２０２３年度 博士後期課程入学試験 ・ ２０２２年度 外国語能力試験 問 題

外 国 語

A

英 語

以下のⅠとⅡの問題にすべて日本語で答えなさい。

早稲田大学大学院法学研究科

Ⅰ 以下の文章は、先端科学技術が法にもたらす課題について論じた講演の一部である。これを読み、後の各問にすべて日本語で答えなさい。

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?

I start with contract law and the advent of "smart contracts". As many of you will know, "①smart contracts" are contracts which can be partially or fully executed 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 ②the law must 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.

Much greater problems in the law of contract may arise if computers are developed to use machine learning to optimise the transactions which they enter into. ③If businesses were to use computers with machine learning capability to deal with other computers with similar ability, they could autonomously generate transactions which would not fit easily into our contract law. How will the law attribute those decisions to the intention of the contracting parties? Should the law say that those who willingly use computers with machine learning to effect their transactions are to be taken as intending to be contractually bound by the deals which those autonomous machines make? If there is to be a contract drafted or adapted by machines, there will have to be significant development to our law of contract which will require careful and imaginative consideration.

※ページ下部に出典を追記しております。

問１ 下線部①は、どのような特徴をもつ契約のことか本文に即して説明しなさい。

問２ 下線部②を和訳しなさい。

問３ 下線部③のような事態が生じた場合、現在の契約法ではうまく扱えない問題がどのような点で生じると著者はいうのかを説明しなさい。

※WEB 掲載に際し、以下のとおり出典を追記しております。

Lord Hodge, Deputy President of The Supreme. "Technology and the Law". The Dover House Lecture 2020, London. The Supreme Court UK, 2020. Contains public sector information licensed under the Open Government Licence v3.0. https://www.supremecourt.uk/docs/speech-200310.pdf

外 国 語

B-1

英 語

早稲田大学大学院法学研究科

II

次の（イ）～（ニ）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。

The development of CSR and the use of codes of conduct in companies are of particular interest for reflexive labour law. In a certain sense, these developments can serve as the model for a reflexive type of regulation. It requires the acknowledgment of the key role of internal regulation in companies and the concept suggested by reflexive labour law, the theory of regulation of self-regulation, seems particularly well suited for an analysis of these modes of governance. What is characteristic of these attempts of regulating multinational companies is a linking of public and private efforts of regulation of employment conditions. International organisations have recognised internal labour policies of multinational companies as promising ways of implementing their standards and have undertaken efforts of regulating CSR by developing new instruments in international labour law. Multinational companies, on the other hand, have begun to view the design of human resource policies in accordance with international labour standards as a beneficial productive factor.

注：CSR = corporate social responsibility

（ロ） 次の文章を日本語に訳しなさい。

外 国 語

B-2

英 語

早稲田大学大学院法学研究科

(ハ) 次の文章を日本語に訳しなさい。

Legal pluralists, generally speaking, are unwilling to be confined by a single formalist definition of law because they recognize that any such definition is likely to derive from a particular subject position and therefore will accord certain social action the mantle of law while denying other social action the same respect. Indeed, for years, pluralists wrestled with trying to define law before effectively giving up the project as inevitably fraught and biased, privileging some instantiations of law over others. Accordingly, pluralists turned the focus to observing sociological fact: what is it that individuals and communities come to consider to be law over time? What pronouncements of decisionmakers do they defer to, what rules do they obey, and whose decisions are they willing to enforce? And what practices do they enter into that impact their practical sense of binding obligation?

(ニ) 次の文章を日本語に訳しなさい。

The primary reason for the appeal in *Breed v. Jones* (1975) was the Fifth Amendment double jeopardy clause as applied to states through the Fourteenth Amendment. However, it was the judge's decision to transfer jurisdiction of Gary Jones's case to criminal court that initiated the appellate process. The double jeopardy occurred in conjunction with a waiver or transfer decision in California.

In 1971, a 17-year-old youth, Gary Steven Jones, was apprehended in Los Angeles, and a petition was filed alleging that he was a delinquent youth. At the time he was apprehended, Jones was armed with a deadly weapon and had allegedly committed a robbery. Jones appeared before the juvenile court judge, and subsequently was adjudicated delinquent in the juvenile court for acts that if committed by an adult would have resulted in a charge of and conviction for robbery. During that hearing, evidence was presented about the allegations that convinced the judge beyond a reasonable doubt that Jones had engaged in acts constituting delinquency. Jones was found to be delinquent, and the judge set a date for the dispositional hearing (*Breed v. Jones*, 1975, p. 421). At the dispositional (sentencing) hearing, the judge determined that Jones was "not . . . amenable to the care, treatment and training program available through the facilities of the juvenile court" under the California statute (p. 524).

※括弧内の訳出は不要。