

平成31年度大学院博士後期課程入学試験問題

研究科名	科目名
法学研究科 法律学専攻	英語

問. 次の英文を読み全文を和訳してください

WE have already noticed the highly significant fact that in most European languages the term for law is identical with the term for right. The Latin *jus*, the German *Recht*, the Italian *deritto*, the Spanish *derecho*, the Slavonic *pravo* point both to the legal rule which binds a person and the legal right which every person claims as his own. Such coincidences cannot be treated as mere chance, or as a perversion of language likely to obscure the real meaning of words. On the contrary, they point to a profound connexion between the two ideas implied, and it is not difficult to see why expressions like *jus* and *Recht* face both ways: it may be said that on the one hand all private rights are derived from legal order, while, on the other hand, legal order is in sense the aggregate of all the rights co-ordinated by it. We can hardly define a right better than by saying that it is the *range of action assigned to a particular will within the social order established by law*. Just because every person under the rule of law divests himself of an unlimited liberty of action, a certain liberty of action limited in extent and direction is conceded and guaranteed to him by right. A right therefore supposes a potential exercise of power in regard to things or persons. It enables the subject endowed with it to bring, with the approval of organized society, certain things or persons within the sphere of action of his will. When a man claims something as his right, he claims it as *his own* or as *due to him*. Naturally enough, his first claims concern his own life and limbs, and the Commonwealth concedes the claim by pledging itself to protect his person. It has not always been so: in ancient times, the claim led only to a declaration of right on the part of a tribal society, while for actual protection a free-man had to look to his own strength and to that of his kinsmen or fellows. Next comes the claim to personal freedom from arbitrary imprisonment or interference with one's movements. Closely connected with this is the right to be protected from unauthorized intrusion into one's home. It is well known what historical struggles have been produced by these elementary claims, and how imperfectly they are realized even nowadays in some communities which deem themselves civilized. Rights to free thought, free conscience, free belief and free speech are asserted on the same ground of personal freedom, though they are often counteracted by considerations of public safety and public morality. And besides the protection of material existence, in more or less advanced communities men claim as by right protection of their reputation and honour: law gradually displaces self- help in preventing and punishing insult and slander.

While this first group of rights clusters round the idea of *personality*, a second group is formed round the idea of *property*. We consider as our own not only our body, our home and our honour, but also the proceeds of conquest and labour (including mental work, e.g. of authors, inventors, artists, etc.). It rests with the State to determine the rules as to the accumulation, disposal and protection of property. One of the most important developments of the right to property consists in the transfer of this right to successors.

No human being stands entirely isolated in this world; every one is more or less affected by the ties of the family and of the State, and perhaps of many intermediate organizations. The exercise of the will in these relations leads to various rights of *authority* and corresponding duties. It is obvious that the rights of a father, of a husband, of a guardian, and also their duties in regard to children, wives, wards, etc., arise from this source. The status of the citizen, denizen, civil officer, soldier, foreigner, also give rise to rights and duties of a personal character.