1. TERMS (30%)
   A. English - Chinese
   (1) Mutatis Mutandis
   (2) Prima facie
   (3) Bail
   (4) Solicitor
   (5) Grand Justice

   B. Chinese-English
   (1) 彌勃
   (2) 仲裁
   (3) 簡易判決
   (4) 瞭解備忘錄
   (5) 合作意向書

2. Translation (40%)
   Please translate the underlined bold sentences into Chinese.

1. **The Great Firewall of China: When Does Online Censorship Violate WTO Rules?**

   China’s government says it is acting in the best interests of its citizens. It is regulating the internet in order to protect its people from pornography and other objectionable content. Critics, however, assert that China is guilty of wide-ranging censorship, drastically limiting what mainland residents can see, hear and say online. Moreover, according to a growing chorus, this online censorship violates World Trade Organization rules.

   Internet censorship is a trade barrier, the European Parliament declared in 2008, by an overwhelming vote of 571-38. European Commission Vice-President Neelie Kroes publicly declared in May that because China’s so-called “great firewall” prevents the free flow of information, it is a trade barrier “that needs to be tackled within the WTO.”

   The United States hasn’t taken a position on this issue yet. The US Trade Representative is studying the matter. But organisations representing free speech advocates and the technology industry are lobbying hard to get the US to file a grievance with the WTO about China’s online censorship.
heavyweights are backing this effort, with Google being the most prominent. Despite all this, it is unclear whether the US or the EU will haul China before the WTO over this issue. Doubt remains about whether China's online censorship violates WTO rules. And even if China is breaking the rules, experts disagree about whether going to the WTO would be the best way to change China’s behaviour.

China has the world’s largest number of internet users, almost 400 million, and that number is growing rapidly. By 2013, 840 million Chinese may be online, according to Emarketer Inc.

But the vast majority of Chinese don’t have access to the full internet. A government-mandated firewall limits mainland residents' access to internet sites outside China, and a panoply of government rules limits the content that can go through the firewall or be put online in China. Pornography is outlawed, as is information that the government finds politically uncomfortable — including information on the Falun Gong, the Dalai Lama or the Tiananmen Square massacre.

Internet companies that want to do business in China must comply with the government's restrictions, but many Western firms have had trouble satisfying government censors. For instance, Facebook, YouTube, Twitter, Flickr and other social media popular in the West are blocked by China’s firewall, because the government is concerned these services will allow individuals to freely share information. Once Google stopped censoring its search results in China, the company had to significantly cut back its operations on the mainland and found the government to be intermittently blocking both search results and a variety of Google services.

While Western firms are struggling in China, local online companies are thriving. Baidu, for example, has garnered 64 percent of the search engine market, earning approximately 4.45 billion yuan ($663 million) in 2009. Youki, a local competitor to YouTube, is the largest online video sharing site in China, earning 200 million yuan ($29.3 million) in 2009. It is expected to grow more than 100 percent this year. Tencent Holding Services operates several successful online businesses, including China’s largest IM service, with over 568 million active accounts. The company earned 12.4 billion yuan ($1.83 billion) in 2009.

