

國 立 清 華 大 學 命 題 紙

九十三學年度 科技法律研究 系(所) 甲 組碩士班入學考試

科目 英文 科號 5703 共 三 頁第 一 頁 *請在試卷【答案卷】內作答

本試卷共有三大題

第一題 請將以下段落文字翻譯為中文 (30%)

Three months after Congress approved legislation intended to curb spam, unsolicited e-mail is a persistent, if not worsening, problem, according to a survey released yesterday by the Pew Internet and American Life Project. Roughly 75 percent of the Internet users surveyed reported no change or an increase in the amount of junk e-mail they receive, and nearly one-third of them said they were using e-mail less because of it.

The legislation, which was passed in December and went into effect on Jan. 1, was expected to help curtail the unmarked and sometimes sexually explicit or deceptive messages that have flooded millions of in-boxes. The law tightened restrictions on mass e-mail by requiring that e-mail marketers identify themselves accurately and by prohibiting the use of deceptive subject lines and fake return addresses. Under the law, senders must also inform recipients of how to opt out of receiving future e-mail messages.

第二題 請將以下段落文字翻譯為中文 (20%)

A young teacher in Germany has been refused a permanent job on the grounds that members of her family have Huntington's disease and she is therefore at risk of developing the disease herself.

The teacher was identified as being at a high risk of Huntington's disease—a rare genetic disorder that runs in families—during a medical examination that all applicants to the German civil service, including teachers, have to undergo.

The case has raised concerns that employers could use the legal vacuum on genetic testing that currently exists in Germany to discriminate unfairly against employees.

第三題 閱讀下面文章後請以英文作答 (50%)

Read the following article carefully and answer the five questions below in English: (50%)

It is no doubt true, as a general rule, that the right of a plaintiff in ejectment to recover, rests on the strength of his own title, and is not established by the exhibition of defects in the title of the defendant, and that the defendant may maintain his defense by simply showing that the title is not in the plaintiff, but in some one else. And the rule is usually thus broadly stated by the authorities, without qualification. There are, however, exceptions to the rule as thus announced, as well established as the rule itself. As when the defendant has entered under the title of the plaintiff he cannot set up a title in a third person in contradiction to that under which he entered. Other instances might be cited in which it is equally as well settled that the defendant would be stopped from showing defects in the title of the plaintiff. In such cases, the plaintiff may, and often does recover, not by the exhibition of a title good in itself, but by showing that the relations between himself and the defendant are such that the latter cannot question it. The relation between the parties stands in the place of title; and though the title of the plaintiff is tainted with vices or defects that would prove fatal to his recovery in a controversy with any other defendant in peaceable possession, it is yet all sufficient in a litigation with one who entered into the possession under it, or otherwise stands so related to it that the law will not allow him to plead its defects in his defense.

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Whether the case of an intrusion by a stranger without title, on a peaceable possession, is not one to meet the exigencies of which the courts will recognize a still further qualification or explanation of the rule requiring the plaintiff to recover only on the strength of his own title, is a question which, I believe, has not as yet been decided by this court. . . . In this country . . . I have found no case in which the question seems to have been more fully examined or maturely considered than in *Sowden, & c. v. McMillan's heirs*, 4 Dana's R. 456 . . . [where it is asserted that earlier cases]

establish unquestionably the right of the plaintiff to recover when it appears that he was in possession, and that the defendant entered upon and ousted his possession, without title or authority to enter; and prove that when the possession of the plaintiff and an entry upon it by the defendant are shown, the right of recovery cannot be resisted by showing that there is or may be an outstanding title in another; but only by showing that the defendant himself either has title or authority to enter under the title.

It is a natural principle of justice, that he who is in possession has the right to maintain it, and if wrongfully expelled, to regain it by entry on the wrongdoer. When titles are acknowledged as separate and distinct from the possession, this right of maintaining and regaining the possession is, of course, subject to the exception that it cannot be exercised against the real owner, in competition, with whose title it wholly fails. But surely it is not accordant with the principles of justice, that he who ousts a previous possession, should be permitted to defend his wrongful possession against the claim of restitution merely by showing that a stranger, and not the previous possessor whom he has ousted, was entitled to the possession.

The law protects a peaceable possession against all except him who has the actual right to the possession, and no other can rightfully disturb or intrude upon it. While the peaceable possession continues, it is protected against a claimant in the action of ejectment, by permitting the defendant to show that a third person and not the claimant has the right.

But if the claimant, instead of resorting to his action, attempt to gain the possession by entering upon and ousting the existing peaceable possession, he does not thereby acquire a rightful or a peaceable possession. The law does not protect him against the prior possessor. Neither does it indulge any presumption in his favor, nor permit him to gain any advantage by his own wrongful act. . . .

In this state of the law, untrammled as we are by any decisions of our own courts, I feel free to adopt that rule which seems to me best calculated to attain the ends of justice. . . . I am disposed to follow those decisions which uphold a peaceable possession for the protection as well of a plaintiff as of a defendant in ejectment, rather than those which invite disorderly scrambles for the possession, and clothe a mere trespasser with the means of maintaining his wrong, by showing defects, however slight, in the title of him on whose peaceable possession he has intruded without shadow of authority or title.

The authorities in support of the maintenance of ejectment upon the force of a mere prior possession, however, hold it essential that the prior possession must have been removed by the entry or intrusion of the defendant; and that the entry under which the defendant holds the possession must have been a trespass upon the prior possession. And it is also said that constructive possession is not sufficient to maintain trespass to real property; that actual possession is required, and hence that where the injury is done to an heir or devisee by an abator, before he has entered, he cannot maintain trespass until his reentry.

The presumption is but a fair and reasonable one; and does, I think, arise here; and as the only evidence tending to show that the defendant sets up any pretense of right to the land, is the certificate of the surveyor of Buckingham, of an entry by the defendant, for the same, in his office, in December 1844; and his possession of the land must, according to the evidence, have commenced at least as early as some time in the year 1842; it seems to me that he must be regarded as standing in the attitude of a mere intruder on the possession of the plaintiffs.

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Questions:

1. What is the general rule of legitimate ejectment as according to this article?(10%)
2. Is there any exception to the general rule of legitimate ejectment as mentioned above?(10%)
3. What is the natural principle of justice against title intruder as mentioned in Sowden, & c. v. McMillan's heirs? (Don't simply copy the paragraphs, read carefully and find out the answer!) (10%)
4. According to this article, could an intruder proclaim his right of title by showing defects in the title of the trespasser who has already peaceably possessed it?(10%)
5. If the answer to the above question is yes, explain the reasons to uphold the trespasser's title; or if your answer to the above is negative, explain the reasons to sustain the intruder's claim.(10%)