【前期課程　一般入試（研究コース）】

2017年度　法学研究科　前期課程

9月実施入学試験　英語　試験問題

注意事項

＊〔A〕〔B〕〔C〕〔D〕の英文のうち、２問を選んで全文を和訳しなさい（出典は除く）。ただし、〔C〕〔D〕のうちどちらか１問を必ず選択してください。

＊開始の指示があるまで解答を始めないでください。

＊外国語辞書の持込は可（ただし、電子辞書等は認めません）。

＊答案用紙は必ず１問ごとに１枚使用し、解答欄の冒頭に選択した問題の番号〔A〕〔B〕〔C〕〔D〕を明記してください。　例　→〔C〕

＊答案用紙上部の研究科名・専攻名・課程・受験科目名・受験番号・氏名記入欄を試験開始の指示があった後に、記入してください。

記入例：

研究科名	専攻名	課程	受験科目名	受験番号	氏　　名
法学研究科	法学専攻	前期	英　語	31○○○○○○	立命　太郎

＊試験時間：前期課程　一般入試（研究コース）：13:00～15:00　外国語

＊筆記試験終了後、１５：５０までに存心館２Ｆ７０３号（面接待機会場）に集合してください。

(A)

Stakeholders often ignore, not only in political circles but also in academia, the distinction between constitution making and constitution writing. Constitution writing is a formal technical process. Any expert can write a constitution, either individually or collectively. In the collective form, a commission, a committee, or a legislative body can write a constitution, via a legitimate process. In this course, public consultations might be carried out on a limited scale. Whereas, in constitution making, along with writing a constitution, not only the key stakeholders (parliament, political leaders, policy makers, and experts) but also the people as well as civil society organizations engage in the constitutional awareness process, provide feedback to their legislators or drafters of the constitution, and participate in the constitutional discourse. It is through this process that the people can acknowledge the importance of constitutionalism and own the constitution as a fundamental governing instrument based on the foundation of constitutionalism.

When the constitution-making process is delinked from the process of generating public ownership, the constitution ultimately loses its social acceptability. Consequently, the people do not safeguard the constitution. In the end, the constitution becomes a document of oppression imposed upon the people. Conflicts between the constitution and the people start possibly from the very day of its promulgation.

(B)

In the words of *The Economist*, risk aversion is the feature of human nature that explains why, 'when given a choice between, say, losing 1 dollar and a 10 per cent chance of losing 10 dollars, most people would prefer a certain outcome (losing 1 dollar) to a riskyone (losing 10 dollars or nothing)'. 'Prospect theory' tells us that people making decisions in uncertain conditions weigh prospective losses twice as heavily as prospective gains. If people know that there is a 1 per cent chance of total loss of their £100,000 house, they may be willing to pay more than £1,000 for insurance, and one of the main reasons is that they are willing to pay to offload anxiety. Such people are 'risk averse'. The Association of British Insurers (ABI), the organization that speaks for the insurance industry, projects insurance as something that enables people who are insured to organize their household budgets, or plan their business activities, with greater certainty. Indeed, although the usual period of commercial risks cover is one year, some insurers have offered businesses a fixed premium for two or more years, because research indicated that stable insurance-planning could be used as a selling point in the UK, as it has been in other countries such as Germany. This raises the question: What is it that makes a risk so unacceptable that people decide to do something about it and, in particular, to buy insurance cover?

[C]

Rights are universal, many people say. Everybody possesses certain fundamental rights simply by virtue of being human. But there are also many people who say that rights are a modern, Western invention. Rights are something made up, "constru cted," by a certain historical culture – call it the modern, bourgeois West – that seeks, for its own purposes, to export its notions and even to impose them upon other cultures regardless of their traditional ways. And some people seem to want to say both that rights are something that modern Western culture made up and that rights belong to everybody simply by virtue of being human – ignoring the apparent inconsistency.

One way of trying to reconcile these conflicting opinions about the nature of rights is to trace the history of rights discourse, and see whether rights or something equivalent to rights are recognized in all human cultures at all times. If they are, then that would settle the question: rights, whatever else they are, are not simply a modern Western invention. If, on the other hand, rights are not universally recognized across cultures, then the discovery may make us uneasy, for we will then have to face the following dilemma: Should we say that the particular moral cultures that do not, or did not, recognize rights are to that extent morally defective cultures, or should we say instead that the fact that a given culture rejects or ignores the idea of rights does not entitle us to draw any conclusions about its moral worth?

