一、 請閱讀下列網路新聞後，以中文回答下列問題：

EU court backs 'right to be forgotten' in Google case

A top EU court has ruled Google must amend some search results at the request of ordinary people in a test of the so-called "right to be forgotten".

The **European Union Court of Justice said** links to "irrelevant" and outdated data should be erased on request.

The case was brought by a Spanish man who complained that an auction notice of his repossessed home on Google's search results infringed his privacy.

Google said the ruling was "disappointing".

"We now need to take time to analyse the implications," a spokesperson added.

'Inadequate'

The search engine says it does not control data, it only offers links to information freely available on the internet.

It has previously said forcing it to remove data amounts to censorship.

The EU Justice Commissioner, Viviane Reding, welcomed the court's decision **in a post on Facebook**, saying it was a "clear victory for the protection of personal data of Europeans".

"The ruling confirms the need to bring today's data protection rules from the "digital stone age" into today's modern computing world," she said.

The European Commission proposed a law giving users the "right to be forgotten" in 2012.

It would require search engines to edit some searches to make them compliant with the European directive on the protection of personal data.

In its judgement on Tuesday, the court in Luxembourg said people had the right to request information be removed if it appeared to be "inadequate, irrelevant or no longer relevant".

A right to be forgotten?

In 2012, the European Commission published plans for a "right to be forgotten" law, allowing people to request that data about themselves to be deleted Online service providers would have to comply unless they had "legitimate" reason to do otherwise.

The plans are part of a wide-ranging overhaul of the commission's 1995 Data Protection Directive.

UK's Ministry of Justice claims that the law "raises unrealistic and unfair expectations"

Some tech firms have expressed concern about the reach of the bill

BBC technology correspondent Rory Cellan-Jones says the ruling has huge consequences for anyone who publishes material online about individuals.

It appears to say that anyone who does not like an old story about them can ask for it to be wiped away, he adds.

The judgement stresses that the rights of the individual are paramount when it comes to their control over their personal data, although there is a public interest defence when it comes to people in public life.

'No legal oversight'

The ruling came after Mario Costeja Gonzalez complained that a search of his name in Google brought up newspaper articles from 16 years ago about a sale of property to recover money he owed.

He said the matter had been resolved and should no longer be linked to him.

Campaign group Index on Censorship condemned the decision, saying it "violates the fundamental principles of freedom of expression".

"It allows individuals to complain to search engines about information they do not like with no legal oversight," it said.

"This is akin to marching into a library and forcing it to pulp books."

Mr Gonzalez's case is one of scores of similar cases in Spain whose complainants want Google to delete their personal information from their search results.

The court said people should address any request for data to be removed to the operator of the search engine, which must then examine its merits.

(Source: ***BBC News***, EU court backs 'right to be forgotten' in Google case, available at http://www.bbc.com/news/world-europe-27388289?print=true, last visited 2015/1/18)

請在回答問題後，在相關陳述之重點，劃上底線。

（一） 肯定遺忘權之論點，主要有誰？論點為何？ (10%)

（二）否定遺忘權之論點，主要有誰？論點為何？(10%)

（三）你覺得肯定說或否定說哪一個有道理，試申論之。(5%)

二、請閱讀下列經濟學人文章後，以中文回答下列問題：

The Supreme Court

A year of drama and dissent

The Roberts court quietly paves the way for big changes

Jul 5th 2014

ON JUNE 30th, the final day of its 2013-14 term, the Supreme Court's slim conservative majority took pains to deny that its last two rulings were radical. In *Burwell v Hobby Lobby*, the Court decided, 5-4, that some employers with religious objections do not have to pay for contraceptives for their staff, despite a law (Obamacare) that tried to make them do so. This ruling will not open the door to "a flood of religious objections" to American laws by pious employers, insisted Justice Samuel Alito, a conservative. Oh yes it will, retorted Justice Ruth Bader Ginsburg, a liberal, albeit in grander language. The case sparked furious controversy (*omit..*).

