2018年度　博士後期課程入学試験問題

外国語

A

英語

早稲田大学大学院法学研究科

以下のⅠとⅡの問題にすべて日本語で答えなさい。

Ⅰ

次の文章は、イギリスの最高裁判所に上訴された事件の事実と下級審での経緯を要約したものである。これを読み、後の各問に答えなさい。

The claimant paid £620,000 to the defendant pursuant to an agreement under which the defendant agreed to use the money to bet on the movement of shares on the basis of inside information. The agreement was contrary to the prohibition on insider dealing in section 52 of the Criminal Justice Act 1993. In the event, the agreement could not be carried out because the expected inside information was not forthcoming. The claimant brought a claim against the defendant for the repayment of the money.

The first instance judge dismissed the claim as being barred by illegality, holding that (i) the claimant's case relied on the illegal agreement, since in order to make good ①his case the claimant had had to prove the illegal purpose for which he had paid the money to the defendant, as well as the failure of that purpose; and (ii), although the claimant would not have been barred from relief if he had voluntarily withdrawn from the illegal agreement before it had been performed, he was so barred because the agreement had been frustrated.

The Court of Appeal allowed the claimant's appeal on the basis that ②a party who had withdrawn from an illegal agreement because it could no longer be performed was not prevented by public policy from relying on the agreement, provided that no part of it had been carried into effect.

The defendant appealed.

問１　この事件の原告と被告の間の合意が被告により履行されなかった直接の原因を述べなさい。

問２　下線部①の内容を簡潔に説明しなさい。

問３　下線部②を訳しなさい。

2018年度　博士後期課程入学試験問題

外国語

B－1

英語

早稲田大学大学院法学研究科

Ⅱ

次の（イ）～（二）の中から2問を選択して答えなさい。
必ず選択した番号を明記すること。

（イ）以下のアメリカに関する文章を訳しなさい。

Notice that the decline of local democratic control over criminal justice did not inevitably produce more punishment, nor did it inevitably produce less. As in the early twentieth-century South, it produced both: first much less punishment, then vastly more. The crucial regulating mechanisms that governed northern cities' justice systems in the Gilded Age—frequent jury trials, prosecutors elected by voters in poor and working-class city neighborhoods (because more upscale city neighborhoods and suburbs were more thinly populated than today), and police forces ruled by urban machines that depended on working-class immigrant votes for their survival—faded. Bureaucratic detachment, legal procedure, and symbolic politics took their place. The consequences were poor crime control, rapidly changing punishment practices, and massive inequality.

（ロ）次の文章の「　　」の部分を訳しなさい。

The theory of sovereignty began as an attempt to analyse the internal structure of a state. Political philosophers taught that there must be, within each state, some entity which possessed supreme legislative power and/or supreme political power. It was easy to argue, as a corollary to this theory, that the sovereign, possessing supreme power, was not himself bound by the laws which he made.

Then, by a shift of meaning, the word came to be used to describe, not only the relationship of a superior to his inferiors *within* a state, but also the relationship of the ruler or of the state itself towards *other* states. But the word still carried its emotive overtones of unlimited power above the law, and this gave a totally misleading picture of international relations.

「When international lawyers say that a state is sovereign, all that they really mean is that it is independent, that is, that it is not a dependency of some other *state*. They do not mean that it is in any way above the *law*. It would be far better if the word 'sovereignty' were replaced by the word 'independence'. In so far as 'sovereignty' means anything in addition to 'independence', it is not a legal term with any fixed meaning, but a wholly emotive term. Everyone knows that states are powerful, but the emphasis on sovereignty exaggerates their power and encourages them to abuse it; above all, it preserves the superstition that there is something in international co-operation as such which comes near to violating the intrinsic nature of a 'sovereign' state.」

2018年度　博士後期課程入学試験問題

外国語

B－2

英語

早稲田大学大学院法学研究科

Ⅱ

（ハ）次の文章を訳しなさい。

Everyone agrees that taxation should treat taxpayers equitably, but they don't agree on what counts as equitable treatment. It is standard practice in addressing the question to distinguish between vertical and horizontal equity. According to this conception, vertical equity is what fairness demands in the tax treatment of people at different levels of income (or consumption, or whatever is the tax base), and horizontal equity is what fairness demands in the treatment of people at the same levels. Vertical equity is analytically more fundamental, since sameness of income takes on significance for policy purposes only if we believe that persons with different levels of income should be taxed differently. Accordingly, we address vertical equity first.

（二）次の文章を訳しなさい。

Infringements on the privacy and on personal data of individuals and businesses belong to the most discussed areas of cross-border dispute resolution. This area is dominated by technical advances permitting the universal dissemination and retrieval of data , by the emergence of global players using and profiting from these developments, and by the quest for efficient protection of individuals and of businesses.

Cross-border litigation in this field is dominated by forum shopping. In the European Union, jurisdiction based on tortious liability opens up a multitude of fora where individual and professional plaintiffs may institute legal proceedings seeking injunctive relief and damages.

Forum shopping is usually triggered by differences of both procedural and substantive laws. With regard to protection of privacy this situation might come as a surprise. In Europe, there is strong and detailed case law of the European Court of Human Right (ECtHR) on protection of private life as well as freedom of expression and of the press.