２０２０年度　博　士　後　期　課　程　入　学　試　験　問　題

外　国　語

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、ホッジ（Hodge）英国最高裁判所判事が、新技術（情報通信技術や人工知能技術）が法に及ぼす影響を論じた講演の抜粋である。判事は新技術が、①契約法の領域に生じる影響に既存の法がどう対応でき、または今後どのような問題を生じると考えているか。②民事訴訟の分野でどう利用されどう評価されていると述べているか。①②各５行以内で説明しなさい。

The speed of technological developments poses a real challenge to the law and to regulation. How then are legislators, judges and lawyers to apply and adapt the law, especially in a commercial context?

Contract law

"Smart contracts" are contracts which can be partially or fully executed or enforced without human intervention. At their simplest, they involve an instruction to the computer that if X happens then the computer is to act to make Y the result. This process of "if-then" instructions can be compared to the operation of an automatic vending machine. If you wish to buy a snack, you put money in the machine, select the product and the machine takes the money and delivers you your snack. In such a simple form, there should be no problem in upholding the existence of a contract in legal systems such as the common law, which assess the intention of the contracting parties objectively, so long as the parties were aware, when contracting, of the nature of the arrangement which they were entering into.

But the law has to address how to provide a remedy if contractual consent has been vitiated, for example, by misrepresentation or fraud. Smart contracts are self-executing as the terms of the agreement between a buyer and a seller are written into lines of code which exist in a blockchain. When the coded conditions are met, a product is released or a payment made. No-one, including a court, can stop the performance of a smart contract. The courts will not be able to cancel the performance of the contract. But a remedy may lie in the law of unjust enrichment in both common law and civil law jurisdictions to compel the parties to re-transfer the property or money which was the subject of the transaction.

Moreover, if there is widespread use of Artificial Intelligence (AI) to optimise the arrangements between contracting parties on the occurrence of contingencies, contract law will have to be developed to address this. If machines make independent decisions, how will the law attribute those decisions to the intention of the contracting parties?

Changes to legal practice

But it is not only substantive law that will need to be adapted in order to accommodate changing technology. Many commentators have suggested that the legal profession itself is on the brink of unprecedented upheaval.

Law firms are employing AI to support or even replace lawyers in the execution of core legal tasks. In *Pyrrho Investments v MWB Property* [2016] EWHC 256 (Ch), an English court expressly endorsed, for the first time, the use of predictive coding software*. The case concerned alleged breaches of directors' duties in the hotel and leisure industry, where over three million documents had to be considered for relevance and possible disclosure. The High Court considered whether, for the purpose of disclosure, the parties could rely on predictive coding, a form of machine learning that takes data input by people about document relevance and then applies it to much larger document sets. Master Matthews considered that there was no evidence that predictive coding software leads to less accurate disclosure than manual review, and indeed, there was some evidence to the contrary. He also noted that predictive coding software offers greater consistency than dozens, or perhaps hundreds, of junior fee-earners independently seeking to apply the relevant criteria in relation to individual documents. Moreover, it was a much less expensive option: he estimated it would cost several million pounds for a full manual review versus approximately £500,000 for predictive coding software.

　　*予測符号化ソフト

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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）　　次の文章を日本語に訳しなさい。

※この問題は、著作権の関係により掲載ができません。

（ロ）　　次の文章は、2019 年 6 月に大阪で開催された G20 サミットに関するものである。下線部
を和訳しなさい。

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（ハ）　次の文章を日本語に訳しなさい。

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