

國立高雄第一科技大學 101 學年度 碩士班 招生考試 試題紙

系 所 別：科技法律研究所

組 別：不分組

考科代碼：2362

考 科：英文

注意事項：

- 1、本科目不得使用電子計算器。
- 2、請於答案卷上規定之範圍作答，違者該題不予計分。

一、選擇題，每一題 2 分，單選題，答錯不倒扣，請將正確選項，答於答案卷。(50%)

1. The lawyer has to _____ a claim with the Court until Wednesday.
(a) issue (b) send (c) file (d) write
2. Torts are civil wrongs recognized by law as _____ for a lawsuit.
(a) appropriate (b) evidence (c) foundation (d) grounds
3. The plaintiff may sue for _____ to prevent the continuation of the tortious conduct or for monetary damages.
(a) an injunction (b) a judgement (c) a justice (d) a rejoinder
4. Globalization is illustrated in aviation by commercial, marketing and technical alliances amongst airlines, in some cases involving ownership and control issues beyond national boundaries, while transnationalization means airlines going _____, that is locating parts of their operations outside their national base.
(a) offshore (b) outside (c) overland (d) overseas
5. Damages, in a legal sense, is the sum of money the law imposes for a _____ of some duty or violation of some right.
(a) breach (b) broach (c) shift (d) shirk
6. One factor affecting civil aviation is the emergence of regional and sub-regional blocs, which provide _____ for sharing of some of the safety responsibility in a common localized geographic approach.
(a) media (b) modicums (c) vehicles (d) viaticums
7. While products are generally thought of as tangible personal property, products liability has _____ that definition to include intangibles, naturals, real estate, and writings.
(a) spread (b) strengthened (c) stretched (d) swelled
8. The rise of the Internet since the _____ of the World Wide Web has provided an easy-to-use communication channel for businesses to contact current and potential customers.
(a) advent (b) convention (c) event (d) provenance
9. Products liability refers to the liability of any or all parties along the _____ of manufacture of any product for damage caused by that product.
(a) chain (b) creek (c) links (d) way

10. The commercialization of such provision therefore necessitates both _____ delegation of operational functions of governments and changed regulatory functions of governments.

(a) prescribed (b) prioritized (c) prorated (d) proscribed

11. Civil aviation is unique in that it remains regulated at the international level largely by _____ agreements between governments, but several regional and subregional air services agreements are already in place and others are under consideration.

(a) bilateral (b) mutual (c) nominal (d) prenuptial

12. There is increasing recognition of and response to environmental concerns, and a perception that the aviation sector may be contributing _____ to both existing and emerging problems.

(a) abnormally (b) absolutely (c) unduly (d) unusually

13. There are numerous specific torts, including trespass, assault, battery, products liability, and intentional _____ of emotional distress.

(a) imposition (b) infliction (c) insertion (d) insistence

14. Products containing _____ defects that cause harm to a consumer of the product, or someone to whom the product was loaned, given, etc., are the subjects of products liability suits.

(a) ingrained (b) inherent (c) instinctive (d) internal

15. Many states have _____ comprehensive products liability statutes.

(a) contracted (b) enacted (c) exacted (d) protracted

Tenant acknowledges that late payment of rent will cause Landlord to (16) costs not contemplated by this Lease, the exact amount of which will be extremely difficult to (17). These costs include, but are not (18) to, processing and accounting charges, and late charges which may be (19) on Landlord by the terms of any Superior Leases and Mortgages. Accordingly, if any installment of Monthly Rent or payment of additional rent is not received by Landlord or Landlord's designee within fourteen days after the amount is (20). Tenant shall pay to Landlord a late charge equal to ten per cent of said amount. Acceptance of late charges by Landlord shall not constitute a waiver of Tenant's default with respect to said amount, nor prevent Landlord from (21) any of the other rights and remedies granted hereunder or at law or in equity.

16. (a) derive (b) acquire (c) collect (d) incur

17. (a) affirm (b) classify (c) ascertain (d) locate

18. (a) contained (b) limited (c) held (d) bound

19. (a) imposed (b) dictated (c) obliged (d) required

20. (a) owing (b) scheduled (c) due (d) unpaid

21. (a) practising (b) exercising (c) commanding (d) undertaking

The word mistake is generally used in the law of contracts to refer to an erroneous belief – 'a belief that is not in accord with the facts.' To avoid confusion, it should not be used, as it sometimes is in common speech, to refer to an improvident act, such as the making of a contract, that results from such an erroneous belief. Nor should it be used, as it occasionally is by courts and writers, to refer to a situation in which two parties attach different meanings to their language.

An erroneous belief is not a mistake unless it relates to the facts as they exist at the time the contract is made. A poor prediction of events that are expected to occur after the contract is made is not a mistake. The law of mistake deals only with the risk of error relating to the factual basis of agreement – the state of affairs at the time of agreement. It does not deal with the risk of error as to future matters. Cases of poor prediction are dealt with by the doctrines of impracticability and frustration, which are thought to be more suited to adjusting the relationship between the parties under their agreement.

