

國 立 清 華 大 學 命 題 紙

98 學年度 科技法律研究所

甲、乙 組碩士班入學考試

科目 英文 (含文獻評析) 科目代碼 4502、4602 共 5 頁第 1 頁 \*請在【答案卷卡】內作答

一、英翻中：(10%)

- (1) encyclopedia
- (2) institutional review board
- (3) disaster
- (4) bodily integrity
- (5) state of the art

二、中翻英：(10%)

- (1) 自主
- (2) 大眾媒體
- (3) 種族歧視
- (4) 不公平競爭
- (5) 名譽

三、請以中文簡要說明下面英文段落之意旨：(10%)

"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."

四、請將下面英文段落中劃底線之句子翻譯為中文：(10%)

**Europe Tightens the Screws on Vessels Polluting Ocean Waters**

BRUSSELS, Belgium, March 29, 2007 (ENS) - Starting April 1, the 27 member states of the European Union will display their common determination to tackle unlawful discharges of polluting substances at sea as legislation adopted in 2005 is implemented.

Illicit discharges at sea are still occurring and preventing them is now more than ever a priority for Europe, the European Commission said today.

"We must get tough on illegal discharges and gross negligence must be fought at all cost: the threat of criminal penalties hanging over polluters' heads will help to protect our coasts."

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"We cannot tolerate deliberate pollution or gross negligence by a minority of operators who tarnish the image of the shipping industry," said Jacques Barrot, the commission's vice president in charge of transport.

The law, Directive 2005/35, on ship-source pollution and the introduction of penalties for infringements is intended, in line with international law, to impose penalties on any party found to have caused or contributed to illegal pollution deliberately or as a result of gross negligence.

Vessel masters, owners, charterers, and ship classification societies all must abide by the directive.

The directive applies to discharges in all sea areas, including on the high seas, and it applies to all ships calling at EU ports, whatever flag they fly.

The law provides for cooperation between Port State Authorities to enable action to be taken at a violating vessel's next port of call.

On March 1, Directive 2005/35 on sanctions for ship source pollution and on the introduction of penalties for infringements came into force.

The EU member states are obliged to incorporate this law into their national laws by March 31, 2007.

The commission said today it will "leave no stone unturned to ensure that it is implemented."

...

五、請閱讀下述案件事實，然後以中文回答其後之問題（你可以從一般利益衡量的觀點提出自己的看法，不必考慮任何智慧財產權或其他法律概念之內容及要件）：（20%）

Vanna WHITE, Plaintiff-Appellant,

v.

SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation, and David Deutsch Associates, Inc., a New York corporation, Defendants-Appellees.

971 F.2d 1395

July 29, 1992

GOODWIN, Senior Circuit Judge:

This case involves a promotional "fame and fortune" dispute. In running a particular advertisement without Vanna White's permission, defendants Samsung Electronics America, Inc. (Samsung) and David Deutsch Associates, Inc. (Deutsch) attempted to capitalize on White's fame to enhance their fortune. White sued, alleging infringement of various intellectual property rights, but the district court granted summary judgment in favor of the defendants. We affirm in part, reverse in part, and remand.

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Plaintiff Vanna White is the hostess of "Wheel of Fortune," one of the most popular game shows in television history. An estimated forty million people watch the program daily. Capitalizing on the fame which her participation in the show has bestowed on her, White markets her identity to various advertisers.

The dispute in this case arose out of a series of advertisements prepared for Samsung by Deutsch. The series ran in at least half a dozen publications with widespread, and in some cases national, circulation. Each of the advertisements in the series followed the same theme. Each depicted a current item from popular culture and a Samsung electronic product. Each was set in the twenty-first century and conveyed the message that the Samsung product would still be in use by that time. By hypothesizing outrageous future outcomes for the cultural items, the ads created humorous effects. For example, one lampooned current popular notions of an unhealthy diet by depicting a raw steak with the caption: "Revealed to be health food. 2010 A.D." Another depicted irreverent "news"-show host Morton Downey Jr. in front of an American flag with the caption: "Presidential candidate. 2008 A.D."