WTO rules do not forbid censorship per se. On the contrary, the ‘General Agreement on Trade in Services’ provides, in Article XIV, that nothing in the
treaty prevents member states from adopting measures “to protect public 
morals or to maintain public order.”
But, some argue, China’s online censorship goes beyond what is allowed by this 
exemption. “When China regulates pornography, that clearly falls within the 
exemption. When it is filtering information on human rights, that’s a lot harder 
to fit within the exemption,” said Derek Bambauer, who teaches internet law at 
Brooklyn Law School.
A footnote to GATS Article XIV states, “The public order exception may be 
invoked only where a genuine and sufficiently serious threat is posed to one of 
the fundamental interests of society.” Said Bambauer, “It is hard to argue that 
one-party rule is a fundamental interest of society.”
Even if the exemption covers China’s online censorship, such censorship can still 
rune afoul of WTO rules if it is applied in a way that discriminates against foreign 
firms. “If you are making the argument that censorship is a trade barrier, you’d 
have to make the argument that the censorship is being unequally levied,” said 
Doug Guthrie, incoming dean of the George Washington University School of 
Business, in Washington, DC.
He claims there is no discrimination. “China’s firewalls are the same for 
everyone,” he said.
Some disagree. “Theoretically, the firewall is nondiscriminatory, but it creates a 
discriminatory effect. Its impact is to give an unfair advantage to local businesses 
and allows them to pick up customers. That’s where it becomes anticompetitive,” 
said Malcolm S. McNeil, a partner in the law firm of Fox Rothschild LLP.
The censorship rules may be the same for foreign and domestic firms, but it can 
be hard for foreign firms to find out precisely what those rules are. “There are a 
host of publicly available regulations, from a dozen different agencies, but many 
of these regulations are vague,” Bambauer said. “For instance, they require 
companies to avoid behaviour that endangers state security.” But the regulations 
don’t define what constitutes a danger to state security. “Government officials 
decide what fits under these indefinite rubrics,” Bambauer said.
And Chinese officials don’t formulate clear, formal interpretations of the vague 
standards. “You get a sense in meetings with officials. You get push backs,” 
McNeil said.
This maze of vague censorship standards favours locals, some experts claim. “It’s 
easier for Chinese companies to operate, because they know whom to contact in
order to get answers [about what is forbidden], while foreign companies don’t know whose door to knock on,” Bambauer said.

Whether China’s online censorship violates WTO rules is a close question, according to most experts. “China’s internet censorship is definitely a trade barrier that hurts Western software and internet companies, but the real issue is whether it is a WTO-illegal trade barrier. The WTO prohibits most, but not all, trade barriers and China’s censorship measures fall into a grey area,” said Warren Maruyama, a partner in the law firm of Hogan Lovells and former general counsel of the US Trade Representative’s office.

If the matter were brought before the WTO, it would take years to get a final ruling. Negotiating with China would be less confrontational and might solve the dispute more quickly.

The US certainly seems to prefer negotiating. US Trade Representative Ron Kirk said in March that trying to resolve the issue bilaterally was “much more preferable than the uncertain path of what can be a two-, three-, four-year legal battle in the WTO.”

Some experts, however, assert that filing a complaint with the WTO is essential to resolving the dispute. “Unless you bring an action at the WTO, high level officials in China will not respond. There will be interminable negotiations,” McNeil said. “That’s why we have to take action [at the WTO]. We need that dynamic in the negotiation process.” (Steven Seidenberg, Intellectual Property Watch, 28 July 2010)

2. *Residents: Workers or Students in the Eyes of the Law?*

Despite their medical school diplomas, medical interns and residents are not yet full-fledged physicians. But does it follow that interns and residents should still be considered students? Some in the medical profession think so. In recent years, the Accreditation Council for Graduate Medical Education (ACGME) has sought to limit residents’ work hours and protect them from performing certain routine job-related tasks that might rightfully be expected of employees, such as drawing blood or transporting patients. These restrictions reflect a desire to preserve residents’ ability to focus on their educational development.

In the eyes of the law, however, the answer may be different. For example, in
malpractice cases, residents can be judged according to the same standard of care as more senior physicians. In 1999, the National Labor Relations Board (NLRB) declared residents to be employees, and thus able to join unions, on the basis of their direct patient care and receipt of compensation and standard employment-related benefits. The NLRB found that the educational component of residency “complements, indeed enhances, the considerable services the Hospital receives from the house staff, and for which the house staff are compensated.”

Now, in the case of *Mayo Foundation for Medical Education and Research, et al. v. United States*, the Supreme Court has added its weighty voice to the question of whether residents are workers or students. The centerpiece of the controversy was the 1935 Federal Insurance Contributions Act (FICA), which provided for supplemental taxes on employers and employees that fund the Social Security program. *An amendment in 1939 created a student exemption for a “service performed in the employ of... a school, college, or university... if such service is performed by a student enrolled in and regularly attending classes at such school, college, or university.”* In its regulations, the U.S. Treasury announced that the student exemption would apply for a service performed “incident to and for the purpose of pursuing a course of study” at the institution.

