

九十三學年度 科技法律研究所 乙組 碩士班入學考試

科目 英文 科號 5802 共 7 頁第 1 頁 \*請在試卷【答案卷】內作答

第一題 請將以下段落文字翻譯為中文 (30%)

### **Taiwanese President Agrees to Recount**

President Chen Shui-bian of Taiwan agreed Tuesday morning to a recount of his disputed victory by a razor-thin margin in the presidential elections on Saturday, giving in to pressure from street demonstrations and the United States.

President Chen said he would instruct lawmakers from his Democratic Progressive Party to vote with lawmakers from the opposition Nationalist Party to pass a special law making the recount possible. The government said a recount could start as soon as Thursday, but could then last for days because considerable work would be involved in recounting and verifying more than 13 million ballots.

Hundreds, and at times thousands, of Nationalist supporters have been occupying the boulevard in front of the Presidential Office since Saturday night. But a greater source of pressure on the government was the conspicuous silence of the United States in acknowledging Mr. Chen as the winner of a second four-year term.

第二題 請將以下段落文字翻譯為中文 (20%)

### **Germany debates gene patents**

A law has been introduced in Germany's Bundestag, or lower house of parliament, that would make it easier for researchers and companies to obtain patents in the field of biotechnology and would finally bring Germany into compliance with a European Directive issued in 1998.

The bill, which was given a first reading last week (March 11) in the Bundestag, was introduced by Chancellor Gerhard Schroeder's ruling coalition of the Social Democrat and Green parties. It would grant commercial rights for gene sequences but allow scientists free use of those patented sequences for research purposes.

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第三題 閱讀測驗一 (10%)

### **DNA as Evidence**

Crimes can be very difficult to solve, especially if there is little evidence to go on. In court, a jury must often decide whether or not a person is guilty of a crime based on what other people said they saw or heard.

Sometimes, the only piece of evidence is a shred of clothing or a strand of hair.

Medical scientists can now take that strand of hair and analyze its cells, linking it conclusively to one person and one person only. This process is an incredibly precise way to identify criminals. But how does it work?

Your body is made up of billions of cells. Each human cell holds all the information for your entire genetic makeup, which indicates what color your eyes are, how tall you are, and millions of other characteristics that go into making a human. This genetic map identifies you as a unique being. Your DNA, or the code that makes up your genetic map, is very complex. It is so long and complicated that no one else on earth has the same one. In fact, if you were to take each cell in your body, unravel its DNA strands out end to end, the strands would reach from Earth to the moon about 6,000 times.

Your genetic code is represented by an endless sequence of four letters that pair up with each other. When you make new cells, your body is putting together the DNA alphabet in a way that is unique to you. Even with just four letters, the DNA code spells out all the information needed to create new, healthy cells. In order to identify you by your cells, doctors and scientists must study and decipher your code, which involves sequencing your DNA, or putting the sequence of DNA letters into the correct order. Once your code is sequenced, a positive identification can be made.

DNA was first used as evidence in a courtroom in 1985, but it was not used to send someone to jail until 1988, the use of DNA evidence in criminal and other court cases has become less complicated and more prevalent. Advances in technology have made it possible to sequence DNA from very small samples of biological material, to extract DNA from samples that once were thought too dirty or contaminated, and to use extensive databases to identify patterns in DNA code in order to catch criminals who repeat crimes.

Evidence gathered from study DNA is used not only to prove the guilt of a criminal, but also to exonerate an innocent person of a crime. At least ten innocent people who were condemned to death have been freed from U.S. prisons after their DNA was examined. Also, before a crime is even solved, DNA evidence is used to narrow down the field of suspects by eliminating those that do not match the criminal's code.

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Critics of DNA criminal profiling insist that even though the science of sequencing the code is becoming more and more sophisticated, the results are never 100 percent certain. These critics urge caution, because the DNA code is so complicated that even minute differences between the codes of two people can lead to errors in matching and thus the potential for accusing an innocent person of wrongdoing.

However, medical scientists say the technology of studying DNA is becoming more advanced every year. Also, the odds of finding two unrelated people with the same DNA profile are more than 1 in 100 billion. With this small a margin of error, DNA is evidently some of the best evidence we have to solve crime. (ExamView: Active Skills for Reading 3, Thomson Heinle)

**Write "T" for True, "F" for False and "U" for not identified for the questions that follow.**

1. Even if there is just a little evidence, it's not too difficult to solve most crimes.
2. Scientists can analyze someone's hair and narrow identification down to a particular family, but not a particular person.
3. The information about how tall you are and what color your eyes are along with many other personal characteristics can be found in just one of your cells.
4. Your DNA strands are so long that, if you stretched them out, they could reach from the Earth to the Moon and back.
5. Doctors and scientists decipher your genetic code by sequencing your DNA.
6. DNA was first used as evidence to identify criminals in 1985.
7. If biological material is not sterile, it is impossible to extract DNA from it.
8. Databases are being successfully used to study DNA and identify criminals.
9. While DNA evidence can be used to convict a criminal, it has never been used to exonerate an innocent person.
10. The chances of finding two people with the same DNA are 1 in 1 million.

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第四題 閱讀測驗二 (20%)

**Please read the passage then answer the following questions.**

**Planned Parenthood of Southeastern Pennsylvania v. Casey**

*Supreme Court of the United States*

*505 U.S. 833(1992)*

Opinion by Justices O'Connor, Kennedy, and Souter:

**I**

Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages, *Roe v. Wade*, that definition of liberty is still questioned...

