

國立中央大學 105 學年度碩士班考試入學試題

所別： 產業經濟研究所 碩士班 法律組(一般生)

共3頁 第1頁

科目： 法學英文

本科考試禁用計算器

*請在答案卷(卡)內作答

考試規則：1. 禁止使用字典。 2. 單選題答錯不倒扣。

I. Choose the most appropriate term for each of the numbered blanks in the following excerpts of a U.S. Federal court decision (single choice, 5% each)

MOORE, 1 Judge.

These appeals stem from a patent 2 action brought by ActiveVideo Networks, Inc. (ActiveVideo) against Verizon Communications, Inc. et al. (Verizon). Verizon 3 that ActiveVideo infringed certain of its patents. After trial, a jury found that Verizon infringed four ActiveVideo patents and that ActiveVideo infringed two Verizon patents and awarded 4 to both parties. Following trial, the district court entered a permanent 5 against Verizon but delayed enforcement . . . for six months during which Verizon was ordered to pay a sunset 6 . . . Verizon also appeals the district court's grant of 7 of invalidity as to a third Verizon patent and its grant of judgment as a matter of law (JMOL) preventing Verizon's invalidity defenses from reaching the 8 . Active Video 9 the district court's denial of JMOL of non-infringement and its grant of JMOL For the reasons set forth below, we affirm-in-part, reverse-in-part, vacate-in-part, and 10 .

1. 1 should be ...? (A) Judge (B) Circuit (C) Justice (D) Grand (E) Federal
2. 2 should be ...? (A) licensing (B) application (C) denial (D) infringement (E) inapplicability
3. 3 should be ...? (A) overreacted (B) admitted (C) assured (D) appealed (E) counterclaimed
4. 4 should be ...? (A) damages (B) penalties (C) instructions (D) investments (E) rewards
5. 5 should be ...? (A) warning (B) ordanance (C) injunction (D) warrant (E) order
6. 6 should be ...? (A) penalty (B) award (C) royalty (D) tax (E) deduction
7. 7 should be ...?
(A) summary judgment (B) initial verdict (C) final resolution (D) initial judgment (E) final verdict
8. 8 should be ...?
(A) expert witness (B) trial judge (C) appellate court (D) final judgment (E) jury
9. 9 should be ...?
(A) counter-appeals (B) cross-appeals (C) super-appeals (D) un-appeals (E) retro-appeals
10. 10 should be ...? (A) finalize (B) refrain (C) decide (D) remand (E) deliver

注意：背面有試題

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II. Choose the best answer for each question after reading the following Wall St. Journal news report (Single Choice, 5% each)

A federal appeals court on Tuesday upheld a 2013 decision finding Apple liable for conspiring with publishers to raise the price of e-books. The 2-1 ruling Tuesday by the Second U.S. Circuit Court of Appeals in Manhattan follows three years of litigation, millions of dollars in legal fees and a bold decision by Apple to challenge the U.S. Department of Justice to a trial, even after all the publishers with which it was accused of colluding had settled their cases.

The iPhone maker is expected to pay \$450 million, most of it to e-book consumers, as part of a November agreement with private plaintiffs and 33 states that joined the Justice Department's 2012 lawsuit accusing Apple of violating civil antitrust law. The deal hinged on the outcome of the appeal. The penalty amounts to less than 3% of the Cupertino, Calif., company's profit in the quarter that ended in December.

"We conclude that the district court correctly decided that Apple orchestrated a conspiracy among the publishers to raise e-book prices," wrote Second Circuit Judge Debra Ann Livingston. The conspiracy "unreasonably restrained trade" in violation of the Sherman Act, the federal antitrust law, the judge wrote.

The case laid bare Apple's efforts to gain a foothold in a market that Amazon.com commanded in 2010 with between 80% and 90% of all e-book sales. At the time, publishers were dissatisfied with Amazon's aggressive discounts. Apple's agreements ceded the power to set prices to the publishers, in what's known as an agency model. But there was an exception: If another retailer was selling an e-book at a lower price, the publisher would have to match that price in Apple's bookstore.

With a new outlet for their e-books, the publishers had the leverage they needed to reclaim some pricing power from Amazon, Justice Department lawyers said. Change was inevitable: The publishers couldn't afford to sell their e-books in Apple's store at Amazon's discounted prices of \$9.99 for most best sellers. Prices on many e-books increased immediately. Lawyers for Apple said the company unwittingly facilitated the push against Amazon by the publishers. But the Second Circuit majority said the evidence showed the technology company knew what it was doing.

