

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

UPDATE

Germany and Japan: A Legal Dialogue between Two Economies

(2011/10/21-22)

As one of various events to commemorate the 150th anniversary of exchange between Japan and Germany, this symposium was held on October 21 and 22 at Max Planck Institute in Hamburg, Germany. It was organized by German-Japanese Association of Jurists, Bucerius Law School of Max Planck Institute for Comparative and International Private Law, and Global COE Waseda Institute for Corporation Law and Society under the auspices of Japanese Consulate General in Hamburg.

From Waseda, Professor Tatsuo Uemura, Director of GCOE, and Professor Yoshiaki Kurumisawa, Professor Etsuro Kuronuma, Professor Katsunori Kai, Professor Mariko Kawano, and Professor Hiroshi Oda (Professor of University of London and Visiting Professor of Waseda University) participated in the symposium and delivered a speech. After individual speeches at each session, we had roundtable discussion and general discussion based on the speeches. In addition, Mr. Shunji Yanai, who is President of the International Tribunal for the Law of the Sea and former ambassador to USA, happened to participate in the symposium and had a special speech.



< Program >

Day 1: October 21, Friday

Welcome Addresses

【Theme】 Deutschland im Blickfeld Japans: die Wirtschaftsordnung 1860 bis 1914

【Speaker】 Knut Wolfgang Nörr (Tübingen University)

【Theme】 Wirtschaftsordnung und Rechtsentwicklung in der japanischen Modernisierung

【Speaker】 Yoshiaki Kurumisawa (Waseda University)

【Theme】 Long Term Continuous Contracts in Japan

【Speaker】 Hiroshi Oda (University of London)

【Theme】 Does Commercial Law Have a Future?

【Speaker】 Karsten Schmidt (Bucerius Law School)

Round Table Discussion

General Discussion

【Moderator】 Harald Baum (Max Planck Institute)

【Theme】 Corporate Directors' Liabilities towards Shareholders

【Speaker】 Etsuro Kuronuma (Waseda University)

【Theme】 Liability of Managing Directors under German Stock Corporation Law

【Speaker】 Holger Fleischer (Max Planck Institute)

【Theme】 Corporate Governance and the Capital Market (especially Takeovers)

【Speaker】 Tatsuo Uemura (Waseda University)

【Theme】 Takeover Regulation and Corporate Governance

【Speaker】 Christian Kirchner (Humboldt University)

Round Table Discussion

General Discussion

【Moderator】 Moritz Bälz (Goethe University Frankfurt)

Day 2: October 22, Saturday

【Theme】 Unternehmenstätigkeit und strafrechtliche Sanktionen – Vergleich der Corporate Compliance in Japan und Deutschland

【Speaker】 Katsunori Kai (Waseda University)

【Theme】 Corporate Compliance und Strafrecht in

Deutschland

- 【Speaker】 Thomas Rönnau (Bucerius Law School)
- 【Theme】 Legal Problems of Fighting Piracy: The Japanese Perspective
- 【Speaker】 Mariko Kawano (Waseda University)
- 【Theme】 Legal Problems of Fighting Piracy: The German Perspective
- 【Speaker】 Doris König (Bucerius Law School)

Round Table Discussion

General Discussion

- 【Moderator】 Maria v. Tippelskirch (University of Hamburg)



The Quarterly Review of Corporation Law and Society

The Quarterly Review of Corporation Law and Society Vol.29 (Dialogues with European M&A specialists on Takeover Rules) was published. It can be viewed at our webpage (most of them are in Japanese).