In some cases, however, the line between a mistake as to an existing fact and a poor prediction as to a future event is hard to draw, especially when the parties have extrapolated from existing facts to set their expectations as to future use. *Leasco v. Taussig* is an example. In February 1971, Taussig, who had been an officer at Leasco's subsidiary MKI, made a contract with Leasco to buy MKI. In May, however, he sought to avoid the contract on the ground that the parties had erred in estimating MKI's pre-tax earnings for the period ending with September 1971 as \$200,000. In fact the company lost \$12,000, and Taussig argued the parties had shared a mistake as to the existing fact 'that they were dealing with a company which would earn \$200,000 in the fiscal year ending September 30, 1971.' The court, however, held that this was merely a poor prediction as to a future event. Therefore, each party bore a risk that the earnings might not be as estimated, and each was bound even though, 'as it turned out, one party got a better bargain than anticipated.'

A similar issue was presented by *Aluminum Co. of America v. Essex Group*. Under a 16-year contract made in 1967, ALCOA was to convert alumina supplied by Essex into molten aluminum. The contract price provisions contained an escalation formula, one portion of which was based on the Wholesale Price Index – Industrial Commodities (WPI). By 1979, it had become apparent that the WPI was not keeping pace with the sharp rise in the cost of energy to ALCOA, and the company stood to lose some \$60 million over the contract term. ALCOA sought relief for mutual mistake. The trial court found that the parties had chosen the WPI to reflect changes in ALCOA's non-labor costs after a careful investigation showed that the WPI had, over a period of years, tracked ALCOA's non-labor cost fluctuations without marked deviations. In this, the judge concluded, the parties had made an error 'of fact rather than one of simple prediction of future events.' He distinguished the Taussig case on the ground that there the 'parties bottomed their agreement on a naked prediction,' while in ALCOA the capacity of the WPI 'to work as the parties expected it to work was a matter of fact, existing at the time they made the contract.' The judge felt that justice required him to find a mistake of fact. 'At stake in this suit is the future of a commercially important device – the long-term contract. If the law refused an appropriate remedy when a prudently drafted long-term contract goes badly awry, prudent business people would avoid using this sensible business device.'

22. What is the writer doing in the first paragraph?

- (a) explaining why a word is misused
- (b) identifying the appropriate legal usage of a term
- (c) giving examples of common legal errors
- (d) suggesting a wider interpretation of a particular term

23. In the second paragraph, what does the writer say about cases involving poor prediction?

- (a) They occur more often than cases involving a mistake of fact.
- (b) They do not normally result from a breakdown in relationships.
- (c) They are not dealt with under the law of mistake.
- (d) They can be more difficult to resolve than mistakes of fact.

24. Taussig argued that he was not held by his contract with Leasco because

- (a) Leasco's anticipated takeover of MKI had failed.
- (b) MKI's financial record was worse than he thought.
- (c) MKI's projected income had been miscalculated.
- (d) Leasco had underestimated the value of MKI's stock.

25. A factor in ALCOA's decision to go to court was that

- (a) Essex was not keeping to the terms of the contract.
- (b) energy was rapidly becoming its biggest single cost.
- (c) the wholesale price of alumina was fluctuating considerably.
- (d) a contract price was linked to an inappropriate predictor.

二、請將下列中文法律名詞，翻譯成英文法律名詞，答於答案卷，每一題2分。(30%)

- | | | | | |
|---------|---------|---------|--------|----------|
| 1. 抵押權 | 2. 公證人 | 3. 連帶責任 | 4. 董事會 | 5. 內線交易 |
| 6. 共同基金 | 7. 交互詰問 | 8. 羈押 | 9. 假釋 | 10. 相當理由 |
| 11. 管轄權 | 12. 過失 | 13. 上訴 | 14. 仲裁 | 15. 死刑 |

三、請將下面英文段落翻中文，答於答案卷，每一題10分。(20%)

1. Failure to maintain rigorous standards for client selection can jeopardize an attorney's reputation, increase stress and decrease morale within the firm, and ultimately have a negative impact on the firm, rather than provide the remuneration the firm envisioned in entering into a relationship with an improperly screened client. If a firm has to assign lawyers to represent it in charges of malpractice, or has to retain outside counsel for that purpose, its bottom line is being adversely affected. Potentially, these lawyers will have to spend several hours each day documenting every detail of every conversation with in-house counsel, and a substantial amount of time apprising management of evolving issues and discussing how to resolve them.
2. A statute is a formal written enactment of a legislative authority that governs a country, state, city, or county. Typically, statutes command or prohibit something, or declare policy. The word is often used to distinguish law made by legislative bodies from case law and the regulations issued by government agencies. Statutes are sometimes referred to as legislation. As a source of law, statutes are considered primary authority.