An Introduction to Rights by William A. Edmundson.

[D]

For a long time public and academic discussion of corporations has started from the premise that managers have "control" and use this to exploit investors, customers, or both. The usual prescription is some form of intervention by the government. This may mean prescription of the firm's output, wages, and prices. It may be regulation of the securities markets. It may take the form of corporate law, which establishes minimum voting rules and restricts how managers can treat the firm and the investors.

The argument is simple. In most substantial corporations—firms with investment instruments that are freely traded, which we call "public corporations"—each investor has a small stake compared with the size of the venture. The investor is therefore "powerless." The managers, by contrast, know how the business is running and can conceal from investors information about the firm and their own activities. Armed with private knowledge and able to keep investors in the dark, the managers can divert income to themselves, stealing and mismanaging at the same time. Diversion and sloth may not be obvious, but they exist. Even when they do not, the potential for misconduct remains. Only some form of regulation can protect investors. And the limit on regulation is to be found not in principles of free contracting—for the corporate charter is at best a contract of adhesion by which the managers call all the shots—but in a concern that regulation not go "too far."

THE ECONOMIC STRUCTURE OF CORPORATE LAW by Frank Easterbrook and Daniel R. Fischel, Cambridge, Mass.: Harvard University Press,

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注意事項

＊〔Ⅰ〕〔Ⅱ〕から１問を選んで、全文を和訳しなさい（出典は除く）。

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＊入試種別により試験時間が異なりますので注意してください。

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記入例：

研究科名	専攻名	課程	受験科目名	受験番号	氏　名
法学研究科	法学専攻	前期	英　語	31○○○○○○	立命　太郎

＊試験時間：前期課程　一般入試（リーガル・スペシャリスト・コース、公務行政コース、法政リサーチ・コース）：10:00～12:00　論文試験（２科目）

※ 出願時届出者のみ、論文（随意選択科目）１科目を外国語科目に代えて受験

＊筆記試験終了後は、指定の時間までに存心館２Ｆ７０３号（面接待機会場）に集合してください。

〔I〕

Whereas criminal law is concerned with the state taking action against those who offend against society or the criminal code, civil law is a matter of individuals taking action against other individuals. The common link between criminal and civil law is that they are both concerned with the regulation of human conduct with the ultimate purpose of maintaining order in society. Most people are aware of those actions that constitute a crime. Civil law also covers an extremely wide range of human conduct, which includes breaches of contract, negligence, trespass, libel, divorce, probate, and many more. There are occasions when both criminal and civil law overlap. For instance, if a person hits another who sustains a severe bruise, the offender can expect to be prosecuted for the criminal offence of assault occasioning actual bodily harm and may also be liable for the civil wrong of assault and battery under an action for trespass to the person. In such cases, the victim is usually content to see the assailant punished in the criminal courts, although the injured party may in certain circumstances still seek redress in the civil courts for damages. Therein lies a further difference between criminal and civil law – the former seeks to punish, whereas the latter seeks to recompense. Yet both can occur within the same court, for instance a criminal court may punish the offender and award compensation to the victim.

〔II〕

The American colonies were settled in the first part of the seventeenth century. But each one had a quite different history. For many years there was little direct contact between them. And to a considerable extent, there was little connection with the Mother country. Many of the colonists were refugees. They left England because they wanted to get away from something they did not like here. For the most part, they had little use for the law of England, and they felt virtually no need for lawyers. The reasons varied from place to place. For example, in New York, this may have been due to the desire of the merchants to keep things in their own hands. In Pennsylvania, it was due to the influence of the Quakers.

In Massachusetts, the early government was a theocracy. Laws were based upon the Bible, and doubtful points were resolved by divines, and not by lawyers. The earliest code of laws in Massachusetts, known as the Body of Liberties, was drafted by two Puritan ministers, the Rev. John Cotton and the Rev. Nathaniel Ward. Ward had been a barrister of Lincoln's Inn before he became a minister. Their code provided that wherever the law did not cover a matter, decision was to be made according to "the word of God." Under such a system, there was no place for lawyers. Later in the century some persons were admitted as attorneys, but as late as 1700 there was no person in Massachusetts who had been trained for the law.