

國立清華大學命題紙

九十二學年度 科技法律研究 (所) 甲 組碩士班研究生招生考試

科目 英文 科號 5503 共 3 頁第 1 頁 *請在試卷【答案卷】內作答

1. 名詞翻譯(中翻英)：(30%)

1. 積體電路
2. 專利
3. 衛星定位系統
4. 數位匯流
5. 無線區域網路
6. 永續發展
7. 核廢料
8. 幹細胞
9. 基因
10. 著作權

2. Read the following article carefully and answer the questions at the bottom. (40%)

"It frequently happens that when several ships are cruising in company, a whale may be struck by one vessel, then escape, and be finally killed and captured by another vessel; and herein are indirectly comprised many minor contingencies, all partaking of this one grand feature. For example, - after a weary and perilous chase and capture of a whale, the body may get loose from the ship by reason of a violent storm; and drifting far away to leeward, be retaken by a second whaler, who, in a calm, snugly tows it alongside, without risk of life or line. Thus the most vexatious and violent disputes would often arise between the fishermen, were there not some written or unwritten, universal, undisputed law applicable to all cases.

Perhaps the only formal whaling code authorized by legislative enactment, was that of Holland. It was decreed by the States-General in A. D. 1695. But though no other nation has ever had any written whaling law, yet the American fishermen have been their own legislators and lawyers in this matter. They have provided a system which for terse comprehensiveness surpasses Justinian's Pandects and the By-laws of the Chinese Society for the Suppression of Meddling with other People's Business. Yes; these laws might be engraven on a Queen Anne's farthing, or the barb of a harpoon, and worn round the neck, so small are they.

I. A Fast-Fish belongs to the party fast to it.

II. A Loose-Fish is fair game for anybody who can soonest catch it.

But what plays the mischief with this masterly code is the admirable brevity of it, which necessitates a vast volume of commentaries to expound it.

First: What is a Fast-Fish? Alive or dead a fish is technically fast, when it is connected with an occupied ship or boat, by any medium at all controllable by the occupant or occupants, - a mast, an oar, a nine-inch cable, a telegraph wire, or a strand of cobweb, it is all the same. Likewise a fish is technically fast when it bears a waif, or any other recognised symbol of possession; so long as the party waiving it plainly evince their ability at any time to take it alongside, as well as their intention so to do.

These are scientific commentaries; but the commentaries of the whalemens themselves sometimes consist in hard words and harder knocks - the Coke-upon-Littleton of the fist. True, among the more upright and honorable whalemens allowances are always made for peculiar cases, where it would be an outrageous moral injustice for one party to claim possession of a whale previously chased or killed by another party. But others are by no means so scrupulous.

Some fifty years ago there was a curious case of whale-trover litigated in England, wherein the plaintiffs set forth that after a hard chase of a whale in the Northern seas; and when indeed they (the plaintiffs) had succeeded in harpooning the fish; they were at last, through peril of their lives, obliged to forsake not only their

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lines, but their boat itself. Ultimately the defendants (the crew of another ship) came up with the whale, struck, killed, seized, and finally appropriated it before the very eyes of the plaintiffs. And when those defendants were remonstrated with, their captain snapped his fingers in the plaintiffs' teeth, and assured them that by way of doxology to the deed he had done, he would now retain their line, harpoons, and boat, which had remained attached to the whale at the time of the seizure. Wherefore the plaintiffs now sued for the recovery of the value of their whale, line, harpoons, and boat.

Mr. Erskine was counsel for the defendants; Lord Ellenborough was the judge. In the course of the defence, the witty Erskine went on to illustrate his position, by alluding to a recent criminal case, wherein a gentleman, after in vain trying to bridle his wife's viciousness, had at last abandoned her upon the seas of life; but in the course of years, repenting of that step, he instituted an action to recover possession of her. Erskine was on the other side; and he then supported it by saying, that though the gentleman had originally harpooned the lady, and had once had her fast, and only by reason of the great stress of her plunging viciousness, had at last abandoned her; yet abandon her he did, so that she became a loose-fish; and therefore when a subsequent gentleman re-harpooned her, the lady then became that subsequent gentleman's property, along with whatever harpoon might have been found sticking in her.

Now in the present case Erskine contended that the examples of the whale and the lady were reciprocally illustrative of each other.

These pleadings, and the counter pleadings, being duly heard, the very learned judge in set terms decided, to wit, -That as for the boat, he awarded it to the plaintiffs, because they had merely abandoned it to save their lives; but that with regard to the controverted whale, harpoons, and line, they belonged to the defendants; the whale, because it was a Loose-Fish at the time of the final capture; and the harpoons and line because when the fish made off with them, it (the fish) acquired a property in those articles; and hence anybody who afterwards took the fish had a right to them. Now the defendants afterwards took the fish; ergo, the aforesaid articles were theirs.

A common man looking at this decision of the very learned Judge, might possibly object to it. But ploughed up to the primary rock of the matter, the two great principles laid down in the twin whaling laws previously quoted, and applied and elucidated by Lord Ellenborough in the above cited case; these two laws touching Fast-Fish and Loose-Fish, I say, will, on reflection, be found the fundamentals of all human jurisprudence; For notwithstanding its complicated tracery of sculpture, the Temple of the Law, like the Temple of the Philistines, has but two props to stand on.

Is it not a saying in every one's mouth, Possession is half of the law: that is, regardless of how the thing came into possession? But often possession is the whole of the law."

1. Is there any law applicable to the whale-fishing industry? If there is, what is the context of the laws?(10%)
2. In the case of whale-trover litigated in England as referred in this article, who is the plaintiff and who is the defendant, and who actually wins the case with what judgment? (10%)
3. Pursuant to Mr. Erskine, in this article, the examples of the whale and the lady were reciprocally illustrative of each other, so is the lady Fast-Fish, or Loose-Fish accordingly?(10%)
4. What are the "two props to stand on" the "Temple of the Philistines" as reflecting the laws found the fundamentals of all human jurisprudence? (10%)

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3. Read the following article carefully and answer the questions at the bottom. (30%)

"British subject' means any person who owes permanent allegiance to the Crown. 'Permanent' allegiance is used to distinguish the allegiance of a British subject from the allegiance of an alien who, because he is within the British dominions, owes 'temporary' allegiance to the Crown. 'Natural-born British subject' means a British subject who has become a British subject at the moment of his birth." "Subject to the exceptions hereinafter mentioned, any person who (whatever the nationality of his parents) is born within the British dominions is a natural-born British subject. This rule contains the leading principle of English law on the subject of British nationality." The exceptions ... are only these two: "1. Any person who (his father being an alien enemy) is born in a part of the British dominions, which at the time of such person's birth is in hostile occupation, is an alien." "2. Any person whose father (being an alien) is at the time of such person's birth an ambassador or other diplomatic agent accredited to the Crown by the Sovereign of a foreign State is (though born within the British dominions) an alien." And he adds: "The exceptional and unimportant instances in which birth within the British dominions does not of itself confer British nationality are due to the fact that, though at common law nationality or allegiance in substance depended on the place of a person's birth, it in theory at least depended, not upon the locality of a man's birth, but upon his being born within the jurisdiction and allegiance of the King of England; and it might occasionally happen that a person was born within the dominions without being born within the allegiance, or, in other words, under the protection and control of the Crown."

1. Following the rationale of this article, is a child of alien born in the British territory a British subject, native or through naturalization?(10%)
2. Is a child of British parents born in hostile occupation of British dominions an alien? Explain the reasons. (10%)
3. Please give an example of "a person was born within the dominions without being born within the allegiance" as referred in this article. (10%)