The issue of whether medical residents fit under the student exemption lay quiescent — with many hospitals paying FICA taxes on residents as if they were employees — until the 1990s, when the Social Security Administration sought to recover unpaid taxes from the University of Minnesota, which had long considered its house staff to be exempt from FICA. *The case reached the Eighth Circuit Court of Appeals, which ruled in favor of the university because an analysis of the particular residency program led to the conclusion that “the primary purpose for the residents’ participation in the program is to pursue a course of study rather than to earn a livelihood.”* After that 1998 decision, sponsors of residency programs throughout the country filed thousands of claims to recover paid FICA taxes. In the resulting litigation, other Circuit Courts held that residents could qualify for the student exemption. The Treasury ultimately compromised by conceding existing refund claims and promulgating a new
prospective regulation. Its “clarifying” regulation — which became effective April 1, 2005 — states that in all cases “the services of a full-time employee are not incident to and for the purpose of pursuing a course of study” and specifies that residents working more than 40 hours per week are categorically ineligible for the student exemption.

The Mayo Foundation and the University of Minnesota sued to overturn the Treasury’s new regulation. Supported by numerous hospitals and academic medical centers in friend-of-the-court briefs, Mayo and Minnesota offered both functional and structural reasons why house officers should legally be considered students. They compared a residency’s function to that of an undergraduate degree: a residency is usually chosen on the basis of academic opportunities, and completion of an accredited program is required for practicing medicine in the United States. They also argued that residency training involves characteristics of other programs of learning, including supervised work, educational curricula, and numerous lectures and conferences. In fact, they claimed that “the academic program of a medical resident is virtually indistinguishable from that of a third- or fourth-year medical student,” because both learn from a combination of hands-on care and didactics.3

In defense of the Treasury regulation declaring residents to be employees, government lawyers pointed to residents’ vast patient care responsibilities, which absorb 85 to 90% of their time and take precedence over educational conferences. Legislative history also arguably supported the Treasury, including the fact that although the 1939 FICA amendments contained an additional clause specifically excluding from the definition of employment the “service performed as an intern in the employ of a hospital,” the intern-specific language was dropped in 1965. An accompanying report noted that the rationale was to “give young doctors an earlier start in building up social security protection”: exempting residents from paying FICA taxes could be detrimental, since certain minimum contributions (depending on a person’s age) are required for eligibility for disability benefits.

At stake in Mayo v. United States were substantial financial implications for academic medical centers and their house staff. The taxes at issue amount to about $700 million per year for U.S. hospitals and academic medical centers.4
These resources may otherwise be well spent on patient care and medical education. FICA taxes also amount to about $4,000 a year in an individual resident’s salary, a sum that could certainly benefit residents, whose high levels of debt can influence their specialty and career choices.

On January 11, 2011, the Supreme Court ruled in an 8-to-0 decision (Justice Elena Kagan was recused) that the Treasury regulation making residents categorically ineligible for the student exemption was a “perfectly sensible” way of distinguishing education from service for the purposes of the tax code. Chief Justice John Roberts wrote that residents could reasonably be construed as “the kind of workers that Congress intended to both contribute to and benefit from the Social Security system.”

Indeed, although residencies allow physicians to learn by serving as physicians in an environment of structured oversight, a resident differs in notable ways from a “student” who is “enrolled in and regularly attending classes.” Whereas medical students participate in a multidisciplinary plan of study and engage in clinical clerkships to learn from residents and attending physicians without any true service obligations (except when they are acting as sub-interns), residents serve as a workforce. Mayo and Minnesota have denied receiving economic value from the work of residents, arguing that they “permit their residents to care for patients purely for educational purposes...residents do not provide a net economic benefit.”3 This contention, however, is implausible: residents are clearly indispensable to the care provided at the hospitals where they are employed, even if their work is reviewed by supervising physicians. Moreover, the ACGME requirements regarding didactic time and educational benchmarks for residents face objections from many hospitals that need to find costly replacement providers for lost work time.5

The Supreme Court’s decision in Mayo v. United States may have other, indirect legal implications as well. Residents could find additional support in the Court’s unambiguous holding for efforts to enforce other workplace rights, such as unemployment benefits (e.g., after hospital closure) or protection under the Family Medical Leave Act. Residents may not be fully trained physicians, but there are benefits to not being labeled as “students” in the eyes of the law. [The
New England Journal of Medicine, January 12, 2011) (Aaron S. Kesselheim, M.D.,
Law)

3. Composition (30%)

Estoppel