

考試科目	7111C、7112C、7113C、 英文	所別	法律學系	考試時間	2月28日(日)第三節
	7114C、7115C、7116C、7117C				

### 第一大題：字彙 (30%)

請在答案卷上，回答以下法律英文詞彙之中文意義：

1. burglary
2. inquisitorial system
3. manslaughter
4. per curiam
5. equitable relief

### 第二大題：英翻中 (30%)

1. The period of development of contributory negligence was that of the industrial revolution, and there is reason to think that the courts found in this defense, along with concepts of duty and proximate cause, a convenient instrument of control over the jury, by which the liability of rapidly growing industry were curbed and kept within bounds. (15%)
2. A number of considerations may justify the imposition of duty in particular circumstances, including the guidance of history, our continually refined concepts of morals and justice, the convenience of the rule, and social judgment as to where the loss should fall. (15%)

### 第三大題：閱讀測驗 (40%)

**What is 'safe harbour' and why did the EUCJ just declare it invalid?**

Samuel Gibbs

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The Guardian, Tuesday 6 October 2015 12.09 BST

The European Court of Justice has ruled that the “safe harbour” agreement that allowed the transfer of European citizens data to the US is no longer valid. But what does that mean for the Facebooks, Googles and Microsofts of this world?

In a two-year-old case forced to the EU’s highest court by Austrian privacy campaigner Max Schrems, the EUCJ ruled that the European Commission’s trans-Atlantic data protection agreement that went into force in 2000 was invalid because it does not adequately protect consumers in the wake of the Snowden revelations.

### What was the ‘safe harbour’ agreement?

EU privacy law forbids the movement of its citizens’ data outside of the EU, unless it is transferred to a location which is deemed to have “adequate” privacy protections in line with those of the EU.

The safe harbour agreement that was made between the EC and the US government essentially promised to protect EU citizens’ data if transferred by American companies to the US.

It allowed companies such as Facebook to self-certify that they would protect EU citizens’ data when transferred and stored within US data centres.

Patrick Van Eecke, co-head of the global privacy practice DLA Piper said: “The advantage of safe harbour was that it functioned as a kind of ‘one stop shop’ allowing for the export of personal data to the US, whoever in Europe it came from, without the need to ask for consent, or to enter into bilateral agreements, over and over again.”

### Can data still be transferred to the US?

Now that the 2000 agreement has been called invalid, American companies – including Google, Facebook, Apple and Microsoft – can no longer rely on self-certification and must seek to strike “model contract clauses” in each case. These agreements authorise the transfer of data outside of Europe.

Monique Goyens, director general of the European Consumer Organisation said: “In essence, if Facebook, Google et al. wish to continue sending Europeans’ personal data over the Atlantic they will just have to guarantee an adequate level of protection in line with EU rules.”

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The impact on large US technology companies and their operations within the EU is likely to be limited to a large amount of paperwork. Many will already have model contract clauses already drawn up. Others may be forced to stop the transfer of data to the US until they have.

Many US companies have established or are in the process of building EU-based data centres to handle data for EU citizens, including Facebook, Apple and Google. The search company, for instance, lists four data centres within Europe, including one in Ireland.

### What about Facebook?

For Facebook, which has been placed at the centre of this case by Schrems, the decision means that the Irish data protection authority (DPA) will be forced to investigate the Austrian's claims and Facebook's data protection practices.

"[The Irish DPA must]decide whether ... transfer of the data of Facebook's European subscribers to the US should be suspended on the grounds that that country does not afford an adequate level of protection of personal data," the EUCJ said.

### Will I notice anything different?

The impact on users in the short term is unlikely to be obvious. The dissolution of the agreement will, in theory, ensure better data protection for users' personal information going forward. It may also help stop the US government from being able to gain access to user data from the EU.

Sites and services such as Facebook are highly unlikely to be disrupted to any meaningful level. But it may open the door to further probes, complaints and lawsuits from users and data regulators.

### What about cloud services?

The companies most affected are likely to be smaller, less financially and technologically able companies. Many use US-based cloud services to store or process data that they could not do themselves. It is the 21st century equivalent of outsourcing.

Those companies will have to abide by the same systems as Facebook and Google, agreeing model contract clauses and ensuring that the service they are using, such as Amazon's web services, also complies with data protection regulations.