Feature: Dialogues with European M&A specialists on Takeover Rules (Vol.29)

Part I Symposium: Laborer’s Poverty and Roles of Social Law - Cross-section of Labor Law and Social Security Law Unstable Employment, Single Mother and “Social Contract”

Lucy Williams

Translation: Yusuke Tsunemori

The Necessity of Developing Preconditions for “Social Contract” and “Self-reliance” —the Significance of Williams Paper—

Yoshimi Kikuchi

Unstable Employment in the Postindustrial Era and Roles of Labor Law and Poverty Law

Karl Klare

Translation: Toshiharu Suzuki

Reconsidering Social Law – the Relationships between Labor Law and Social Security Law –

Hirokuni Tabata

Employment and Poverty – Towards New Social Law

Makoto Ishida

Part II Dialogues on Takeover Rules with European M&A Specialists

Introduction: Hiroyuki Watanabe

(1)French Takeover Rules and Practices① ~Interactions between Market Practices and Takeover rules (Interview with French M&A lawyers)

Hubert Segain, Edouard Thomas, Hiroyuki Watanabe
 (2)French Takeover Rules and Practices②~ Strategies of the Offeror, Target Company and Minority Shareholders (Interview with French M&A lawyers)

Olivier Diaz, Emmanuel Brochier, Bertrand Cardi, Hiroyuki Watanabe

(3)French Takeover Rules and Practices③ ~From a M&A Banker’s Standpoint (Interview at Société Générale)

Laurent Meyer, Hiroyuki Watanabe

(4)Issues in German Takeover Law (Interview at the Max Planck Institute)

Harald Baum, Christoph Kumpan, Felix Steffek, Hiroyuki Watanabe

(5)Regulatory Philosophy behind German Takeover Law

(Interview with Professor Mülbert) Peter O Mülbert, Hiroyuki Watanabe

(6)The Reality of German Takeover Law and Practice

(Interview with German M&A lawyers)

Joachim von Falkenhausen, Dirk Kocher, Hiroyuki Watanabe

(7)The Comparison and the Reality of German and the UK Takeover Law (Interview with German and English M&A lawyers)

Michael Burian, James Robinson, Hiroyuki Watanabe

Part III Japan-Korea Comparison / International IP Law Research (8)
 IP Law and Private International Law Symposium
 The Principles of Private International Law on Intellectual Property Right - Focusing on the Japan-Korea Joint Proposal -
 Waseda GCOE Research Group's "the Principles of Private International Law on Intellectual Property Right (Japan-Korea Joint Proposal)"
 General Provisions in the Japan-Korea Joint Proposal
 Yoshiaki Nomura
 International Jurisdiction in the Japan-Korea Joint Proposal
 Shunichiro Nakano
 Applicable Law in the Japan-Korea Joint Proposal
 Kwang Hyun SuK
 Recognition and Enforcement of Foreign Judgment in the Japan-Korea Joint Proposal
 Lee Gyooho

Discussion

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THE CRIP PRINCIPLES-SUMMARY OF THE PROJECT
 Annette Kur
 Law Applicable to Copyright Infringements in the ALI and CLIP Proposals
 Rita Matulionyte

Part IV Individual Articles

Current Conditions and Challenges of Internal Control System in Corporate Law System in China
 —Through Analysis of Fundamental Rules and Guidelines of Corporate Internal Control—
 Jin Jing

Suggestion to Human Resource Management Theory from "Trade Secret" under Unfair Competition Prevention Act
 Akito Yoshizawa

GCOE Note

Symposium & Seminar

■East Asia Maritime Law Forum 2011

(2011/9/10-11)

This forum is an international conference on East Asian Maritime Law, aiming at the establishment of research network in East Asia, mainly Japan, China, and Korea. It was first held in Japan in 2008, co-organized by Global COE, Institute of Maritime Law, and Institute of Comparative Law, Waseda University. The second forum was held in October 2009 in China and the third form was held in Korea. The fourth forum was held at Waseda this time. This forum has invited not only researchers but also practitioners and has picked up practical problems among three countries. This time, speakers from each country had a speech respectively and exchanged opinions.

