



Creating New Corporate Legal Systems for Mature Civil Society
- Restructuring Legal Systems of Corporation,
Finance and Capital Market, and Asian Challenges -

FY 2009 Activity Report

Our Global COE (Center of Excellence) has gained social recognition as a very important independent comprehensive research organization for creating legal theories and theories of legal policies. At the COE, cross-sectoral legal researches are always being conducted and new findings as well as concrete proposals are continuously announced. Our periodical publication which started from the previous program, the 21st COE, reached the 22nd issue at the end of March, 2010. In addition, we published the eight-volume series of books, "Creating Corporation Law and Society" (publisher: Nihon-hyoron sha) as an accomplishment of the 21st COE. A plenty of accumulated knowledge were shown in the books. Our Institute is now becoming the leading center for new jurisprudence of Japan in the 21st century.

Concretely speaking, first of all, Article 1 of the Financial Instruments and Exchange Act stipulating the purpose of the Act ensures functions of the capital market and fair price formation. This clause adopted the idea of our Institute as it is. In response, we have proposed a legislation of "public company law" which fully utilizes the capital market. As a result, the Legislative Council of Justice Ministry started to address the issue from April 2010. Second, people's interest on takeover rules traditionally focused on the U.S. However, it has drastically shifted to on European takeover rules. This is also the awareness of the issues which we have blazed a trail. Third, we have continuously advocated the cross-sectoral capital market legislation. The financial ombudsman which has played a main role of promoting the cross-sectoral capital market legislation was put into practice as the establishment of Financial ADR Law in April 2009. Fourth, we have promoted the infrastructure of the Asian common capital market. As part of a more concrete proposal, "Asian Debt Listing utilizing TOKYO AIM", the proposal of establishing

of "Asian Inter-Regional Professional Securities Market" and its domestic version, "Professional Securities Market-Japan" is close to be announced with the involvement of a wide range of related parties.

In FY 2009, we kept our project very active. In the recent financial crisis, we announced Waseda's message on Japan's position in financial crisis in five languages in August 2009. The message introduced that Japan was positioned as the almost only third force which could point out the problems in the Western systems. Also, we held multifaceted symposia on this issue including a series of «The Present Situation of Finance, Law, Management, and Accounting from the Perspective of the UK», fulfilling our function as a think tank.

Japan's unique conditions which enable these messages are built on the comparative-law-oriented position of Japan which has learned modern Western law systems over a hundred of several tens of years. A symposium: a Challenge of New Comparative Law - Theoretical and Practical Issues in Comparative Law in the New Millennium (November 2009) inviting authorities from the world was a particularly notable project. The background as such becomes an important basis for discussing financial and capital market as well as corporate law system. New findings on fundamental theories concerning corporate law system such as the significance of labor to corporate law system as well as the relations between corporate law system and the Constitution are now becoming an issue with a lot of potential of drastically changing the character of Japan's corporate jurisprudence.

In addition, Research Center for the Legal System of Intellectual Property has developed the English-language database of Intellectual Property (IP) precedents and the project is expanded to include not only Asia but also Japan and Europe. We have established our position as a global contact of a big database, a fundamental infrastructure of IP research of the world. Furthermore, it has started to develop a new field of research integrating Arts and Sciences.

Also, we continuously made a contribution to the reform of corporate law systems in Asian countries such as Asia and Korea. The research cooperation based on the agreement with National People's Congress of China, the highest legislative organization in China, has already covered

Chinese corporate law, securities law and monopoly law. It also expanded to water pollution related law, air pollution related law, earthquake countermeasures law, insurance law, state compensation law, local government law, and forcible expropriation law.

In addition, many workshops and symposia were held, having fruitful results. During this fiscal year, we published five volumes of our publication, “Corporation Law and Society” (Vol.18, Vol.19, Vol.20, Vol.21 and Vol.22). Also, in terms of developing young researchers, we hired a total of 30 Research Assistants to support various research projects. We would like to emphasize that our Institute has a quite unique atmosphere providing the Research Assistants with an opportunity to freely participate in numerous open workshops of cross-sectoral law fields and support those projects as Research Assistants.



