

早稲田大学大学院法学研究科
2026年度 修士課程入学試験問題 (一般入試)

外国語科目

英語

- (1) 次の文章は、*Savage and Another v Fairclough and Others* という1999年の民事事件について述べたものである。これを読んで問いに日本語で答えなさい。

In many ways, this case is completely unremarkable. The defendants were not liable in private nuisance for polluting their neighbours' watercourse by applying nitrates and pig manure to their own land during the late 1970s and 1980s. Their fertiliser use was within accepted limits for the time, and so the court found they could not reasonably have foreseen any harm to the claimant's land. Intensive pig and arable production was a reasonable use of land. It looks like a simple application of *Cambridge Water Co Ltd v Eastern Counties Leather Plc* to farming pollution. Yet, in its normalisation of these harms lies its significance.

It has bothered me for years. For a start, the neighbours were complaining from an early stage about pollution to their spring and continued to do so. Despite ignoring these complaints and failing to inform their advisors of a problem, the defendants were held to be 'good farmers', unable to foresee any harm to the land of these long-suffering neighbours. It is true that their farming practices were the same as other intensive farmers of the period and their application of fertiliser was not unduly high. The legal obligations at the time were few and the defendants were not breaking any rules. We knew less about the negative impacts of intensive agriculture on the environment and on the animals involved. Hindsight can be a cruel judge.

But I have never found the approach satisfactory. I have a particular issue with the courts' representation of the 'good farmer' as someone who follows basic legal rules, completely divorced from the needs and interests of their wider community. How could it be 'good farming' to ignore the 'distress' of your neighbours for years, even if you are complying with your legal obligations? And whilst we undoubtedly have more evidence now of the myriad harms resulting from intensive farming, we cannot pretend the potential for harm was not widely known at the time in question. The Soil Association was established three decades earlier, in 1946, Compassion in World Farming in 1967 and Friends of the Earth in 1969. As counsel for the claimants argued in the original judgment, the specific issue of pollution by nitrates was understood well beyond the scientific community and one of which farmers and their advisors were becoming aware during the relevant period. Yet, despite this context, there was no expectation that the 'good farmer' ought to be responsive to risks outside their explicit legal obligations in a way that might give rise to a duty to—at least—investigate their practices. Even when coupled with complaint of that very harm occurring.

※出典は下記に記載しております。

- 問1 この事件における事実および判決の概要について、第一段落で示される内容をまとめなさい。
- 問2 判決はどのような理由から損害の予見可能性がないとしたか、本文から読み取れる内容を記しなさい。
- 問3 この判決について筆者がどのように評価しているか、理由とともに説明しなさい。

※WEB掲載に際し、以下のとおり出典を追記しております。

Howe, H. (2024). Who Let the Pigs Out? Rooting for the 'Good Farmer' in *Savage v Fairclough*. In H. Dancer, B. Holligan, & H. Howe (Eds.), *UK Earth Law Judgments: Reimagining Law for People and Planet* (pp. 121-122). Hart Publishing. Available open access under a CC BY-NC-ND 4.0 license.

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(2) 次の文章を日本語に訳しなさい。

In the conventional view, democracy begins with the voters. Ordinary people have preferences about what their government should do. They choose leaders who will do those things, or they enact their preferences directly in referendums. In either case, what the majority wants becomes government policy—a highly attractive prospect in light of most human experience with governments. Democracy makes the people the rulers, and legitimacy derives from their consent... That way of thinking about democracy has passed into everyday wisdom, not just in the United States but in a great many other countries around the globe....

Unfortunately, while [this] folk theory of democracy has flourished as an ideal, its credibility has been severely undercut by a growing body of scientific evidence presenting a different and considerably darker view of democratic politics. That evidence demonstrates that the great majority of citizens pay little attention to politics. At election time, they are swayed by how they feel about “the nature of the times,” especially the current state of the economy, and by political loyalties typically acquired in childhood. Election outcomes turn out to be largely random events from the viewpoint of contemporary democratic theory. That is, elections are well determined by powerful forces, but those forces are not the ones that current theories of democracy believe should determine how elections come out. Hence the old frameworks will no longer do.

※WEB掲載に際し、以下のとおり出典を追記しております。

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(3) 次の文章を日本語に訳しなさい。

Congress' decision to entrust enforcement of the National Labor Relations Act to an expert agency was animated by several concerns. Some were the same concerns that inspired the creation during the New Deal of expert administrative agencies in many areas of government, and some were unique to the field of labor relations. Congress distrusted the capacity and willingness of federal judges to resolve labor disputes because the federal courts had, in the view of Progressive supporters of labor legislation, completely disgraced themselves in the late nineteenth and early twentieth centuries by enjoining all manner of worker action. A politically accountable agency staffed with labor lawyers seemed infinitely preferable to federal courts. In addition, the New Deal was the high water mark of faith in the power of experts to resolve disputes in a way that could transcend politics. The NLRB* was supposed to be staffed with expert labor economists, sociologists, and lawyers who would design a legal regime that would be the best it could be. The notion that the legal issues that emerged from the great contest of capital and labor could be resolved by the application of expertise has in retrospect come to seem hopelessly naive.

*NLRB: National Labor Relations Board の略称。

※WEB掲載に際し、以下のとおり出典を追記しております。

Cooper, L. J., & Fisk, C. L. (Eds.). (2005). Introduction: The enduring power of collective rights. In *Labor law stories* (1st ed., p. 2). Foundation Press (West Academic). Reprinted with the permission of West Academic.