< Program >

Day 1

Opening Remarks:

Koji Tsubaki, Director of Institute of Maritime Law, Professor of Waseda University
 Tatsuo Uemura, Director of GCOE, Professor of Waseda University
 Waichiro Iwashii, Dean of School of Law, Professor of Waseda University

Commemorative Speeches

Lee-Sik Chai, Professor of Korea University, former Chairman of Legal Committee IMO
 Si Yu-Zhuo, Prof. and former President, Dalian Maritime University

Speech: Trends of Maritime Law in Japan, China, and Korea

【Moderator/commentator】

Kenjiro Egashira, Professor of Waseda University, Director of the Maritime Law Association of Japan
 【China】 Shan Hongjun, Prof., Dalian Maritime University
 【Korea】 Kim Hyun, Attorney at law
 【Japan】 Takashi Aihara, Professor of Kansai Gakuin University

Day 2

Symposium 1: Various Issues Related to Applicable Law and Jurisdiction in Maritime Affairs

【Moderator】 Hiroshi Kimura, Attorney at law, Visiting Professor of Waseda University

【Speakers】

Hu Zhengliang, Professor of Shanghai Maritime University
Kang Jongku, Attorney at law

Akiyoshi Ikeyama, Attorney at law, Lecturer at Waseda University

Symposium 2: Various Issues Related to Legislation on International Multimodal Transport Contract

【Moderator】 Seiichi Ochiai, Professor emeritus at the University of Tokyo, Professor of Graduate School of Law, Chuo University

【Speakers】

Guo Ping, Professor of Dalian Maritime University

In-Hyeon Kim, Professor of Korea University

Souichiro Kozuka, Professor of Gakushuin University

【Co-host】

Institute of Maritime Law, Comprehensive Research Organization of Waseda University

Global COE, Waseda Institute for Corporation Law and Society

■ East Asian Research Workshop: East Asian Competition Laws and International Enforcement

(2011/09/13)

【Venue】 Campus Plaza Kyoto

Opening Remarks: Prof. Suami, Takao (Waseda University)

Welcome Speech: Prof. Okada, Toshihiro (Waseda Univ.)

Session I: Chinese Antimonopoly Law and Extraterritorial Application

(1) National and Transnational Dynamics: The Interplay from the Perspective of China's AML

Prof. Wang, Xiaoye (Chinese Academy of Social Sciences)

(2) Some Comparative Analysis on the Extraterritorial Application of AML

Prof. Xu, Shiyang (East China University of Political Science and Law)

Session II: Korean Antimonopoly Law and Extraterritorial Application

(1) Extraterritorial Application of Antimonopoly Law : General Issue and Merger Control

Prof. Shin, Hyun Yoon (Yonsei University)

(2) Extraterritorial Application of Cartel Prohibition

Prof. Kwon, Ohseung (Seoul National University)

Session III: Japanese Antimonopoly Law and Extraterritorial Application

(1) Extraterritorial Application of Antimonopoly Law: General Issue and International Cartels

Prof. Tsuchida, Kazuhiro (Waseda University)

(2) Extraterritorial Application of Antimonopoly Law to International Mergers

Prof. Ochi, Yasumi (Waseda University)

■ “Constitution and Economic Order” Workshop No.15 (2011/9/18)

This workshop invited Professor Toru Nakajima at Waseda University and Professor Koji Aikyo at Nagoya University as speakers to have a speech respectively.

First, Professor Nakajima spoke on the theme of “the Great East Japan Earthquake from the Perspective of the Constitution – an Attempt”. This presentation took up the two topics: “fishery right” and “TTP and agriculture” as the issues to be discussed from the perspectives of the Constitution and economic order. The issue was whether the fishery right should be considered as a property right guaranteed under the Constitution based on the ground that the fishery right is a type of common right. It would be revealing the issue of modernization of the rights which have not been modernized at the Supreme Court. As to the issue of agriculture and reconstruction + TTP, he stated that “in contrast to the issue of fishery right, farmland ownership which was modernized by the land reform led to a decrease of farmland area and the creation of unused farmland, and paradoxically, the voice of ‘ownership to utilization’ came from the financial community calling for the emancipation of farmland”. Then, he discussed how to consider this issue.

