早稲田大学 大学院法学研究科

2018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３問中２問を任意に選択して解答しなさい。

（1） 次の文章を日本語に訳しなさい。

As "lawyers for the state," prosecutors face conflicting pressures to press charges vigorously against lawbreakers while also upholding justice and the rights of the accused. These pressures are often called "the prosecutor's dilemma." In the adversarial system, prosecutors must do everything they can to win a conviction, but as members of the legal profession they must see that justice is done even if it means that the accused is not convicted. Even so, they always face the risk of "prosecutor's bias," sometimes called a "prosecution complex." Although they are supposed to represent all the people, including the accused, prosecutors may view themselves as instruments of law enforcement. Thus, as advocates on behalf of the state, their strong desire to close each case with a conviction may keep them from recognizing unfair procedures or evidence of innocence.

※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。
George F. Cole, Christopher E. Smith, Criminal Justice in America, 6th edition, Wadsworth, 2011

（2） 次の文章を日本語に訳しなさい。

Standard form contracts can give rise to more than one kind of difficulty. Commonly, the problem is that one party dictates the terms of the contract by imposing its standard conditions. This can occur in both commercial and consumer contracting. Where it does so occur, it gives rise to concerns about both the reality of the agreement as well as the fairness of the transaction. Another problem altogether, however, is presented where both (commercial) contracting parties seek to dictate terms through their own standard forms (this setting up the so-called 'battle of the forms'). Here, the concern is not so much about the fairness of the contract. Rather, the difficulty is that the parties' dealings do not relate to an agreement in any straightforward sense – thus leaving the courts to make the somewhat uneasy choice between either declaring there to be no contract, or constructing from the exchange of documents a set of terms to govern the transaction.

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（3）　以下の文章を読み問題に答えなさい。

It has been suggested that the role of NGOs as intervenors in international law cases is rooted in theories of deliberative democracy. Whether or not this is so, ①to replicate the privileged international standing of campaigning groups at national level is unjustified. The status of NGOs in international relations relates directly to the absence there of democratic processes and of any functioning civil society. NGOs are often the only unofficial actors on a stage dominated by states and multinational enterprises. It is tempting to fall into the trap of seeing them not only as components but as the whole of globalised civil society. In the context of a democratic national political system, ②this equation is ③unacceptable. Campaigning groups may be membership groups but neither their world-wide nor their national members can easily be consulted; their policies are dictated by the small élite of professionals who actually run them. In public interest litigation, campaigning groups can be treated as experts provided their hidden agenda is overtly recognised. Alternatively, they can be treated as single issue political parties, in which case their presence as advocates in the legal process needs a different justification. Otherwise, the triumph of pressure groups or factions or special interests will mark a corruption of the legal process.

①の下線部を和訳しなさい。
②の内容を本文に即して説明しなさい。
③の理由を論者が本文で展開する議論から説明しなさい。