Despite being standard and essentially fixed agreements, getting them approved before

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transferring data will be both a financial and administrative burden.

### **Will a new safe harbour agreement be needed?**

The ruling did not come completely out of the blue – it's a ratification of the EU's Advocate General's opinion on Safe Harbour – but was not expected quite so soon.

A new safe harbour agreement is currently being negotiated between the EU and US, and has been in negotiation for the last two years, following the Snowden revelations.

The EU has been trying to limit the US government's access to EU citizens' data stored in the US and to allow EU citizens to sue US companies in US courts should they misuse their data.

The EU has been using the threat of vetoing future trade agreements as a stick, but an agreement has yet to be struck. The new ruling is likely to light a fire under the proceedings as a new agreement is needed to help lubricate international trade in services.

Some analysts see the EUCJ's ruling as likely to hurt, not help, the new safe harbour negotiations.

Van Eecke: "By tweaking and fine-tuning the existing safe harbour system and adding a layer of solid enforcement we could come to a workable solution. This is exactly what the government officials are working on, but which now risks to be impeded by the court's decision."

### **What happens if one can't be made?**

Should the US attempt to derail a new safe harbour agreement, it is US companies aiming to expand beyond US borders that are likely to be impacted. European companies may also see access to advanced cloud services restricted, although the move to data centres situated in Europe will ease the situation.

In the meantime encryption may hold the answer to maintaining data transfer while a new agreement is put in place.

Nigel Hawthorn, from cloud security company Skyhigh Networks, said: "Organisations need to investigate technologies such as encryption or risk being dragged through the courts by privacy advocates, customers or employees. Tokenising or encrypting data flows before they are sent to the cloud, and keeping the keys on premise, means all of these issues disappear. There is no

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'personal' data in the cloud service once it has been encrypted or tokenised."

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**On the basis of the foregoing news story, please choose the *best* answer to the following questions, and put it down on the answer sheet.**

1. **What is the reason that the safe harbour works like a type of 'one stop shop'?**
- (a) Without the safe harbor agreement, companies may not transfer EU citizens' personal data to their US data centres.
  - (b) The safe harbour agreement is made between the EC and the US government and promises to protect EU citizens' data if those data are transferred to the US.
  - (c) Once covered by the safe harbor, there is no need for companies to seek for EU citizens' consent when their data are transferred to the US.
  - (d) The US is the only country that EU has signed such a safe harbour agreement.
2. **(Which of the following is incorrect?) Without a safe harbour, how can transnational internet service providers, such as Google, Facebook, Apple and Microsoft, legitimately transfer personal data outside of EU?**
- (a) They may strike "model contract clauses" with EU citizens.
  - (b) They may afford an adequate level of protection of personal data to meet the EU privacy requirements.
  - (c) They may establish EU-based data centres to handle data for EU citizens.
  - (d) They may have US and EU government conclude a new safe harbour agreement in compliance with EUCJ's ruling.
3. **According to the author, which would be the possible impact of EUCJ 's ruling of the Schrems case?**
- (a) Transnational service providers, such as Google, Facebook, Apple and Microsoft, may stop providing their internet service to EU citizens.
  - (b) Trans-border internet service for EU citizens may be generally affected.

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(c) It is widely recognized that the task of negotiating and concluding a new safe harbour agreement between the US and EU would become even more difficult.

(d) US-based cloud services for EU companies, such as Amazon's web services, will be adversely affected.

4. Which of the following is *not* the possible advantage that EUCJ's ruling will bring about?

(a) Internet and cloud service providers may be less financially and administratively burdened.

(b) US companies may not self-certify, instead may have to actually afford adequate privacy protection in line with the EU requirements.

(c) US companies may need to ensure better data protection for users' personal information.

(d) It may help to stop the US government from gaining access to user data from the EU.

5. Going forward, which of the following is the most likely to happen in the near future?

(a) The US government delays the conclusion of a new safe harbour agreement.

(b) Tokenising or encrypting data flows will be more popular and welcome.

(c) The Facebook's transfer of the data of its European subscribers to the US will be suspended

(d) The US government's access to EU citizens' data stored in the US will be constrained.

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一、作答於試題上者，不予計分。  
二、試題請隨卷繳交。