Next, Professor Koji Aikyo spoke on the theme of “the Historical Conditions of the Theory of Political Constitution - an Aspect of ‘the Constitution and economic order’ in the UK”. He defied that political constitution focused on pursuing political responsibility through political system such as the parliament in contrast to legal constitution which expects laws and courts to be main means and systems of questioning government’s responsibility. He mentioned various academic theories on political constitution in the UK and also explained about its historical background – “postwar system” in the UK.

■ **The JASRAC Open Lecture of 2011 No.1**
“Constitutional Dimension of Copyright Law and Protection of Users”

(2011/9/24)



Copyright protection covers a wide range of works from traditional literary works and artworks to technical computer programs and so forth. Facing an age of digitalization, the way of using copyrighted works become diversified. At the same time, the response to copyright infringement should be more than monolithic in the current conditions. There are lots of issues to be examined concerning the way of balancing protection and usage of copyright including the discussion about the pros and cons of adopting a so-called Japanese version of fair use doctrine.

Under such conditions, the third JASRAC Open Lecture consecutively invites the leading IP law practitioners and academics from Japan and abroad as speakers to have discussions on urgent issues surrounding copyright infringement in the form of symposium (a four-time series: September 24, October 15, November 19, December 3, 2011). The first symposium focused on the constitutional dimension of copyright law as a clue to resolve various problems in the interpretation and operation of copyright law. Introducing the discussion of “Constitutional Dimension of Copyright Law” seeking a balanced protection of interests of related parties, the symposium aimed to gain suggestions for resolving similar problems in Japan through a panel discussion.

【Theme】 “Constitutional Dimension of Copyright Law and Protection of Users”

【Moderator】 Ryu Takabayashi, Professor of Waseda University

【Speaker】 Christophe Geiger, Associate Professor of University of Strasbourg

Lea Chang, Assistant Professor of Tokyo City University

【Commentator】 Masahiro Kurita, Associate Professor of Ryukoku University

【Host】 Waseda Law School

【Co-host】

Global COE, Waseda Institute for Corporation Law and Society, Research Center for the Legal System of Intellectual Property (RCLIP)

Institute for Interdisciplinary Intellectual Property Study Forum (IIPS Forum)

※For the detail, please see the Newsletter by Research Center for the Legal System of Intellectual Property.

■ **Protection of Shareholders, Creditors, and Laborers at Corporate Reorganization – German Regulations**

(2011/10/4)

In Japan, corporate reorganization such as merger became easier by the Companies Act of 2005. On the other hand, we see many cases in which minority shareholders, creditors and laborers of companies suffer damage or disadvantage. Therefore, Justice Ministry's Legislative



Council (Corporate Law Subcommittee) is currently having discussions on these issues. In Germany, Business Reorganization Law was enacted in 1995 to protect shareholders at corporate merger and separation. Aiming to learn the current conditions in Germany and have

suggestions for the ideal shape of the future Japanese regulations, this lecture invited Rüdiger Veil, Professor of Bucerius Law School as a speaker to explain about German regulations and practices.

【Speaker】 Rüdiger Veil, Professor of Bucerius Law School

【Program】

Opening Remarks: Tatsuo Uemura, Professor of Waseda University, Director of Global COE Waseda Institute for Corporation Law and Society

Introduction of Speaker and Purport of the Speech:

Shosaku Masai, Professor of Waseda University

Speech:

Rüdiger Veil, Professor of Bucerius Law School

■ The JASRAC Open Lecture of 2011 No.2

“Modern Issues Surrounding Moral Rights”

(2011/10/15)

We invited Ms. Machiko Satonaka, comic artist, to have a lecture on what moral rights (especially, rights of integrity) mean to authors and comic artists and to what extent the rights should be protected. Then, Ms. Reiko Nagao, the Japan Writer’s Association, made comments. In the panel discussion, the panelists had a free discussion about modern issues of moral rights arising in various shapes in the digital society. Especially the discussion had an emphasis on the issue of protection of moral interests after author’s death that had been frequently disputed.

