

國 立 清 華 大 學 命 題 紙

96 學年度__科技法律研究__系(所)__甲__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

翻譯題(中翻英、英翻中)(20%)

1. 永續發展
2. *obligations erga omnes*
3. autochthonous
4. 原住民
5. common heritage of mankind
6. 強制授權
7. 仲裁
8. 數位匯流
9. punitive damage
10. 最惠國待遇

問答題(請用中文回答)(80%)

1. Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act. So the question depends upon the particular facts. The greatest weight is given to the judgment of the legislature but it always is open to interested parties to contend that the legislature has gone beyond its constitutional power.

Questions:

- A. Please explain the overall meaning of this article. (10%)
- B. If the statement of this article is found agreeable, what is the limitation for the government to deprive private property? (10%)

國 立 清 華 大 學 命 題 紙

96 學年度__科技法律__系(所)__甲__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__2__頁 *請在【答案卷卡】內作答

2. "We may not suffer it to petrify at the cost of its animating principle."

Questions:

A. Please translate verbatim this paragraph into Chinese. (10%)

3. When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Questions:

A. Please explain the overall meaning of this article. (10%)

4. LAW ENFORCEMENT & CELLULAR LOCATION INFORMATION

A variety of recent incidents suggest that cell location technology can be a powerful tool for law enforcement authorities. On April 21, 2004, someone stole a car with a five-year-old girl inside while her mother visited with a relative. Though the woman had kept the keys in the ignition, she had fortunately also left her cell phone in the car. When she realized that the car and child were missing, she called the cell phone and the child answered. Using the cell tower triangulation information, the police were able to locate the car and child — both unharmed — within half an hour.

After killing two Georgia real estate agents in November 2003, Stacey Ian Humphreys fled from authorities on foot, rented a car, and embarked on a road trip to Wisconsin. Throughout his journey, U.S. Marshals tracked his movements by monitoring his cell phone usage until a police officer recognized the rented vehicle and began a highspeed pursuit that ended with the suspect's capture.

國 立 清 華 大 學 命 題 紙

96 學年度__科技法律__系(所)__甲__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__3__頁 *請在【答案卷卡】內作答

That same month, missing North Dakota college student Dru Sjodin's last cell phone call was processed from a cell tower in the vicinity of Crookston, Minnesota, twenty-five miles from her home in Grand Forks. The phone call led detectives to focus on a suspect who lived with his mother in the same area and had just been released from a twenty-three year sentence for rape, kidnapping, and assault. When DNA matching the victim was found in the suspect's car, their initial suspicions were confirmed. Alfonso Rodriguez, Jr. will be tried in federal court for the kidnapping and murder.

In March of 2004, a Vancouver, Washington woman was shot and killed in her car. Though her ex-boyfriend was immediately a suspect, he told police that he was not in the area at the time of the murder. However, cell phone records proved otherwise. The cell tower information for his calls placed him within blocks of the scene of the crime both before and three minutes after the shooting. Records further indicated that during the actual murder, he likely had the phone turned off. Prosecutors argued this was also inculpatory in that someone who was secretly stalking a victim would not want a cell phone call to alert the victim to his presence.

In perhaps the most widely publicized trial of the year, the prosecution of Scott Peterson for his wife Laci's murder, the state introduced cell phone records in order to establish the defendant's whereabouts. Though Peterson maintained that he left the house on the morning of the murder at 9:30, cell phone records placed him at home until 10:08. In cross-examination, defense attorneys pointed out that cell phone records are not intended to pinpoint the caller's location, but an investigator testified that he did three "test runs" replicating the movements prosecutors believed Peterson had made on the morning of Laci's murder. As the prosecution expected, the investigator's calls were first picked up on a cell tower near the Peterson home and then transferred to a nearby tower as he moved toward Peterson's warehouse.

In each of these investigations, law enforcement authorities used cell phone records that cell phone owners themselves had effectively created as a result of making outgoing calls or accepting incoming ones. Given the Supreme Court's decision in *Smith v. Maryland* that a defendant has no expectation of privacy as to the numbers he dials when using a phone, it is no surprise that law enforcement authorities can obtain at least certain information about cell phone calls without a warrant.

Questions:

- A. 請簡述以上言論之要點。(10%)
- B. 請針對以上言論提出你的看法。(10%)

國 立 清 華 大 學 命 題 紙

96 學年度__科技法律__系(所)__甲__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__4__頁 *請在【答案卷卡】內作答

5. CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS (Paris, 20 October 2005)

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 3 to 21 October 2005 at its 33rd session,

- (1). *Affirming* that cultural diversity is a defining characteristic of humanity,
- (2). *Recalling* that cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels,
- (3). *Recognizing* the need to take measures to protect the diversity of cultural expressions, including their contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,
- (4). *Being convinced* that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value,

Adopts this Convention on 20 October 2005.

Questions:

- A. 請閱讀以上公約前言，並逐字翻譯第(3)段。(10%)
- B. 請針對第(4)段，提出你的個人見解。(10%)