

考試科目

社會議題分析

所別

法研所

考試時間

2月26日(六)第二節

「社會議題分析」中文部分共七十分，分為兩題。第一題四十分，第二題三十分。評分標準為答題所表現的下列面向：問題剖析以及推理能力，文字表達能力，與所提出論點之論證強度。

第一題：

民法第 805 條：遺失物自通知或最後招領之日起六個月內，有受領權之人認領時，拾得人、招領人、警察或自治機關，於通知、招領及保管之費用受償後，應將其物返還之。

有受領權之人認領遺失物時，拾得人得請求報酬。但不得超過其物財產上

價值十分之三；其不具有財產上價值者，拾得人亦得請求相當之報酬。

前項報酬請求權，因六個月間不行使而消滅。

第一項費用之支出者或得請求報酬之拾得人，在其費用或報酬未受清償前

，就該遺失物有留置權；其權利人有數人時，遺失物占有人視為全體權利人占有。

今有某大學生某甲，撿到兩萬元現金，某甲將之送到附近派出所，隨後婦人某乙出現在派出所，表示遺失兩萬元。經證實該二萬元確為某乙所遺失，某甲堅持向某乙索取十分之三之報酬，經過一番爭執後，某甲取得報酬，並將該十分之三之報酬全數捐給就讀大學之養狗社。

評論人 A 君認為：「拾金不昧」乃傳統美德，屬道德領域，法律不宜規範。學生某甲依法索取報酬，是法律入侵道德領域，長久以往，令道德式微的最佳例證；

評論人 B 君則認為：法律規範與道德規範不必然有所聯繫，某甲依法向某乙請求報酬，並不表示其在道德上，便應當可以向某乙求償。大眾對某甲之批判，正反應此一現象。

請注意：背面還有試題。

備

註

試題隨卷繳交

考試科目	社會議題分析	所別	法科所	考試時間	2月26日(六)第二節
------	--------	----	-----	------	-------------

評論人 C 君認為：某甲就讀之學校，應當訂有「拾金不昧」的校規，以彰顯該校培養有道德涵養的學生之決心，本事件應依據某甲就讀學校之校規解決，如此在法制，道德，與教育各方面，都會得到最好的結果；

評論人 D 君則認為：各校若規定不一，會出現一國多制，不若由民法規定之，統一人民之間的權利義務關係，使人民行爲時，較能有合理之期待。

請問：對於 A, B 間的不同主張，妳/你認為誰較為合理？請附理由。(20)

對於 C, D 間的不同主張，妳/你認為誰較為合理？請附理由。(20)

### 第二題

某甲任職於乙公司，公司曾以電子郵件公告：公司電子郵件，不得做私人用途，管理單位會進行偵測與追蹤。此外，乙公司的工作規則中，規定不得談論員工之薪資，違反者解雇。前年底，乙公司以電子郵件告知每位員工，該年度不調薪。某甲將該電子郵件轉寄給親朋好友，被乙公司查獲，將某甲解雇。請就乙公司將某甲解雇(15)，以及某甲可否向乙公司主張乙公司監看某甲電子郵件，侵害某甲的隱私權(15)，分別論述妳/你的看法。

考試科目	社會議題分析	所別	法律科際整合研究所	考試時間	2 月 26 日(六) 第二節
------	--------	----	-----------	------	-----------------

## II. Critical Thinking and Analysis (30%)

Read the news story and the theoretical text and answer the questions that follow. You may answer in either English or Chinese.

### Good values - and offering a seat on public transport

[Global Times, November 19 2010]

The issue of showing respect to one's elders – and offering one's seat on public transportation – is being discussed by members of the Chinese public again, after a woman in her 40s hurled abuse at a younger woman who offered her a seat on a bus.

This incident occurred on a No. 80 bus in Changchun, Northeast China's Jilin Province, on Wednesday, when the older woman apparently was insulted – as she felt the gesture was a sign that she seemed older than her age.

The website Jilin.com.cn reported that the older woman may indeed have seemed older than her actual age – and the younger woman, who was in her 20s, offered her seat immediately.

"Please have a seat here!" the girl reportedly said to the woman.

To the surprise of other passengers, the woman was irritated by the offer: "Do I look so old? I am only in my 40s. Why do you offer your seat to me?"

The girl explained that she had only meant to be polite.

"How stupid you are! Why couldn't you guess my age correctly?" the woman was quoted as saying.

She also apparently swore at the younger woman.

According to the report, most passengers were critical of the older woman's crude behavior.

An employee surnamed Zhou of the No.80 bus was quoted by the report as saying that "The woman should not have cursed the kind girl even if she didn't want to thank her."

請注意：背面還有試題。

考試科目	社會議題分析	所別	法律科際整合研究所	考試時間	2 月 26 日(六) 第二節
------	--------	----	-----------	------	-----------------

Most net users supported the younger woman, criticizing the rudeness of the other woman.

"We should have a double check from now on to confirm that the people we offer our seat to on the bus are truly gray-haired and wrinkled-faced," A net user wrote. "Otherwise, we may be criticized for a mistaken offer."

A psychologist surnamed Yang at the Institute of Psychology of the Chinese Academy of Sciences, told the Global Times that the reasons behind the rage of the older woman are complicated.

### The Common Place of Law (by Patricia Ewick and Susan S. Silbey)

[text 1] Reconceptualizing legality as an internal and emergent feature of social life requires that we shift our empirical focus away from law to "events and practices that seem on the face of things, removed from law, or at least no dominated by law from the outset". The necessity of this shift in focus has certain methodological implications, that is, implications for where and how we go about studying legality in everyday life. (p.23)

[text 2] We looked for moments when people presented themselves as active participants in constructing or challenging legality and moments when they expressed a feeling of powerlessness. In short, conceiving of legality as present in and through our everyday lives, we anticipated that we would find its presence in and through the stories and accounts of our respondents. (p.27)

#### Questions:

1. Please discuss the news by using the conceptual framework of the paragraphs in the book of "the Common Place of Law".
2. There are many similar disputes over the issue of "Priority seat" recently presented in the news in Taiwan. Please explain the reasons of this phenomenon and provide your possible solutions at both theoretical and practical levels.