Part I Moral Rights from the Perspective of Author

【Theme】 “Moral Rights for Comic Artist”

【Speaker】 Machiko Satonaka, comic artist, Professor of Osaka University of Arts, Intellectual Member of Property Strategic Headquarters, Cabinet Office, Member of the Cultural Affairs Council of the Agency for Cultural Affairs

【Commentators】 Reiko Nagao, the Japan Writer’s Association

Part II Modern Issues Surrounding Moral Rights (panel discussion)

【Panelists】 Tatsuhiro Ueno, Professor of Rikkyo University / Ryoichi Mimura, former Judge of IP High Court; attorney at law

【Moderator/Panelists】 Eiji Tomioka, attorney at law / Tetsuo Maeda, attorney at law

※For the detail, please see the Newsletter by Research Center for the Legal System of Intellectual Property.

■ Seminar: Revision of Korean Company Law

(2011/10/29)



In Korea, major revision has been made recently in commercial code and company law. This revised Korean Commercial Code is profoundly affected by Japan. This

seminar invited researchers who took main roles in the revision of Korean Commercial Code to introduce the most updated conditions surrounding Korean Commercial Code and Corporations.

【Program】

Opening Remarks: Tatsuo Uemura, Professor of Waseda University, Director of Global COE Waseda Institute for Corporation Law and Society

Explanation of Purport: Yasuhiro Osaki, Professor of Waseda University

Song Jong Joon, Professor of Chungbuk National University

“Major Changes of Korean Revised Company Law and the Future Challenges”

Kim Soon Suk, Professor of Chonnam National University
“New Development of Types of Companies, Class Shares, and Corporate Bond System under Korean Commercial Code”

Kwon Jae Yeol, Professor of Kyunghee University

“Examination on Provisions Pursuing Balance with Global Trend under the Revised Commercial Code – Focusing on Accounting System”

Yang Man Sig, Professor of Dankook University

“Korean Revised Company Law and Changes of Control Structure”

Panel Discussion

■ Codification of Consumer Law:

A Lecture by Professor Philip Stoffel-Munck

(2011/10/27)

【Speaker】 Philip Stoffel-Munck, Professor of Université Paris 1

【Theme】 Codification of Consumer Law (*La codification du droit de la consommation*)

【Moderator】

【Moderator and Commentator】 Makinori Goto, Professor of Waseda University

【Interpreter】 Kazuma Yamashiro, Assistant Professor of Waseda University

Aiming at present a proposal toward the theory of codifying consumer law in Japan, in the light of the experience of French Law which has an independent law called Code de la consommation, we invited Professor

Philip Stoffel-Munck at Université Paris 1 to speak with the theme of “Codification of Consumer Law (La codification du droit de la consommation)”.

The lecturer’s basic position was that “consumption (consumer) law originally aimed at protection of individual interests but today’s development could be fully understood only when it was examined from the perspective of “market law”. From that perspective, he saw the category of “consumer” as an object instead of individual concrete consumer protection conducted in civil law and proposed that it would be reasonable to provide an independent code instead of integrating consumer law into civil law. In the lecture, he mentioned the contents and grounds as to the difference between French civil code and consumer law and also explained uniqueness and features of consumer law.

■2011 Social Law Workshop No. 2: The Position of Employment in Social Security



(2011/10/29)

【Speaker】 Satoshi Nishitani, Professor Emeritus of Osaka City University

【Theme】 Significance of Labor and Future Welfare State

【Speaker】 Ikuko Mizushima, Associate Professor of Osaka University

【Theme】 Unemployment / Poverty and Social Security— Focusing on Income Security for Job Seekers

Social Law Research Group is conducting examination towards the establishment of new social laws combining labor law and social security law, in order to deal with increasing economic gap or poverty triggered by the recent global economic crisis. This workshop was held as part of this effort.

First, Professor Makoto Ishida of Waseda University gave the opening speech. Then, Professor Satoshi Nishitani presented on the theme of “Significance of Labor and Future Welfare State”. In his talk, Professor Nishitani talk

about the necessity of developing integrated “social law” combining labor law and social security law in order to achieve “decent work as constitutional rights”. Next, Professor Ikuko Mizushima spoke on the theme of “Unemployment / Poverty and Social Security—Focusing on Income Security for Job Seekers”. Concerning the recently-developed job seeker support system, she introduced the detail of the system and how the system is theoretically positioned in the whole picture of social security law and labor law.