Yet it may have been the less consequential of the two cases decided that day. The other was *Harris v Quinn*, a dispute about unions that turned on the arcane question of how to categorise home-healthcare workers. Pamela Harris, an Illinois mother, bridled when she was told to pay fees to the Service Employees International Union (SEIU). Under Illinois law, because Ms Harris received Medicaid cheques for looking after her disabled son, she was deemed a public employee and had no choice but to be represented by SEIU in negotiations with the state.

By the narrowest of margins, the court ruled that this was unfair. Mr. Alito observed that Ms Harris and other home health aides are employed by the people they care for, not by the state, and that they enjoy few of the perks that fully-fledged public workers get, such as pensions and ironclad job security. "Illinois deems personal assistants to be state employees for one purpose only, collective bargaining," wrote Mr. Alito. He ruled that Ms Harris was at most a "partial" public employee, and therefore not obliged to pay the SEIU for representation she did not want.

Although the opinion was narrow, labour leaders saw ominous signs in it. Mr Alito and some other conservatives would probably have liked to overturn *Abood v Detroit Board of Education*, a 1977 precedent holding that public-school teachers who do not join a union must still contribute cash to its collective-bargaining efforts. Unions see this as a safeguard against free-riding: they fret that, if they could, some workers might opt to enjoy the benefits of union-negotiated wages without paying the negotiators. Democrats fear that removing this safeguard would deprive their party of

a crucial source of funds. Republicans, who see the cosy ties between Democrats and unions as a conspiracy to fleece taxpayers, would not mind that. For the moment, though, *Abood* stands.

The Court's conservative-liberal split was equally raw in *McCutcheon v Federal Election Commission*, decided in April. The justices lined up 5-4 to chip away at campaign-finance laws. Individuals were previously allowed to donate up to $2,600 to any political candidate during each election cycle, up to a total of $48,600 (plus $74,600 to political parties and political-action committees). More than that, it was feared, might be corrupting.

The court found this an unconvincing rationale for curbing free speech, and scrapped the aggregate limits while leaving the per-candidate limits in place. "The government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse," wrote Chief Justice John Roberts. In dissent, Justice Stephen Breyer retorted that the ruling "eviscerates our Nation's campaign-finance laws."

Despite such fireworks, the past year has seen more agreement than any for half a century: two-thirds of rulings were unanimous. One area where the justices found it easy to agree was when upholding limits on presidential power (*omit..*). In three notable cases, the court ruled 9-0 against the Obama administration.

In *National Labour Relations Board v Noel Canning*, for example, a Pepsi bottler contested the legitimacy of an NLRB ruling against it. Because President Barack Obama had bypassed the Senate, which is supposed to vet senior appointments, and installed three members of the board as "recess appointments" when the Senate said it was not in recess, Noel Canning sued, and won. Mr. Breyer's opinion set new guidelines for recess appointments: the Senate gets to decide when it is in recess, and no appointments may be made during breaks of fewer than 10 days. That could stymie future presidents facing obstructive Senates.

In *Riley v California*, the court swept aside the objections of Mr. Obama's Justice Department and ruled 9-0 that police need a warrant to search a suspect's mobile phone. In *Bond v US*, a unanimous court rejected the administration's claim that a

woman who smeared mildly toxic chemicals on a love rival's car, causing a minor burn on her thumb, could be prosecuted under a global chemical-weapons treaty.

The Court also grappled with race, religion and abortion. In *McCullen v Coakley*, it ruled unanimously that Massachusetts's 35-foot "buffer zone" keeping peaceful protestors away from abortion clinics infringed free-speech rights. (Those who harass women seeking an abortion are a different matter.) In *Schuette v Coalition to Defend Affirmative Action* the justices said that voters could insist on colourblindness, upholding a ban on racial preferences in public college admissions that Michigan had approved in a ballot initiative. And in *Greece v Galloway*, the Court ruled 5-4 that a town board could begin meetings with mostly Christian prayers without offending the First Amendment's bar on "the establishment of religion".

