早稲田大学 大学院法学研究科

２０１６年度　修士課程入学試験問題（国内受験）

外国語科目　英語

外国人留学生

次の（１）～（４）のうち、いずれか２問を選び解答しなさい。

（１）　次の文章を日本語に訳しなさい。

Believed by some to be a keystone right, or even the core of liberty, property lies at the foundation of both contract and tort law. As a legal term, property is prominent in many doctrines and statutes. Importantly, in contrast to contractual rights that avail only against other parties to an agreement, property rights avail against the rest of the world, irrespective of consent. Hence, classifying an interest as property has far-reaching implications in our legal system. A simple example demonstrates the power and importance of property. Consider the conveyance of an automobile. A contract can sufficiently allocate legal rights between Buyer and Seller and, as between them, can render property law redundant. The Buyer and Seller, however, have no contractual relationship with third parties who may covet the automobile. Here, as between people out of contractual reach from one another, property is dominant. Because it is practically impossible for contracts to arrange most of society's relationships, property law determines most of the legal interactions regarding assets among people.

※Web公開にあたり、著作権者の要請により出典追記しております。
Abraham Bell & Gideon Parchomovsky, A Theory of Property, vol.90, the Cornell Law Review, pp.531 (2005)

（２）　次の文章を日本語に訳しなさい。

To the retributive view there has always been opposed one that we may characterize as utilitarian: it holds that the purpose of the criminal law is to prevent or reduce the incidence of behavior that is viewed as antisocial. This view rejects retribution as a basis for punishment on the ground that suffering is always an evil and that there is no justification for making people suffer unless some secular good can be shown to flow from doing so. The retributive view is essentially backward-looking; it regards the offense committed by the criminal as crucial, and adjusts the punishment to it. The utilitarian view is forward-looking; it assesses punishment in terms of its propensity to modify the future behavior of the criminal and (especially, in the classic view) of others who might be tempted to commit crimes. In its essence, it sees man as a rational, pleasure-seeking creature who can be prevented from engaging in antisocial behavior by the prospect that the pain it brings him will more than cancel out the pleasure. It relies, in a word, on deterrence.

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（３） 次の文章を日本語に訳しなさい。

To say that speech is valuable, and that we are therefore deeply committed to a principle of free speech, is not to say that a person is — or should be — free to say whatever she wants. In fact, plenty of speech is currently regulated, e.g. criminal solicitation, insider trading, and speech used in contracts, to mention but a few examples. Furthermore, most of us think that many such regulations are perfectly compatible with a commitment to free speech. If this is right, then a commitment to free speech does not *prohibit* the regulation of speech. Rather, it just makes it *more difficult* to regulate speech. To put this idea slightly differently, we might say that a principle of free speech consists in a presumption of liberty in favor of speech. This presumption may be strong, since, after all, the principle of free speech is a fundamental political principle, but it is no more than a presumption. As such, it can be overridden.

※Web公開にあたり、著作権者の要請により出典追記しております。
Speech and Harm: Controversies Over Free Speech edited
by Ishani Maitra & Mary Kate McGowan (2012):
Introduction and Overview (p.3).
By permission of Oxford University Press.

（４） 次の文章を和訳しなさい。ただし、［　　］の部分は除く。

[From where does international law derive its content and its authority?] At the level of domestic law, questions of this kind rarely need to be posed, because the answer in most cases is evident. A fundamental element of a legal and social structure is a legislature, whatever particular form it may take. If the legislator has spoken, the result is (unless otherwise stipulated) binding law, to be observed by all persons present on the territory. The primary 'source' of law is thus the legislature. In some legal systems, there may exist also a body of law established over the years by decisions of the courts, not in application of legislation but of a body of 'common law' or 'customary law', and this too may be regarded as a 'source'.