"Apple understood that its proposed contracts were attractive to the publisher defendants only if they collectively shifted their relationships with Amazon to an agency model—which Apple knew would result in consumers facing higher e-book prices," Judge Livingston wrote in a decision joined by Judge Raymond J. Lohier Jr.

Apple could ask the Second Circuit to rehear the case or ask the U.S. Supreme Court to review it. "Apple did not conspire to fix e-book pricing and this ruling does nothing to change the facts. We are disappointed the Court does not recognize the innovation and choice the iBooks Store brought for consumers," Apple said. "While we want to put this behind us, the case is about principles and values. We know we did nothing wrong back in 2010 and are assessing next steps," the company added.

Judge Dennis Jacobs, writing in dissent, said that the trial judge who found Apple liable for price-fixing in 2013 viewed the case through the wrong legal lens. He said antitrust law couldn't hold Apple plainly responsible for a conspiracy among publishers on a different rung of the supply chain.

Lagardere SCA's Hachette Book Group, CBS Corp.'s Simon & Schuster Inc. and News Corp's HarperCollins Publishers LLC agreed to settle with the Justice Department the day it filed its complaint in 2012. Penguin and Macmillan settled with the government soon after. Together, the publishers agreed to pay about \$170 million in damages to e-book buyers.

HarperCollins, Penguin Random House and Simon & Schuster declined to comment. Representatives of Hachette and Macmillan didn't immediately respond to requests for comment. "The decision confirms that it is unlawful for a company to knowingly participate in a price-fixing conspiracy, whatever its specific role in the conspiracy or reason for joining it," said Bill Baer, the assistant attorney general in charge of the Justice Department's Antitrust Division.

With its appeal pending, Apple bridled under the watch of a monitor, Michael Bromwich, who was appointed to by U.S. District Judge Denise Cote to keep tabs on Apple's efforts to set up new policies to prevent antitrust violations. In a May ruling, the Second Circuit declined Apple's request to shake him off.

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The Second Circuit had to step in and clarify Mr. Bromwich's role in a February 2014 ruling, after Apple accused him of overstepping his mandate. Mr. Bromwich, a former Justice Department inspector general who charges \$1,000 an hour, said in a court filing that the company stonewalled him, offering "far less access" than he received in his previous three stints as a corporate monitor.

- C) Cote - district court.
- D) Bromwich - Apple.
- E) Jacobs - Second Circuit Court of Appeals.

11. Which of the following is false?

16. The decision is . . . ?

- A) It is a Circuit Court decision.
- B) It is a New York State court decision.
- C) It is a Federal Court decision.
- D) The court agrees with the lower court.
- E) The Justice Department is on the winning side.

- A) unanimous.
- B) a split decision.
- C) a plurality decision.
- D) non-binding.
- E) a Supreme Court decision.

12. What can you tell from the story?

17. Which of the following is false?

- A) Judge Jacobs agrees with the decision.
- B) Apple has decided to appeal.
- C) Judge Livingston disagrees with Judge Cote.
- D) All of the above.
- E) None of the above.

- A) The penalty will not cause Apple financial hardship.
- B) The case can still be appealed.
- C) The case has been remanded.
- D) The is an antitrust case.
- E) The case stated in 2012 in the lower court.

13. Which of the following is the most appropriate title for the news story?

18. Which of the following was not named as a defendant when the DOJ initiated the suit in the district court?

- A) Apple Appeals to the Supreme Court over E-Books Ruling.
- B) Supreme Court Ruled on Apple E-Books Case.
- C) Apple Loses Federal Appeal in E-Books Case.
- D) A 2:1 Court Rules for Apple.
- E) All of the above are appropriate.

- A) Amazon.com.
- B) Apple.
- C) Hachette Book Group.
- D) HarperCollins.
- E) All of the above were named defendants.

14. Which of the following is true?

19. Which of the following is true about Mr. Bromwich?

- A) Simon & Schuster is a publisher.
- B) Hachette Book Group is a co-appellant in this case.
- C) HarperCollins Publishers LLC is the parent company of News Corp.
- D) All of the above.
- E) None of the above.

- A) He is an inspector general.
- B) He was appointed by the Appellate Court to monitor Apple.
- C) As a monitor, he has had a cordial relationship with Apple.
- D) All of the above.
- E) None of the above.

15. Which of the following associations is at odds with the others?

20. Who is not a judge?

- A) Baer - Department of Justice.
- B) Livingston - Second Circuit Court of Appeals.

- A) Dennis Jacobs.
- B) Debra Ann Livingston.
- C) Denise Cote.
- D) Bill Baer.
- E) All of the above are judges.