑係以國家公權力剝奪犯罪人生命之刑罰，在執行上必須慎重，於執行前為求審慎，更由專人逐案詳加閱卷審核，以排除任何誤殺之可能，與江國慶案之情形全然不同，希望外界不要再以江國慶之單一個案來質疑法務部依法執行之決心，更勿再消費江國慶案作為不執行死刑之理由。

請以此篇報導為適例，從(1)死刑是否侵害人權，及(2)死刑判決有無誤判可能等角度，說明您對死刑的看法。(25%)

備註 試題隨卷繳交



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二、

Please read the following news and discuss whether current laws that define marriage as between a man and a women is unconstitutional. (請以中文作答，佔 25%)

### International Herald Tribune

January 6, 2013, 2:42 AM

### Hints of Taiwan Leading the Way on Same-Sex Marriage in Asia

By Didi Kirsten Tatlow

BEIJING - Will Taiwan become the first place in Asia to legalize same-sex marriage in 2013?

Perhaps, judging from recent developments on the island, where the legislature has held its first hearings on the issue, a move that signifies "a major step towards becoming the first Asian territory to approve marriage equality," the Shanghai-based Web site Shanghaiist reported, citing Gay Star News. In another sign that change may be on the way for Taiwan, senior judges recently asked for advice from the country's constitutional court, the Grand Justices, on whether to legalize same-sex marriages after two men from Taiwan, Nelson Chan and his long-term partner, Kao Chih-wei, filed an administrative lawsuit last year following the rejection by a local registration office in Taipei of their application to marry.

As The Taipei Times reported late last month, the Taipei High Administrative Court had been expected to hand down a decision on Mr. Chen and Mr. Kao's case, "but instead said it was seeking a constitutional interpretation while holding further debates before making a judgment." To Mr. Chen, that was a victory. "I think this is a good decision. I'm happy to see it," he told The Taipei Times. "I am confident and hopeful of the outcome of the constitutional interpretation, because the world is changing. I hope Taiwan would be the first Asian country to recognize same-sex marriages through a judicial ruling."

The moves come as more states in the United States have legalized gay marriage - Maine and Maryland becoming the latest, with Maryland's new law taking effect Jan. 1. Same-sex marriage is now legal in nine states and Washington, D.C. One of the most socially and politically progressive societies in Asia, "Taiwan is moving closer to allowing same-sex marriage," predicted Gay Star News, though it pointed out that top judges in Taiwan had said that the proposed changes did not go far enough and that legislation needed to be rewritten and expanded before that could happen - and that it would not be a simple matter.....

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三、

近幾年來，為推展都市市容更新、交通運輸，以及工業升級與地方觀光產業發展，中央政府與地方政府均大力進行新建設與開發計劃，詎料卻引起相當爭議，人民與相關團體紛紛透過各種方式表達不同意見，並進行相關法律救濟程序。試舉出一則你所知道的相關案件，並提出你個人對於其中法律爭議之看法。(25 分)

四、

2012 年 8 月，兩岸簽署「海峽兩岸投資保障和促進協議」，內容共 18 條、5000 多字，涵蓋投資待遇、透明度、逐步減少投資限制、投資爭端解決、損失補償等，台商最關注的人身安全保障也在其中。本協議對兩岸未來經貿互動影響深遠，試闡述妳/你的看法。(25%)



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