早稲田大学 大学院法学研究科

２０２４年度　修士課程入学試験問題（一般入試）

外国語科目　英語

（1）　次のイギリスの法律雑誌の記事にいう Myths と Reality を対比させながら、それぞれの内容を簡潔に日本語で説明しなさい。

JURY RAPE VERDICTS: MYTHS & REALITY

The government's 'End-to-End Rape Review Report' (2021) was based on the premise that there had been an unprecedented drop in charging levels for rape since 2016. In fact, the precipitous fall in rape charging was part of a systemic fall in charging for *all* offences.

The actual facts are shown in a study conducted by Professor Cheryl Thomas, director of the Jury Project at University College London, published this week in the *Criminal Law Review*. The study is based on analysis of all charges, pleas and outcomes in rape and other sexual offences in England and Wales 2007–2021. It examines a dataset of over 5.6 million charges and all 68,863 jury verdicts by deliberation on rape charges in this 15-year period.

The not guilty plea rate The action plan in the government's review called for an increased number of early guilty pleas in rape cases. Professor Thomas' study shows not only that rape has the highest not guilty plea rate of any type of offence (85%), but that this has been the case consistently for the last 15 years. The next highest is for homicide-related offences (68%). The rate for sexual offences in general (44%) is far lower.

Average number of annual rape convictions The average number of jury verdicts per year in rape cases in the 15 years was 4,590. For seven of the past eight years the number was above the average—the only exception being 2020 when jury trials were severely restricted because of the pandemic. Fluctuations in rape charges reflect wider fluctuations in charging levels each year over the 15-year period, not just for all sexual offences but for all offences.

Jury conviction rates in rape cases The Rape Crisis website states: 'Despite high rates of rape and an increase in reporting in recent years, charging and conviction rates remain among the lowest since records began.' This turns out to be incorrect. Professor Thomas' study shows that for much of the 15-year period the jury conviction rate on rape charges was in the region of 52–55% annually, and that since 2018 it rose considerably. Over the 15-year period the jury conviction rate in rape cases was 58% on average—meaning they were more likely to convict than to acquit.

Downgrading of rape charges The study found no evidence that juries in rape cases tended to downgrade charges by finding the defendant guilty of some alternative offence or lesser charge. In the 15-year period this occurred in only 0.3% of all rape cases.

Jury conviction of younger rape defendants It had been claimed in recent years that juries in England and Wales were reluctant to convict younger defendants and, if that was so, juries should not try rape cases. Again, the analysis showed this belief to be mistaken. In seven out of the past 15 years, the lowest jury conviction rate in adult female rape cases was for defendants in an age group over 25 years of age. And in recent years, the analysis showed that juries have been more likely to convict than acquit a defendant in adult female rape cases for both defendants under and over 25 years of age.

※WEB 掲載に際し、以下のとおり出典を追記しております。
Zander KC, Michael. "Jury rape verdicts: myths & reality."
New Law Journal, Issue 8014 (2023).
https://www.newlawjournal.co.uk/content/jury-rape-verdicts-myths-reality

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（2）　次の文章を日本語に訳しなさい。

It is common ground that in some domains custom can be a source of law, and that reaching a legal conclusion based on custom can be as legitimate as reaching a legal conclusion on the basis of a statute, a legal precedent, a provision of a written constitution, or the opinion of an authoritatively recognized secondary source. With respect to such conventional sources of law, it is a trivial point that first we locate a normative rule, and then determine the extent to which, if at all, it applies to the matter at hand. All legal rules are expressed in or translatable into an if-then form, and thus the application of any of the foregoing sources typically involves, to oversimplify, determining whether the facts we have perceived fall within the scope-designating or "if" part of the rule, and, if so, then determining what the normative consequent—the "then" part of the rule—requires to be done.

（3）　次の文章を日本語に訳しなさい。

The statute*'s message for our cases is equally simple and momentous: An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

*The statute: Title VII of the Civil Rights Act of 1964 を指す。