The advertisement which prompted the current dispute was for Samsung video-cassette recorders (VCRs). The ad depicted a robot, dressed in a wig, gown, and jewelry which Deutsch consciously selected to resemble White's hair and dress. The robot was posed next to a game board which is instantly recognizable as the Wheel of Fortune game show set, in a stance for which White is famous. The caption of the ad read: "Longest-running game show. 2012 A.D." Defendants referred to the ad as the "Vanna White" ad. Unlike the other celebrities used in the campaign, White neither consented to the ads nor was she paid.

.....

- (1) 如果你是原告 Vanna White，你會提出什麼理由說服法官你應該勝訴？（10%）
- (2) 如果你是被告 Samsung 及 Deutsch，你會提出什麼理由說服法官你應該勝訴？（10%）

六、請閱讀以下節錄之文章，並以中文回答問題：（40%）

Assisted reproductive technology (ART) is an umbrella term describing fertility treatments where both the female egg and male sperm are handled or manipulated. One form of ART, which became publicly available in 1990, is Preimplantation Genetic Diagnosis (PGD). Averaging 15,000 American dollars per attempt, PGD allows a physician to screen a fertilized embryo for genetic disorders and gender selection.

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When a woman undergoes in vitro fertilization, prior to implantation of the embryo, one cell, called a blastomere, is “removed from a cleaving embryo and tested for the genetic or chromosomal condition of concern.” .....

In the United States, PGD is currently most commonly sought for sex selection of a third child, when a family already has two children of the same sex. However, as the technology gains popularity and becomes more readily available, an increasing number of families may potentially use PGD to select the gender of a first child. A recent survey of 561 patients seeking the assistance of reproductive technology revealed that 41% of study participants would use PGD for gender selection if no additional fees were involved.

At this time, the studies regarding American preference for the gender of a first infant vary tremendously in result. One study, appearing in the March 2005 publication of Fertility and Sterility suggested that if PGD were offered for sex selection of a first born child, women would choose males and females in “approximately equal numbers.” Yet, earlier research, published in Professor Lori Andrew's book The Clone Age, indicated that within the sector of the population interested in using sex selection techniques, 81% of men and 94% of women expressed a desire to ensure that their first born was a male. A 2000 survey of the general American population found that, if individuals were limited to only having one child, 42% expressed a preference for a boy, where only 27% desired a girl. Another study, jointly conducted by economists at University of Rochester and University of California at Los Angeles, found that “American fathers stubbornly prefer sons to daughters by a margin of more than two to one.”

More alarmingly, these economists found that the patriarchal preference for male infants shapes important familial decisions regarding money management; they speculated that as technology allowing parents to choose the sex of infants becomes increasingly available, the gender-ratio in America may slowly become male dominated. Also increasing the risk of a gender imbalance in the United States is the fact that PGD clinics have used “niche marketing” to target the cultural sensitivities and infant preferences in the Indian-American community, which is one of America's fastest-growing ethnic populations.

The primary argument against allowing PGD for gender selection is that it will promote discrimination against women. Regardless of whether Americans possess a modest desire or a deeply rooted longing for a male child, allowing gender selection perpetuates the “societal belief that women are a greater burden and of less inherent value than men.” Since it is the wealthy that will be able to afford sex selection, and there is an unfortunate preference for male children, some fear that allowing gender selection will further

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decrease a woman's ability to access "the nation's assets." In other words, PGD would result in a disproportionate number of males in the powerful upper class, as compared to the lower economic class, where individuals would not be able to take advantage of PGD. ....

- (1) 根據本文，什麼是PGD？功能為何？（13%）
- (2) 本文是否贊成以PGD作為性別篩選之方式？所提出的理由有哪些？（14%）
- (3) 你贊成本文的觀點嗎？請說明理由。（13%）