It must be stated at the outset and with clarity that *Roe's* essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger the woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each.

**IV**

That brings us, of course, to the point where much criticism has been directed at *Roe*, a criticism that always inheres when the Court draws a specific rule from what in the Constitution is but a general standard. We conclude, however, that the urgent claims of the woman to retain the ultimate control over her destiny and her body, claims implicit in the meaning of liberty, require us to perform that function. Liberty must not be extinguished for want of a line that is clear. And it falls to us to give some real substance to the woman's liberty to determine whether to carry her pregnancy to full term.

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We conclude the line should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy. We adhere to this principle for two reasons. First, as we have said, is the doctrine of *stare decisis*. Any judicial act of line-drawing may seem somewhat arbitrary, but *Roe* was a reasoned statement, elaborated with great care...

The second reason is that the concept of viability, as we noted in *Roe*, is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman. Consistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. We must justify the lines we draw. And there is no line other than viability which is more workable. To be sure, as we have said, there may be some medical developments that affect the precise point of viability, but this is an imprecision within tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter. The viability line also has, as a practical matter, an element of fairness. In some broad sense it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child.

The woman's right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce.

On the other side of the equation is the interest of the State in the protection of potential life. The *Roe* Court recognized the State's "important and legitimate interest in protecting the potentiality of human life." The weight to be given this state interest, not the strength of the woman's interest, was the difficult question faced in *Roe*. We do not need to say whether each of us, had we been Members of the Court when the valuation of the state interest came before it as an original matter, would have concluded, as the *Roe* Court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly 20 years of litigation in *Roe's* wake we are satisfied that the immediate question is not the soundness of *Roe's* resolution of the issue, but the precedential force that must be accorded to its holding. And we have concluded that the essential holding of *Roe* should be reaffirmed.

*Roe* established a trimester framework to govern abortion regulations. Under this elaborate but rigid construct, almost no regulation at all is permitted during the first trimester of pregnancy; regulations designed to protect the woman's health, but not to further the State's interest in potential life, are permitted during the second trimester; and during the third trimester, when the fetus is viable, prohibitions are permitted provided the life or health of the mother is not at stake.

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The trimester framework no doubt was erected to ensure that the woman's right to choose not become so subordinate to the State's interest in promoting fetal life that her choice exists in theory but not in fact. We do not agree, however, that the trimester approach is necessary to accomplish this objective. A framework of this rigidity was unnecessary and in its later interpretation sometimes contradicted the State's permissible exercise of its powers.

Though the woman has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the State is prohibited from taking steps to ensure that this choice is thoughtful and informed. Even in the earliest stages of pregnancy, the State may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children as well as a certain degree of state assistance if the mother chooses to raise the child herself. "The Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth." It follows that States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning. This, too, we find consistent with *Roe's* central premises, and indeed the inevitable consequence of our holding that the State has an interest in protecting the life of the unborn.

We reject the trimester framework, which we do not consider to be part of the essential holding of *Roe*. Measures aimed at ensuring that a woman's choice contemplates the consequences for the fetus do not necessarily interfere with the right recognized in *Roe*, although those measures have been found to be inconsistent with the rigid trimester framework announced in that case. A logical reading of the central holding in *Roe* itself, and a necessary reconciliation of the liberty of the woman and the interest of the State in promoting prenatal life, require, in our view, that we abandon the trimester framework as a rigid prohibition on all previability regulation aimed at the protection of fetal life. The trimester framework suffers from these basic flaws: in its formulation it misconceives the nature of the pregnant woman's interest; and in practice it undervalues the State's interest in potential life, as recognized in *Roe*.

**Questions**

1. Which word can be applied to replace the word "trimester"?
2. What are the two major concerns that *Roe v. Wade* recognized and tended to reconcile?
3. Under what circumstances will the unborn baby's right override the right of the pregnant woman?

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4. In *Roe v. Wade*, the Court established a trimester framework to govern abortion regulations. Please state the principal objective that each of the three trimesters aims to protect. (Please answer these questions by identifying "what" of "which person", such as "the right of citizen")
- 2-1 The First trimester:
- 2-2 The Second trimester:
- 2-3 The Third trimester:
5. *Casey* replaces the trimester system of *Roe* with a framework that divides a pregnancy into only two segments. What are these two segments?
- 3-1 Segment 1:
- 3-2 Segment 2:
6. According to *Casey*, which of the following statutes is unconstitutional?
- A statute requires the woman's physician, prior to performing an abortion to "inform the woman of the nature of the procedure, the health risks of the abortion and the childbirth, and the probable gestational age of the unborn child."
  - A statute imposed a 24-hours waiting period between the time the woman received the information and the time the abortion could take place;
  - A statute requires the married woman get consent from her spouse before the abortion;
  - A statute rules that a minor needs the consent of a parent or guardian before the abortion.
7. What makes the Court in *Casey* case considered "the trimester framework suffers from these basic flaws: in its formulation it misconceives the nature of the pregnant woman's interest; and in practice it undervalues the State's interest in potential life, as recognized in *Roe*."

第五題 作文(20%)

**Please write an essay in English to express your concerns about abortion within 200 words.**