After nullifying the Defence of Marriage Act and permitting same-sex marriage to resume in California a year ago, the justices took a break from gay issues this term. But a year on, with 19 states now recognising gay marriage and a judge in Kentucky on July 1st joining the stampede to strike down bans on it, the question is sure to return to the Supreme Court soon.

（Source: *The Economist*, The Supreme Court: A year of drama and dissent, available at http://www.economist.com/node/21606315/print, last visited 2015/1/18）

請於閱讀完本篇文章後，依序簡要敘述本新聞中所討論到的案例。(25%)

三、臺灣高等法院民事判決 94 年度家上字第 165 號部分判決內容如下：

「本件依菲律賓國家庭法第 160 條、第 185 條、民法第 895 條、第 888 條、第 983 條規定、第 999 條規定，上訴人丙○○、乙○○、丁○○之應繼分各為 8 分之 5、8 分之 1、8 分之 1，被上訴人甲○○等二人應繼分各為 16 分之 1，已如前述，亦即經承認之非婚生子女之應繼分為婚生子女應繼分 2 分之 1。雖涉外法適用外國法時，如其規定有背於中華民國公共秩序或善良風俗者，不適用之，涉外法第 25 條定有明文。惟所謂背於公共秩序或善良風俗者，係指適用外國法之結果，與我國公序良俗有所違背而言。按我國民法第 1065 條第 1 項規定非婚生子經生

父認領者，視為婚生子女，其經生父撫育者，視為認領。而本件被上訴人甲○○等二人依菲律賓國民法規定係為獲認之非婚生子女，此為兩造所不爭，被上訴人甲○○等二人倘依我國民法第 1065 條第 1 項規定應視為婚生子女，其應繼分固應與婚生子女同。惟菲律賓國民法第 895 條規定獲認非婚生子女之應繼分，僅為婚生子女應繼分 2 分之 1，其並未剝奪獲認非婚生子女繼承權利，且繼承與身分有密切之關係，亦即與屬人法則有密切之關聯，故我國涉外法關於繼承之準據法亦係採被繼承人死亡時之本國法，期使繼承法律之適用趨於統一。因此，菲律賓國民法第 895 條規定獲認之非婚生子女之應繼分為婚生子女之 2 分之 1，雖與我國民法第 1065 條第 1 項規定相佐，亦難謂其適用結果有與我國公序良俗相違背」。

請以中文簡要敘述上述判決內容所處理的問題、其論理方法，以及你對之贊成或反對的理由。(25%)

四、司法院大法官會議釋字第719號解釋文如下：

「原住民族工作權保障法第十二條第一項、第三項及政府採購法第九十八條，關於政府採購得標廠商於國內員工總人數逾一百人者，應於履約期間僱用原住民，人數不得低於總人數百分之一，進用原住民人數未達標準者，應向原住民族綜合發展基金之就業基金繳納代金部分，尚無違背憲法第七條平等原則及第二十三條比例原則，與憲法第十五條保障之財產權及其與工作權內涵之營業自由之意旨並無不符」。

在不同意見書中，陳新民民大法官表示：

「本席期盼立法者在日後應全盤檢討原住民的相關扶助法制是否已經過時，有無「保護過度」之情事，而讓原住民在國家長期優惠制度與政策照顧下，養成依賴習慣而喪失積極競爭與奮鬥的活力？ 」、「我國關愛原住民，盡量保障其工作的機會，但更應當期盼他們的就業競爭力能「脫弱轉強」，進而融入到社會之中，而非一味地依賴各種的扶助計畫，勢必將彷彿耽迷鴉片般，期盼效力一種強過一種的優惠政策，進而躲入人為的「保護傘下」，逐漸喪失競爭的實力，以及接受失敗的勇氣！」

請以中文簡要說明釋字第 719 號解釋文之論理，以及你是否贊成陳大法官的不同意見。(25%)