FY2009 Major Seminars and Symposia]

- 5/9 Japanese Corporations and Patent Litigations: Offensive Patent Strategies by Forum Shopping, Richard Price (Taylor Wessing, London Office) and others
- 6/26 Recent Developments in U.S. and Europe Doug Stewart(Dorsey&Whitney,Seattle Office) and others
- 7/10 Asian Capital Market Law and Regulation Forum: Japan, China and Korea (in Seoul), Tatsuo Uemura, Shitehito Inukai(Waseda University), Hidenori Mitsui(FSA, Japan) and others
- 7/27&28 Research Exchange on China's State Liability Act (in Beijing), Tatsuo Uemura, Masanori Okada(Waseda University), Yoshikazu Shibaiki(Kyoto University)
- 9/10&11 Private International Law Principle on Intellectual Property Right, Japan-Korea Workshop, Chung-ang University
- 9/18 《 The Present Situation of Finance, Law, Management, and Accounting from the Perspective of the UK》 No.1, John McEldowney, Warwick University

- 10/5 Newly-modified Patent Act of China: Its Operation and Prospects, Professor Zhang Ping of Peking University and others
- 10/22 《 The Present Situation of Finance, Law, Management, and Accounting from the Perspective of the UK》 No.2, Richard Fleck, Attorney at law, Herbert Smith and others
- 10/24 Legal Aspects of Human Biological Materials, Bernard M. Dickens, University of Toronto and others
- 10/30&31 International Conference: Business Law and Innovation, Arnoud W.A. Boot (University of Amsterdam)
- 11/14 A Challenge of New Comparative Law - Theoretical and Practical Issues in Comparative Law in the New Millennium, Rolf Knieper, University of Bremen, Hugh Collins, University of London and others
- 11/15 A Challenge of New Comparative Law - Theoretical and Practical Issues in Comparative Law in the New Millennium, Karl Klare, Northeastern Univ., and others
- 1/21 《 The Present Situation of Finance, Law, Management, and Accounting from the Perspective of the UK》 No.3, Simon Deakin, University of Cambridge and others

FY2009 Grant-in-Aid for Younger Researchers

FY 2009 Grant-in-Aid for Younger Researchers was granted to promote selected researches which are consistent with the mission of the Global COE research projects.

- ① Yu Fenglei, “IP Enforcement in Hungary, a new member state of EU”. Hungary (Budapest)
- ② Noriyuki Shiga, “Comparative legal research on execution of copyright and moral right for content development model on the Internet: historical development of German copyright and moral right”, Germany (Dresden)

UPDATE

The Announcement of proposing the establishment of AIR-PSM and PSM-J

“Asian Debt Listing Study Group(co-chaired by Professor Shigehito Inukai and Visiting Senior Fellow and Professor Syuji Yanase(attorney at law), Waseda University)”, Asian Capital Market Legislation Research, Waseda Global COE, made an announcement of proposing the establishment of Asian Inter-Regional Professional Securities Market, AIR-PSM and Professional Securities Market-Japan, PSM-J) on April 20, 2010.

※Please visit the website for the detail (in Japanese).

http://www.globalcoe-waseda-law-commerce.org/activity/d/btlisting_6.html

This proposal was announced as an accomplishment of a study on “the establishment of an effective professional securities market in Japan and Asia”. Based on “the Findings and the Proposal -the Feasibility of Asian MTN (Medium Term Note) Program” which was the accomplishment of the first and second phases of the JBIC (Japan Bank for International Cooperation) funded research from 2008 to 2009, “Asian Debt Listing Study Group” (co-chaired by Syuji Yanase and Shigehito Inukai) was established as part of “Asian Capital Market Legislation Research” with the cooperation of Waseda Institute for Comparative Law and Jurisprudence (Director: Tatsuo Uemura) and conducted the study over three months from early February to mid-April of 2010.

The Quarterly Review of Corporation Law and Society

The Quarterly Review of Corporation Law and Society Vol.20, 21, and 22 were published. They are viewed at our webpage (in Japanese).

