國　立　清　華　大　學　命　題　紙

97 學年度___科技法律研究____（所）_____甲（科技專業）乙（法律專業）___組碩士班入學考試

科目___英文（含文獻評析）____ 科目代碼__4802_共__4__頁第__1__頁 *請在【答案卷卡】內作答

4702、

一、英翻中與中翻英（20%）

請將以下名詞翻譯為中文（英翻中）（每題二分）：

1. spectrum
2. digital divide
3. cultural diversity
4. catadromous species
5. bona fide sine fraude

請將以下名詞翻譯為英文（中翻英）（每題二分）：

1. 營業秘密
2. 公司治理
3. 管轄權
4. 溫室氣體排放交易
5. 產品責任

二、Please read the following article carefully and answer the questions at the bottom <u>either in English or Chinese</u>: (20%)

"The fairness doctrine, as developed by the Commission, imposes upon broadcasters a two-pronged obligation. Broadcast licensees are required to provide coverage of vitally important controversial issues of interest in the community served by the licensees and to provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues. An examination of the genesis of the fairness doctrine reveals an evolutionary process, spanning a considerable period of time, and marked by a considerable uncertainty as to the proper approaches to insure that licensees operate in the public interest. This inquiry is a further step in a continuing process in evaluating the fairness doctrine. In undertaking this reexamination, we will first determine the purposes underlying promulgation of the fairness doctrine and then assess, in light of current marketplace conditions, whether or not its retention is consistent with the public interest.

Our past judgment that the fairness doctrine comports with the public interest was predicated upon three factors. First, in light of the limited availability of broadcast frequencies and the resultant need for government licensing, we concluded that the licensee is a public fiduciary, obligated to present diverse viewpoints representative of the community at large. We determined that the need to effectuate the right of the viewing and listening public to suitable access to the marketplace of ideas justifies restrictions on the rights of broadcasters. Second, we presumed that a governmentally imposed restriction on the content of programming is a viable mechanism -- indeed the best mechanism -- by which to vindicate this public interest. Third, we determined, as a factual matter, that the fairness doctrine, in operation, has the effect of enhancing the flow of diverse viewpoints to the public.

On the basis of the voluminous factual record compiled in this proceeding, our experience in administering the doctrine and our general expertise in broadcast regulation, we no longer believe that the fairness doctrine, as a matter of policy, serves the public interest. In making this determination, we do not question the interest of the listening and viewing public in obtaining access to diverse and antagonistic sources of information. Rather, we conclude that the fairness doctrine is no longer a necessary or appropriate means by which to effectuate this interest. We believe that the interest of the public in viewpoint diversity is fully served by the multiplicity of voices in the marketplace today and that the intrusion by government into the content of programming occasioned by the enforcement of the doctrine unnecessarily restricts the journalistic freedom of broadcasters. Furthermore, we find that the fairness doctrine, in operation, actually inhibits the presentation of controversial issues of public importance to the detriment of the public and in degradation of the editorial prerogatives of broadcast journalists."

Questions: Do you support the fairness doctrine? Why or why not?

三、Please read the following article carefully and answer the questions at the bottom <u>in English only</u>: (20%)

"Intellectual property law is in need of reform. Many of the problems stem from the association that lawyers and judges often make between intellectual property and real property. In fact, there are very few similarities between the two fields of law.

Intellectual property protection in the United States has always been about generating incentives to create. Thomas Jefferson was of the view that "inventions . . . cannot, in nature, be a subject of property"; for him, the question was whether the benefit of encouraging innovation was "worth to the public the embarrassment of an exclusive patent." In this long-standing view, free competition is the norm. Intellectual property rights are an exception to that norm, and they are granted only when—and only to the extent that—they are necessary to encourage invention. The result has been intellectual property rights that are limited in time and scope, and granted only to authors and inventors who meet certain minimum requirements. In this view, the proper goal of intellectual property law is to give as little protection as possible consistent with encouraging innovation.

This fundamental principle is under sustained attack. Congress, the courts, and commentators increasingly treat intellectual property not as a limited exception to the principle of market competition, but as a good in and of itself. If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions. In this view, absolute protection may not be achievable, but it is the goal.

The absolute protection or full-value view draws significant intellectual support from the idea that intellectual property is simply a species of real property rather than a unique form of legal protection designed to deal with public goods problems. Protectionists rely on the economic theory of real property, with its focus on the creation of strong rights in order to prevent congestion and overuse and to internalize externalities; the law of real property, with its strong right of exclusion; and the rhetoric of real property, with its condemnation of "free riding" by those who imitate or compete with intellectual property owners. The result is a legal regime for intellectual property that increasingly looks like an idealized construct of the law of real property, one in which courts seek out and punish virtually any use of an intellectual property right by another."

Questions: What is Thomas Jefferson's viewpoint concerning intellectual property protection? Do you agree with him? Why or why not?

四、請用中文在兩百字內說明下面英文段落的主要內容與意旨：(20%)

Aboriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those aboriginal practices, customs and traditions which are integral to distinctive aboriginal cultures; and ... those protected uses must not be irreconcilable with the nature of the group's attachment to that land.

The above characterisation is important because it deals with the argument that aboriginal title only encompasses rights to use the land in accordance with particular customary practices rather than encompassing some notion of exclusivity and possession of land. The case Canadian Pacific Ltd v Paul supported this conclusion that aboriginal title amounted to the right to occupy and possess lands and that, once that occupation or title was established, the rights that went with it were not limited to those deriving from custom and included rights to minerals. In other words, the right to exclusive occupation must be related to aboriginal custom, but once the occupation is established, the uses cannot be irreconcilable with custom or the nature of the attachment to the land.

The limitation on aboriginal title arises because of the *sui generis* aspect of the title. The common law seeks to protect 'in the present day' and into the future, the special connection with land enjoyed prior to sovereignty. It is for this reason that the title is inalienable and its inalienability gives it a non-economic element. To permit actions that would threaten that special connection would be inconsistent with the protection afforded by the common law.

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五、請逐字將下面英文段落翻譯成為中文：(20%)

"It may be ventured that the legal system of the community of states has evolved in a direction diametrically the opposite of the law within states. Whereas national law has moved from natural to positive, international law has turned from an exclusively positivist jurisprudence to one which incorporates a modern secular version of natural laws and rights comparable in force to those which inspired the authors of the constitutions of the states."