

考試科目	英文	7111C S 7116C	所別	法律	考試時間	3 月 1 日 第三節
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一、解釋名詞 (每題 4 分，請以英文作答) (20分)

1. Deposition
2. Grand Jury
3. Subrogation
4. Shareholders' derivative suit
5. Libel

二、英翻中(每題 10 分，請以中文作答) (40分)

1. The U.S. Supreme Court ruled the ad had not been published with actual malice, which it defined as a defendant's publication of a statement either 1) knowing it was false; or 2) exercising reckless disregard for the truth. Specifically, the Court made the following observations about the ad.
2. That the relationship between a corporate insider and the stockholders of his corporation gives rise to a disclosure obligation is not a novel twist of the law. At common law, misrepresentation made for the purpose of inducing reliance upon the false statement is fraudulent. But one who fails to disclose material information prior to the consummation of a transaction commits fraud only when he is under a duty to do so. And the duty to disclose arises when one party has information "that the other [party] is entitled to know because of a fiduciary or other similar relation of trust and confidence between them."
3. In the absence of other effective measures, the following procedures to safeguard the Fifth Amendment privilege must be observed: the person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him.
4. Although a policyholder has a duty to act in "*utmost good faith*", the onus is on the insurer to show "*beyond reasonable doubt*" that a fraud has taken place. If the fraud is perpetrated only in order to recover a genuine loss and does not affect the insurer's ultimate liability, then the policyholder will still be able to recover their losses. If the fraud is sufficiently serious to: affect the insurer's ultimate liability; or entitle the insurer to repudiate the policy for fundamental breach of contract; then the firm will be able to "forfeit" the policy (refuse to pay the claim or provide any future cover).

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三、作文 (40 分，請以英文作答)

Please write a 500 word critique on the legal Maxim, "Dura lex, sed lex" to express your approval or objection.



備註

- 一、作答於試題上者，不予計分。
- 二、試題請隨卷繳交。