Feature: Financial Crisis (Vol.20)

Message: Corporate Governance and the Toyota Problem
Tatsuo Uemura

Part I Urgent Symposium

Examining President Obama’s Financial Regulatory Reform – What Message Should Japan Send to the World?
Opening Remarks
Tatsuo Uemura

[1] Direction of Financial Regulatory Reform

Kenji Kawamura

[2] Reform of Traditional Securities Regulation

Yasunobu Wakabayashi

[3] Regulation on Housing Loan Market and Consumer Protection – Consumer Financial Protection Agency

Hiroyuki Bando

[4] Regulation on Securitization Market and Regulation on Rating Companies

Yasuhiko Kubota

[5] Regulation on Hedge Fund and Regulation on Derivatives – Development of Financial Innovation and Challenges towards Public Company Law

Hiroyuki Watanabe

Comment 1

Etsuro Kuronuma

Comment 2

Naohiko Matsui

Symposium and Questionnaire

Part II International Symposium

“Legal Issues on Human Materials”

Control of Human Tissues in Anglo-North American Law

Bernard.M. Dickens

Translation: Kenji Osaka

The Use of Human Biological Material for Research

Purposes: the Legal Situation in Germany

Jochen Taupitz

Translation: Kana Harada

Body Commodification and Organ Procurement: Ethical and Socio-legal Challenges

George Mousourakis

Translation: Yoshinori Fukuyama · Yoshinori Kai

Legal Issues Surrounding Human Biological Materials: Japanese Context”.

Waichiro Iwashiro

Part III Research Accomplishments and Translated Articles

The Legal Scope of the Theory of Civil Society

Report: Seigo Hirowatari, Comment: Katsumi Yoshida

International Criminal Responsibility of Corporation

Marc Engelhardt

Translation: Masateru Matsuda

The Crown Witness Act of Poland from Theoretical and

Practical Perspectives

Emil W. Plywaczewski

Translation: Masami Okaue

GCOE Note

Han Keongsin · Kenji Osaka

Feature: Constitution and Economic Order (Vol.21)

Message: Corporate Law and Constitution

Tatsuo Uemura

On the Publication of the Issue Featuring Constitution

Toru Nakajima

Things in “Economy” from the Viewpoint of a Researcher of the Constitution

Yasuhiro Okudaira

Economic Order for the Constitution – Forms and Contents of Norm –

Yoichi Higuchi

Constitutional Norms and Civil Norms Surrounding

Economic Order

Nobuhisa Segawa

Free Market of Finance and Free Market of Ideas – Economic Order Viewed from Organization and Systems – Masanari Sakamoto	Research Note Recent Trials in Germany on Search Keyword Ads and Trademark Noriyuki Shiga
The Constitution and Market Economic Order – A Choice between Requirements for Establishing Market and Conditions of Market – Takao Suami	Compensation for Damages Caused by Patent Infringement in Taiwan Patent Law – Various Aspects of Discussions on Article 85 the Current Patent Law– Po-Chun Chen
Reexamination of Social Rights Mutsuo Nakamura	Data Reponses to Questionnaire on Orphan Works (the US) Tetsuya Imamura
Self-government, Autonomy, and Social Rights – Concerning the Subject of the Right to Exist Hiroshi Nishihara	Reponses to Questionnaire on Orphan Works Signe H. Naeve Translation: Tetsuya Imamura
Constitutional Grounds in the Analysis of Legal Policy Atsushi Tsuneki	Part III English Articles International Intellectual Property Seminar
Constitution and Economic Order –the Issues in the Interpretation Theory - Toshiyuki Munesue	EU IP Enforcement: Present and Future January 17, 2009 Comparative IP Academic Workshop 2009
Constitution and Economic Order in the Age of Globalization Hideki Mori	Debates on Introduction of "Fair use" to the Copyright Act of Japan and Korea. Do Japan and Korea need Fair use? Yeyoung Chang
Commercial Speech of the Government Tsunemasa Arikawa	Changes to the Civil Procedure Law and Regulations Prompted by Specialized Litigation: Regarding the United States and the Japanese Patent Invalidation Procedures Toshitaka Kudo
«Appendix» Q&A	
GCOE Note: Yoshiki Taeda · Masataka Yamamoto · Kwon Kihou	GCOE Note: Miki Ihara · Yohei Sato · Masato Aoki · Chiemi Kamijo

Feature: Intellectual Property Law Research V (Vol.22)

Message: Research Center for the Legal System of
Intellectual Property and IIPPS Forum

