國立中央大學106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　　＊請在答案卡內作答

考試規則: 1. 禁止使用字典。　2. 全部單選題，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)

I. __1__ of Review

Following a __2__ trial, this Court reviews the "district court's findings of __3__ for clear error" and its "conclusions of __4__ and mixed questions *de novo*." . . . The district court's evidentiary rulings and its fashioning of equitable relief are reviewed for abuse of __5__.

II. Apple's __6__ Under § 1

This __7__ requires us to address the important distinction between "horizontal" agreements to set prices, which involve coordination "between __8__ at the same level of [a] market structure," and "vertical" agreements on pricing, which are created between parties "at different levels of [a] market structure." *Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 182 (2d Cir. 2012) (internal quotation marks omitted). Under § 1 of the Sherman __9__, the former are, with limited __10__, *per se* unlawful, while the latter are unlawful only if an assessment of market effects, known as a rule-of-reason __11__, reveals that they unreasonably restrain trade.

1. __1__ should be ...? Ⓐ Agreement Ⓑ Milestone Ⓒ Standard Ⓓ Application Ⓔ Federal
2. __2__ should be ...? Ⓐ bench Ⓑ studio Ⓒ chamber Ⓓ charter Ⓔ hollow
3. __3__ should be ...? Ⓐ law Ⓑ fact Ⓒ chance Ⓓ errors Ⓔ counterclaime
4. __4__ should be ...? Ⓐ law Ⓑ fact Ⓒ chance Ⓓ errors Ⓔ counterclaime
5. __5__ should be ...? Ⓐ title Ⓑ privilege Ⓒ reputation Ⓓ Liability Ⓔ discretion
6. __6__ should be ...? Ⓐ Troubles Ⓑ Nightmare Ⓒ Farce Ⓓ Liability Ⓔ Suit
7. __7__ should be ...? Ⓐ court Ⓑ attorney Ⓒ time Ⓓ appeal Ⓔ room
8. __8__ should be ...? Ⓐ lawyers Ⓑ competitors Ⓒ managers Ⓓ political parties Ⓔ unions
9. __9__ should be ...? Ⓐ Bill Ⓑ Draft Ⓒ Act Ⓓ Constitution Ⓔ Legislature
10. __10__ should be ...? Ⓐ arguments Ⓑ reviews Ⓒ liability Ⓓ appeal Ⓔ exceptions
11. __11__ should be ...? Ⓐ enterprise Ⓑ enterprises Ⓒ analysis Ⓓ analyses Ⓔ academy

參考用

注意：背面有試題

所別： 產業經濟研究所 碩士班 法律組(一般生)　　共3頁 第2頁

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II. Choose the best answer for each question after reading the following Guardian news report in Dec. 2016 (Single Choice, 5% each)

"General and indiscriminate retention" of emails and electronic communications by governments is illegal, the EU's highest court has ruled, in a judgment that could trigger challenges against the UK's new Investigatory Powers Act – the so-called snooper's charter.

Only targeted interception of traffic and location data in order to combat serious crime – including terrorism – is justified, according to a long-awaited decision by the European court of justice (ECJ) in Luxembourg.

The finding came in response to a legal challenge initially brought by the Brexit secretary, David Davis, when he was a backbench MP, and Tom Watson, Labour's deputy leader, over the legality of GCHQ's bulk interception of call records and online messages.

Davis and Watson, who were supported by Liberty, the Law Society, the Open Rights Group and Privacy International, had already won a high court victory on the issue, but the government appealed and the case was referred by appeal judges to the ECJ. The case will now return to the court of appeal to be resolved in terms of UK legislation.

The aim of going to Luxembourg was to clarify EU law on surveillance. The two MPs had argued successfully in the domestic courts that the Data Retention and Investigatory Powers Act (Dripa) 2014 was illegal. Dripa has since been replaced by the Investigatory Powers Act, which comes into force at the end of this month.

At issue was whether there are EU standards on data retention that need to be respected by member states in domestic legislation. The result, though immediately significant, could prove academic once the UK has withdrawn from the EU and the ECJ no longer has jurisdiction over the UK.

In a summary of the ruling, the court said electronic communications allow "very precise conclusions to be drawn concerning the private lives of persons whose data has been retained".

It added: "The interference by national legislation that provides for the retention of traffic data and location data with that right must therefore be considered to be particularly serious."

"The fact that the data is retained without the users of electronic communications services being informed of the fact is likely to cause the persons concerned to feel that their private lives are the subject of constant surveillance. Consequently, only the objective of fighting serious crime is capable of justifying such interference."

"Legislation prescribing a general and indiscriminate retention of data … exceeds the limits of what is strictly necessary and cannot be considered to be justified within a democratic society." Prior authorisation by a court or independent body to access retained data is required for each official request, the ECJ said.

Before becoming Brexit minister, Davis travelled to Luxembourg to hear the case. He argued that the British government was "treating the entire nation as suspects" by ignoring safeguards on retaining and accessing personal communications data.

Davis, one of the most vociferous critics of the state's powers to collect data on its citizens, withdrew from the case following his ministerial appointment.

The Dripa case was heard by 15 ECJ judges. It coincided with successive atrocities in Paris, Brussels and Nice that reinforced political demands for expansion of powers to intercept emails and phone calls to help catch Islamic State militants operating on the continent.

Lawyers for the UK government maintained that intercepted communications have been at the heart

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