早稲田大学 大学院法学研究科

2023年度 修士課程入学試験問題（国内受験）

外国語科目 英語

（1） 以下はアメリカ合衆国の動物福祉法について論じた文章の一部分である。これを読んで問いに答えなさい。

(1)In terms of animal protection, by far the most important measure is the Animal Welfare Act, which imposes, on those who deal in or with animals, a wide range of negative constraints and affirmative duties. The act begins with an elaborate statement of purposes, emphasizing the need for "humane care and treatment" in the exhibition of animals, transportation of animals, and "use" of animals "as pets." There is a flat ban on commercial ventures in which animals are supposed to fight. Licenses are required for all those who sell animals for exhibition or for use as pets. The secretary is also asked to issue "humane standards" with respect to "the purchase, handling, or sale of animals" by "dealers, research facilities, and exhibitors at auction sales."

A key provision of the statute requires the secretary to issue "standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." These are supposed to include "minimum requirements" governing "handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care." A separate provision lists minimum requirements for "exercise of dogs" and "for a physical environment adequate to promote the psychological well-being of primates." Animals in research facilities must be protected through requirements "to ensure that animal pain and distress are minimized." In "any practice which could cause pain to animals," a veterinarian must be consulted in planning, and tranquilizers, analgesics, and anesthetics must be used. An independent provision requires compliance by the national government with the secretary's standards. Breeders of dogs and cats must allow inspections and may not transport underage dogs. The act also contains a set of record-keeping requirements, designed to ensure that dealers, exhibitors, research facilities, and handlers provide records, evidently designed to allow federal monitoring of the treatment of animals.

By virtue of its scope, the Animal Welfare Act promises an ambitious set of safeguards against cruel or injurious practices. Taken together with other federal statutes, above all the Marine Mammal Protection Act, it suggests that national law is committed to something not so very different from a bill of rights for animals. But (2)there are important limitations in the statute. Perhaps most important, it does not apply to the treatment of animals raised for food or clothing. In fact no federal statute regulates the treatment of animals raised for food or food production on farms, and states typically exempt farm animals from anticruelty statutes. In addition, the Animal Welfare Act has an odd pattern of inclusion and exclusion. There is a requirement for the exercise of dogs, but no such requirement for the exercise of horses, who have at least an equivalent need; the relevant physical environment must promote the psychological well-being of primates, but no comparable protections apply to dogs, cats, and horses.

Many people have also complained that the Animal Welfare Act has been indifferently or even unlawfully enforced, not least via regulations that do far less than the statute requires. The Department of Agriculture has hardly been eager to press the act on those who abuse animals. Here too there is a question whether statutory law is not largely expressive and symbolic, a statement of good intentions, delivering far more on paper than in the world. An important issue therefore becomes: Who has standing to bring suit to require compliance with laws governing animal welfare? Can animals sue to protect themselves? Can people sue on animals' behalf?

To answer these questions, it is necessary to understand (3)some basic legal principles. You cannot bring suit in federal court simply because people have violated the law and you are upset about what they have done. As the Constitution is now understood, you must show that you have suffered an "injury in fact" as a result of the actions of the defendants. There are two other requirements that the law usually imposes, though Congress is permitted to override those requirements. First, you must show that your injury is "arguably within the zone of interests" protected or regulated by the statute in question. Second, you must show that your injury is not widely generalized, that is, it must not be shared by all or most citizens. Under what circumstances do these requirements permit or bar an action brought to prevent unlawful injury to an animal?

※ページ下部に出典を追記しております。

問1 下線部(1)について、動物の販売・取扱者に課された"negative constraints and affirmative duties"の具体例としてこの段落で挙げられているものを、それぞれ日本語で記しなさい。

問2 下線部(2)について、"the statute"が何を指すか明らかにしながら、本文中で挙げられている点を日本語でまとめて説明しなさい。

問3 下線部(3)の指す内容を、日本語で説明しなさい。

早稲田大学 大学院法学研究科

2023年度 修士課程入学試験問題（国内受験）

外国語科目　英語

（2） 次の文章を日本語に訳しなさい。

When it comes to purchased digital assets in the form of music, videos, or books, the contracts change and try to overcome an underlying assumption of property claim in purchased media. Contracts for music, books, and videos go to great pains to state that the purchaser is buying a license to use digital content and not a fee simple interest in the digital content itself. Because the sale is only of a license to access digital content, the contracts expressly forbid the user from selling, leasing, distributing, renting, broadcasting, licensing, transferring, or conveying the interest to a third party. These contracts work under an underlying presumption that the sale of digital content would result in a fee simple ownership interest, but because of the contract, the terms are changed and the sale explicitly results in a license. By creating a license instead of a fee simple property interest, corporations protect the creator's intellectual property rights and ensure that a digital copy will not be easily disseminated without a sale directly from a corporation.

（3） 次の文章を日本語に訳しなさい。

Except when considering the most blatant situations (such as slavery), human rights scholars typically overlook how human rights guarantees affect people at work. This lack of consideration may be related to the fact that most employment and work relationships flow from an agreement by the worker to perform work in return for compensation. As such it is an economic transaction, and if it is to be regulated, many would consider that the domain of labour law regulation. Moreover, many theories on the foundation or function of labour law are based on this premise, positioning it against the background of contract law, property rights, corporate law, etc. Having this mental construct of a binary categorization (human rights law or labour law) often blinds the scholar from considering whether the worker in an economic system somehow has his or her human rights infringed, for instance, by the employer's offering female workers terms and conditions of work that are less favourable than those offered to men with similar qualifications. Because an economic transaction is involved in most work situations, there also seems to be an implicit acceptance of the notion that a person can waive his/her human rights in return for compensation despite the fact that the persons most likely to do so are those who are economically vulnerable.