Ryu Takabayashi

Part I Symposium and Seminar International IP Symposium: EU IP Enforcement– Present and Future International Intellectual Property Seminar Highlights and Issues of New Chinese Patent Act Lecture Note: RCLIP International IP Strategic Seminar Recent Developments in U.S. and Europe Part II Thesis and Research Note Discussions The Scope of Examination in the Litigations to Cancel the Trial Decision Rejecting Patents Due to Novelty Motoki Kato The Effect of the Revision of the Copyright Law on Fine Arts – Article 47 (2) and Droit de suite – Akiko Ogawa Registration of a Three-dimensional Trademark and the Anticompetitive Effect – the Possibility of Unified Interpretation of Protection Requirements Concerning Three-dimensional Form – Asuka Gomi A Consideration on Works Made for Hire under the US Copyright Act – Who is the Owner of Sound Recordings – Kazuhiro Ando Adoption of Three-strikes Rule for Copyright Infringement in Various Countries Lea Chang Various Issues Including Intellectual Property Right in the Law of the People's Republic of China on Liability for Infringement of Rights Yu Fenglei

Introducing Research Projects (6)

In our Institute, various research groups independently promote activities under the keyword as "corporation, market, and civil society". This newsletter features the project overview of each research project group in series.

B. Research Center for the Legal System of Intellectual Property (Leader: Ryu Takabayashi)

B-1. IP Precedents Database / IP Theories Research

(1) Continuous and progressive development of an English-Language database of intellectual property judicial precedents

The Asian IP precedents database developed during the 21st Century COE period, which covers China, South Korea, Taiwan, Indonesia, Thailand, Vietnam, and India, has been handed down to the Global COE and is enhanced with judicial precedents of Europe (Germany, France, and Italy), which is the origin of Asian law systems. We do research on differences between common law and continental law countries as well as the recent trend of international harmonization. Specifically drawing upon Europe after the adoption of EU Directives, we reexamine the reception of IP law systems, harmonization of exercise of rights, and the

future legislation in Asian countries. In addition, new precedents will be added for Asian countries. The database includes English-speaking countries in Asia and Oceania other than India and has links with the existing English-language IP precedent DB. To distribute accomplishments, seminars will be held on individual countries, the precedents of which have been collected in the database, inviting lecturers from those countries.

(2) Promoting exchanges of opinions with academics and proposing intellectual property legal systems

We invite speakers from the countries which we collect IP precedents for the DB to hold workshops and symposiums in Japan. In addition, with the cooperation of leading institutes in Asian major countries, we exchange opinions with academics and legal professionals on the role of IP in economic development from the perspective of Japan's past experience as well as the current issues, based on the accomplishments described in (1). The ultimate purpose is to globally disseminate our proposals ideal intellectual property law systems.

(3) Transnational intellectual property seminars

Fostering young researchers is one of the key themes of the Global COE. We hold seminars on policy, theory, and practice, switching places among Asia, Europe, and the U.S. Using the precedents in the DB, we hold workshops inviting young researchers of related organizations, and mock trials with the participation of American and European judges. This will enable a broad range of students to understand IP legal issues from a comparative law approach and will provide the judges with opportunities to learn about the legal systems of other countries, promoting international harmonization.

(4) Disseminating information through newsletters and websites

The Research Center for the Legal System of Intellectual Property (RCLIP) reported on its activities by issuing a quarterly newsletter in Japanese and English and also posted the same information on its website. As the Global COE, we aim to share information by continuing these practices and increasing the frequency of reporting.

Project Leaders: Ryu Takabayashi, Tatsuki Shibuya, Toshiko Takenaka

B-2. International Trade Laws and IP Legislation

It is undeniable that coordination and harmonization of regulations in various countries concerning levels of protection of intellectual property rights have made great

advances, following the establishment of the WTO/TRIPs. However, considering other substantial laws concerning intellectual property in various countries, there are many disparities reflecting the differences in their industrial policies and cultural policies, and there still remain many outstanding issues concerning the effective exercise of rights.

As one means of reinforcing international protection of intellectual property rights, some conduct research projects to pursue common principles of private international laws concerning intellectual property rights including international jurisdiction, applicable law, and approval and enforcement of judicial decisions. On the other hand, in April 2002 the American Law Institute (ALI) approved "Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes - Proposed Final Draft" as one of its own projects, and Professor Rochelle C. Dreyfuss of New York University and Professor Jane C. Ginsburg of Columbia University played the central roles in performing this work. The final draft was adopted at the ALI conference on May 14, 2007 and published in June 2008. Also, the Max Planck Institute in Germany established a working group within the Max Planck Intangible Asset Research Center in 2001, and in 2005 it began preparing a European draft concerning the same issue as one of its strategic projects.

