

早稲田大学 大学院法学研究科

2019年度 修士課程入学試験問題(国内受験)

外国語科目

英語

(1)

次の文章を読み、後の各問に日本語で答えなさい。

In 2003, Paciano Lizarraga-Tirado was arrested and charged with illegally reentering the United States after having been deported. He admitted that he was arrested in a remote area near the United States-Mexico border, but claimed he was arrested in Mexico while awaiting instructions from a smuggler. To prove the arrest occurred in the United States, the prosecution offered the testimony of the arresting officers that they were familiar with the area and believed they were north of the border, in the United States, when they made the arrest. An officer also testified that she used a Global Positioning System (GPS) device to determine their location by satellite, and then inputted the coordinates into Google Earth. Google Earth then placed a digital “tack” on a map, labeled with the coordinates, indicating that the location lay north of the border. Mr. Lizarraga-Tirado insisted that these mechanical accusations were “hearsay,” out-of-court assertions offered for their truth, and thus inadmissible. The Ninth Circuit rejected his argument, even while acknowledging that the digital “tack” was a “clear assertion,” such that ①if the tack had been manually placed on the map by a person, it would be “classic hearsay.” In the court’s view, machine assertions are simply the products of mechanical processes and, therefore, akin to physical evidence. ②As such, they are adequately “addressed by the rules of authentication,” requiring ③the proponent to prove “that the evidence ‘is what the proponent claims it is,’” or by “judicial notice,” allowing judges to declare the accuracy of certain evidence by fiat.

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the Yale Law Journal

- 問1 Paciano Lizarraga-Tirado 氏をめぐる上記事案の法的争点を簡潔に説明しなさい。
 問2 下線部①を和訳しなさい。
 問3 下線部②の内容を本文に即して述べなさい。
 問4 下線部③は、Paciano Lizarraga-Tirado 氏の事案でいえば、誰がそれに相当するかを答えなさい。

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(2) 次の文章を日本語に訳しなさい。

It has become commonplace to deny a leading role to the churches in modern Europe. The replacement of marriage by simple cohabitation or the increasing Muslim population in European States serve as first-hand evidence. Sociologists, however, have had problems in ascertaining that these pre-judices are true. Still, at the same time, the concept of "family law" has lost its theological affiliations and was even used by fascist or national-socialist dictators, as well as by Communist regimes. They certainly tried to adapt this subject to fit their purposes. But the question remains whether or not such a Christian concept retains its Christian core even in an agnostic state. There is perhaps no other subject closer related to Christianity than "family law". Any attempt to ignore the lasting influence of the Christian tradition risks misunderstanding these concepts. It might be simpler just to ignore the different traditions in Europe in order to establish a common family law, but this would be to adopt a strategy with blinkers that try to hide what might be difficult. Evidently, the law is only accepted when it is in accordance with the domestic cultural tradition.

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(3) 次の文章を日本語に訳しなさい。

That there might be something distinctive about legal reasoning does not flow inexorably from the existence of law as a discrete profession, for it is far from obvious that those who take up some specialized calling must necessarily think and reason differently from those outside that calling. Electricians know things that carpenters do not, and carpenters know things that plumbers do not. But it would be odd to talk of thinking like a carpenter or a plumber. Indeed, maybe it is just as odd to talk of thinking like a lawyer. Yet law schools do not think it odd, nor do most lawyers and judges. Law schools and the lawyers and judges they train suppose that lawyers are characterized by more than knowing things that nonlawyers do not. Knowledge of the law is important, as are skills of advocacy and drafting, but the traditional account of what makes lawyers distinctive is that they have something other than this.