【後期課程　一般入試（研究コース）】

2017年度　法学研究科　後期課程

２月実施入学試験　英語　試験問題

注意事項

＊次の〔Ⅰ〕〔Ⅱ〕〔Ⅲ〕〔Ⅳ〕の英文のうち、２問を選んで全文を和訳しなさい（出典名は除く）。
ただし、〔Ⅲ〕〔Ⅳ〕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〔Ⅰ〕〔Ⅱ〕〔Ⅲ〕〔Ⅳ〕を明記してください。　例　→〔Ⅲ〕

＊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。

＊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	後期	英　語	31○○○○○○	立命　太郎

＊試験時間：後期課程

一般入試	10:00～13:00　外国語科目（２科目） ※ 出願時届出者は、外国語科目１科目を専門科目に代えて受験
一般入試　(法務博士用)	10:00～13:00　専門科目（２科目） ※ 出願時届出者は、専門科目１科目を外国語科目に代えて受験

＊筆記試験終了後、１３：５０までに存心館２Ｆ７０３号（面接待機会場）に集合してください。

〔I〕

With an increasingly interdependent global economy, the purpose and future of state boundaries in the international system come into question. Indeed, economic liberalism, one of the dominant economic philosophies ~~(as discussed in the previous two chapters)~~, would see the withering away of the political interference that "artificial" state boundaries can have on efficient economic exchanges as a positive trend. Many contemporary states recognize the potential economic benefits of **economic integration**—the replacement of national economies with larger (in most cases, regional) ones. "One of the most striking facts about the modern global political economy is that it is organized strongly on a regional basis. For all the talk of globalization, many indicators of globalization (for example, trade, foreign direct investment, international institutions) are directed toward regional partners." Today, more than 400 regional trading arrangements have been reported to the World Trade Organization. Attempts at regional economic integration have increased in recent times, partly because the end of the Cold War means that states have more freedom to cooperate economically and partly because the end of the Bretton Woods system and American economic hegemony ~~(as discussed in Chapter 10)~~ have led states to search for alternative paths to economic stability.

〔II〕

As many scholars and practitioners have commented over the centuries, the common law jury that evolved in England and was transplanted in other parts of the world is a unique institution. It brings together a small group of lay persons who are assembled on a temporary basis for the purpose of deciding whether an accused person is guilty of a criminal act or which of two sides should prevail in a civil dispute. The jurors are conscripted and often initially reluctant to serve. They are untutored in the formal discipline of law and its logic. They hear and see confusing and contested evidence and are provided with instructions, most often only in oral form, about arcane legal concepts and sent into a room alone to decide a verdict without further help from the professional persons who developed the evidence and explained their duties. In criminal cases the jury's decision determines if an accused person may be subject to prison or, in some instances, execution, or may instead be set free or confined to a mental institution. In civil cases juries decide complex matters involving causation and liability and determine compensatory and exemplary damages, sometimes involving very large sums.

Early on in the history of the jury these oddities were also recognized as its strengths. Juries inject community values into the formal legal process, and thus they can bring a sense of equity and fairness against the cold and mechanistic application of legal rules.

〔Ⅲ〕

The common law defines an agent as a person who consents to act "on the principal's behalf and subject to the principal's control." Acting "on behalf of" a principal means acting as the principal's representative in legally salient interactions with third parties, who may either be within the principal's organization or external to it. The basic idea is that an agent acts as the principal's representative, whether or not the principal benefits from the agent's actions "on behalf of" the principal.

The representative quality of an agent's position explains much about indemnification doctrine. If an agent makes a payment on behalf of a principal, subject to the terms of any contract between principal and agent, the principal has a duty to indemnify the agent only when the agent (1) acted with actual authority in making the payment, or (2) acted without actual authority, but benefitted the principal and did not act officiously (that is, without excuse)." An agent acts with actual authority by acting consistently with a reasonable interpretation of any manifestation from the principal concerning how the principal wishes the agent to act." One might think of an agent's action under these circumstances as an extension of the principal and as an action that, through the agent's intermediation, the principal has taken itself.

Deborah A. DeMott, *Indemnification and Advancement Through an Agency Lens,* from Law and Contemporary Problems, 2011. p.177
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〔Ⅳ〕

A system which depended solely on judge-made law could only remain adequate while conditions remained fairly static and the judicial elements in the society represented the most powerful or influential groups. With the growth of democratic ideas has come the recognition that the voice of the people is entitled to be heard and that law is not the monopoly of an élite. But it would be quite wrong to imagine that the public have any very strong views on the rules of law or that the extension of the electoral franchise has had very striking consequences. Even Members of Parliament, if they do not happen to be lawyers, confess repugnance to debates on legal matters. Most legislation is concerned with new social problems and not with the niceties of legal rules.

Where legislation has proved most valuable is in cutting the Gordian Knot with which the judges have bound their own hands. Owing to the doctrine of precedent (a "one-way street"), it is impossible for the judges to reverse well-established legal doctrines. These doctrines may have been fair enough at their inception, but many have since proved unadaptable to changed conditions. Parliament can solve the problem by legislation which modifies or reverses the rules previously developed by the courts. This is not a product of democracy since legal fictions and equity performed the same function at earlier periods. But legislation is clearly a more rapid and efficient means of effecting such legal changes.

A. K. R. Kiralfy, *The English Legal System*, Sweet & Maxwell Ltd, 1984. pp. 94-95.
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