Our research has been conducted based on the results of the two above-mentioned projects, starting from an international symposium in 2007 which invited researchers from Japan and Korea. It has pursued common principles of private international law concerning intellectual property rights from East Asian perspectives in cooperation with the Chinese Private International Law Association. In the future, we hope to do research the legal and technological issues relating to the creation of technology transfer systems in East Asia based on the common principles identified through our research.

Project Leader: Shoichi Kidana

C. Research Center for the Corporate and Accounting System

C-1. Corporate Governance and Economic Analysis

When considering the ideal corporate society in the twenty first century, it is necessary to examine the relationship (corporate governance) between the corporation and the conduct of the various parties that make up the corporation (shareholders, employees, suppliers, customers, local

communities, etc.). It is also indispensable to consider what laws are necessary to achieve more effective corporate governance. In addition, presenting perspectives for developing the systems necessary for Japan's corporate society through these examinations requires investigations into the proper role of the corporation in civil society, taking into consideration the cultural and historical background in each country and identification of the differences in each country. In this sense, the methods of this research are in line with the one of the key features of this Institute, "conducting deep research into the civil society and the concepts such as history and philosophies in the background of the civil society, and searching for the most appropriate form in light of the results." We believe that proposing to the world a non-American type corporate governance model that takes into account the culture, history, and practices of individual countries will have substantial social significance.

With such a perspective, this project empirically analyzes the relationship between the corporate governance structures of Japanese corporations and corporate behavior and performance from economic and corporate finance perspectives and identifies the implications of desirable future corporate law and capital market law from the perspectives of economics and corporate finance theory. Specifically, the objectives are to elucidate the current status of changing corporate governance in Japanese corporations and comprehensively analyze the effect that those characteristics have on corporate performance and corporate behavior. With this objective, this team develops a corporate database and uses the database for empirical analysis.

Project Leaders: Hideaki Miyajima, Katsuyuki Kubo, Shinichi Hirota, Yasuhiro Arikawa

C-2. Changes of Corporate Activities and Disclosure, Accounting, Audit, and Internal Control

I. "The Conceptual Framework of International Financial Reporting Standards"

As capital markets around the world become increasingly globalized, the international convergence of accounting standards has become one of the most important issues. Views on the most suitable method of convergence, however, are not necessarily the same in different countries. It is not easy to maintain accounting standards as social norms in response to changes in economic society while keeping a balance between the globalization of capital

markets and the regulation of domestic markets. The relationship between domestic corporate law and tax law in particular cannot be ignored, but it is no doubt that International Financial Reporting Standards (IFRS) will increasingly be adopted as domestic standards in the future in line with the global trend towards convergence of accounting standards. What is most needed in the process of adopting and revising IFRS in accordance with changes in the economic society is reliable due process. It is global consensus concerning an accounting conceptual framework that will overcome political considerations and play a central role in this process. This research will consist of three core projects based on the above understanding: (1) the collection of accurate information concerning the application of IFRS in various countries; (2) the collection of broad and timely information concerning the results of the IASB conceptual framework project and recent IFRS; and (3) the clarification of a conceptual framework broadly underlying modern accounting through the process of relativizing and analyzing the information collected in (2).

II. "Fundamentals of Accounting Measurement"

When conducting the research described above, it is essential to identify the true meaning of "awareness and measurement" in accounting that is separated from accounting systems. This is because it is possible to relativize IFRS and the underlying conceptual framework only when these results are used as a coordinate axis.

"Professional Skepticism in Auditing" The question of what auditing methods should be used to detect improper financial reporting by management has become an extremely fundamental issue with respect to the roles and responsibilities of auditors. It is skepticism that exists as a fundamental issue in the background to this question. Is skepticism in auditing no more than an issue of the auditor's mindset or attitude, or does it include a fundamental framework relating to audit decision-making? The group seeks to address this issue continuously and ultimately will announce its joint research results with the cooperation of the Japanese Institute of Certified Public Accountants and audit corporations.

Project Leaders: Yoshihide Toba, Eiko Tsujiyama, Yoshinori Kawamura

C-3. Intellectual Property and Innovation

IP management for the creation of value is facing a new phase. More advanced and complex technologies are causing development costs to increase even as product

lifecycles are becoming shorter. The growth of R&D expenses is starting to exceed the growth of sales revenues, and as a result, the development of business models to recover development costs is becoming an urgent issue.

What is needed is an open innovation concept. Under the traditional closed structure, all processes from R&D to commercialization and sales were generally conducted independently. However, many technologies and intellectual property rights that did not match the company's business model remain unused under this structure. This is a loss to the company as well as to society. In this case, the company should use the technology strategically by licensing it to other companies, spinning it off and dividing the company, or selling it.

This type of problem is by no means limited to manufacturing industries. In the content industry, characters developed in Japan have been used in films produced in the United States and other countries, but suitable returns have been difficult to obtain. It is necessary to review the value creation and acquisition structures of earlier vertical integration models and create systems and structures that allow intellectual property to be used effectively (valuation of intellectual property, broker markets for intellectual property). As a research group in the management field, the group hopes to identify the implications of system design that take into consideration the use of intellectual property.

Project Leaders: Makoto Fujita, Tatsuhiko Inoue, Masami Taniguchi)

C-4. Japanese Corporate Governance: Historical Perspective

The objective of this project is to absorb the results of the 21st Century COE Program, empirically analyze at a higher level the relationship between the corporate governance structures of Japanese corporations and corporate behavior over the approximately one century since 1900, and identify the deeper economic implications with respect to appropriate corporate law and capital market law in Japan. Under the 21st Century COE Program, empirical analysis of the relationship between corporate and capital market law and corporate behavior was conducted using the “Waseda University Long-Term Micro Economic Database” to research the historical development of legal structures for protecting investors in Japan, shareholder structures and corporate performance, the characteristics

of corporate governance in pre-war Japan and its effectiveness. And further, research was conducted on mergers and acquisitions in prewar Japan based on the “Waseda University Long-Term M&A Database” that was launched in the final year of the prior program. The results of all of these projects were gathered in the COE series of books. This project seeks to deepen and refine the results of the above research topics by incorporating new international comparative perspectives and conducting more active joint research with experts in law. In addition, the database which is essential for performing and enhancing the research will be expanded and made available outside the university during the term of the Global COE Project. A body of empirical analysis that incorporates historical perspectives will provide insights into deeper implications, taking into account desirable corporate governance in Japan today and in the future as well as the relationship between corporations and corporate and capital market laws. too. The project is still in the preparatory stages.

Project Leader: Hideaki Miyajima, Nao Saito, Syunsuke Hanai

Symposium & Seminar

■IIIPS Forum IP Symposium

“Arts and Sciences: Confrontation to Cooperation – Exploring the Integrated Way of Exploiting Intellectual Property”
(2010/3/20)



【Moderator and Commentator】

Prof. Ryu Takabayashi, Faculty of Law, Waseda University
Prof. Toru Asahi, Faculty of Science and Engineering, Waseda University

【Speakers】

Prof. Syuji Nakamura, University of California, Santa

Barbara (UCSB)

Yoshio Kumakura, Attorney at Law, Nakamura & Partners
Prof. Tetsuya Osaka, Faculty of Science and Engineering,
Waseda University

This symposium was organized by Waseda University Institute for Interdisciplinary Intellectual Property Study Forum; IIIPS Forum and co-organized by RCLIP (Research Center for the Legal System of Intellectual Property, Waseda Global COE) and others, aiming at “exploring the integrated way of exploiting intellectual property” to mark the start of IIIPS Forum.

First, Professor Nakamura who is known as an inventor of blue LED made a keynote speech with the title of “experiences as an inventor and researcher in Japan and the U.S.”. He mentioned the differences between Japan and the U.S., from the perspectives such as the reality in lawsuits on the compensation for employee’s invention, business startup by researchers, and patent system. Next, “from the perspective as an attorney handling Japan-US IP disputes”, Attorney Kumakura spoke on the perspective of how arts should support research development of sciences. Last, comments were made from the commentators. As a researcher of arts, Professor Takabayashi commented that judicial role and judicial system should not be necessarily the same between the U.S. (a common-law country) and Japan (a continental law country). In the comment as a researcher of sciences to Mr. Kumakura’s report, Professor Asahi stated that it was necessary to build trust relationship between researchers and legal staffs to realize full support from legal staffs. In the Part II, first, Professor Osaka made a report on “Cases of R&D and commercialization through university-industry collaboration”. He pointed out that universities should focus on educational research, the research should be contributable to the development of related academic field even if it cannot be commercialized, the research should be attractive not only to businesses but also students, and the leading role in the research should be and the leading role in the research should be clarified. Next, Professor Koizumi spoke on the topics in the scenes where arts and sciences are confronting including judge and technology, employee’s invention and contract, compensation for non-execution, “from the perspective as a legal scholar”.

At the end of the symposium, a panel discussion took place with the all participants including speakers.

(Report made with the help of Motoki Kato)

■IIIPS Forum IP Symposium

“Departure from the Void between Arts and Sciences – Exploring the Nature of Design and the Future of Legal Protection” (2010/3/28)

This symposium was held as the second symposium of the IIIPS startup symposia. In the Part I, Professor Kazuo Kawasaki of Osaka University made a keynote speech with the theme of “Design Value as the Right to Create”. In the Part II, a panel discussion was held with the panelists: Professor Yoshiyuki Tamura of Hokkaido University, Mr. Yoshitaka Kawasaki, Director, Design Division of JPO, Mr. Tadao Mine, Patent Attorney, and Mr. Gomi Asuka, Patent Attorney. Professor Tetsuya Obuchi of University of Tokyo moderated.

In the keynote speech, Professor Kawasaki mentioned legal protection of design as “overall value”. He pointed out that we could not see enough value in Design Act when we only made an issue of the similarity in shape by simply drawing a picture of product. Then, on the premise that modern business models which are supported by copyright or patent have abandoned the responsibility of returning profit to the society and have lost morality, he proposed that we should place design right in the background of copyright or patent quite macroscopically and get back the lost ethics or aesthetics in profit structure by questioning ethics or aesthetics through design right. In the Part II, the main themes were ① significance and purposes of design protection, ② right or wrong to establishing non-examination system, and ③ the issue of the nature of an article. Professor Tamura, Mr. Kawasaki, and Mr. Gomi spoke on these themes.

After the speeches, a panel discussion took place moderated by Professor Obuchi. Opinions were exchanged on various issues such as the relations between design and demand, the issue of Isho’s visual, aesthetic or functional aspect, and the concept of article and immovable property.

(Report made with the support of Asuka Gomi)



■ Law and Society in Current/Former Socialist Countries —A Comparative Legal Analysis on the Present Situations, No.1

(2010/4/16)

From the perspective of comparative law, this project investigates “the issues of socialism” through theoretical overviews of the idea of “socialism as a system” that was established in the 20th century and through analyses of the present situations in current/former socialist countries that are in the process of transformation and development now in the 21st century. The first workshop invited Honorary Professor Taichirou Ohe of Shizuoka University and Professor Masataka Takemori of Gifu University as speakers with the theme of “Transition to Capitalism and Law in Russia”.

First, Professor Taichirou Ohe made a report about “Ownership and Power in Russia”. His report explained that authoritative order in modern Russia is closely related with the structure of ownership which has existed in the eras of Russian Empire, Soviet Union, and newborn Russia. Also he stated that the future democratization of Russia depended on the reform of the ownership structure. Next, Professor Masataka Takemori made a speech about “Political Power and Law in Russia” In his report, he overviewed the history of development of the '93 Russian Constitution and then, examined political and constitutional character of Putin administration that increased the tendency of authoritarianism while using a super presidential system in order to accomplish national unification and re-concentration in the tension between the vision and reality of the “establishment” of constitutionalism and the tension between the approach to Western democracy and “identity” of Russia. Then, Professor Hiromichi Hayakawa of Waseda University (Director of the Institute of Comparative Law) made a comment and after that, a discussion took place.

Organizer: Institute of Comparative Law, Waseda University

Co-organizer: Global COE, Waseda Institute for Corporation Law and Society

Support: Institute for Russian Studies, Waseda University

■Corporations, Markets, and Civil Liability

Workshop No. 8

(2010/4/24)

In the workshop, first, Professor Akio Yamanome of Waseda University made a speech on “the Concept of Product and Real Estate”. His report was about the significance and possibility of including real estate as the subject of product liability. It mainly discussed the reason why the product liability is limited to personal property.

Then, as a commentator, Mr. Yasushi Shimano of National Consumer Affairs Center of Japan made a comment on the circumstances of judicial cases under the current law, the different perspectives of practitioners and researchers, and the practical possibility of Professor Yamanome’s report.

Next, Associate Professor Mitsuo Tsuduki of Nanzan University talked about “A Consideration Concerning the Judgmental Framework and Legal Basis of Discharge of Contract in Hybrid Contract – Focusing on the Discussion on Subjectification of Cause in France-”. Both reports were highly suggestive to Japanese laws where the reform of liability laws is creating a major current.

Waseda Global COE Program

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