 ※The following section introduces other major regulatory workshops(May-July). Please visit our website for the future schedule of workshops and registration information.

■Financial Instruments and Exchange Law / the US Capital Market Legislation Workshop

2011/09/05 (No. 35)

【Speaker】 Tatsuo Uemura, Professor of Waseda University

【Theme】 Corporation Law System and Capital Market (the theme which was presented at Japan Association of Private Law)

2011/09/22 (No. 36)

【Speaker】 Tamaki Kakizaki, Professor of Toyo University

【Theme】 Whistleblower Incentive Program under the Dodd-Frank Act and Compliance Management

2011/10/27 (No. 37)

【Speaker】 Tsutomu Sato, Professor of Nanzan University

【Theme】 Separation of Voting Right from Economic Benefit of Shares

■Commercial Law Workshop

2011/08/22

【Speaker】 Keisuke Matsuoka, Professor of Senshu University

【Theme】 Tokyo District Court’s Decision on February 18, 2010, Hanrei Times vol. 1330, p.275 (Paint House Case) The case of considering fictional increase in capital of listed company as fraudulent means stipulated in Article 158 of former Securities and Exchange Act

【Speaker】 Masahiro Yamashita, Professor of Osaka University

【Theme】 Tokyo High Court’s Decision on October 27, 2010, Kin-yu Hanrei vol.1355, p.42 (Uni PR Case) The case of approving the first trial decision that admitted

the cancellation of company split because it was prejudicial act.

2011/09/15

【Speaker】 Madoka Shimizu, Associate Professor of Ritsumeikan University

【Theme】 Tokyo District Court's Decision on April 14, 2011, Siryo-ban Shojihomu vol. 328, p.64 (The case of requesting cancellation of the resolution of HOYA shareholder meeting)

Rejecting resolution of shareholder meeting and a request to cancel the resolution

【Speaker】 Nobuo Nakamura, Professor of Waseda University

【Theme】 Nagoya District Court's Decision on May 14, 2010, Hanrei Times vol.2112, p.66

Liabilities in damages of “de facto director” based on analogy application of Article 429-1 of Companies Act

2011/10/17

【Speaker】 Hideo Kikuta, Associate Professor of Surugadai University

【Theme】 Tokyo High Court's Decision on January 26, 2011, Kin-yu Hanrei vol. 1363, p.30

The case to reject the standing to sue on invalidation of company split regarding remaining creditors of incorporation-type company split

【Speaker】 Hironao Fukushima, Professor of Waseda University

【Theme】 Tokyo District Court's Decision on January 26, 2011, Siryo-ban Shojihomu vol. 324, p.70

Non-existence of shareholder meeting resolution and confirmed resolution (the case of requesting non-existence of a resolution of InStyle's shareholder meeting)

■ French Corporate Legislation Workshop

2011/10/22

【Speaker】 Tomoko Furukawa, Associate Professor of Hiroshima Shudo University

【Theme】 The judgment of the Court of Cassation on March 30, 2010, Bull. civ., IV., no 69.

Fault of directors who participated in decision making of company at fault and extinctive prescription of responsibilities of de facto directors.]

【Speaker】 Masako Kiyoshiro, Associate Professor of Wakayama University

【Theme】 The judgment of the Court of Cassation on October 26, 2010, RTD com., no 1, 2011, p. 126, note Paul Le Cannu et Bruno Dondero.

Validity of special shareholder meeting's resolution without a report of directors meeting that should be submitted

【Speaker】 Tomonori Shiraishi, Associate Professor of Hakuoh University

【Theme】 The judgment of the Court of Cassation on February 8, 2011, Rev. soc. 2011, p. 288, note Paul Le Cannu; D. 2011, 515, obs. A. Lienhard.

The extinctive prescription of the right to request the validation of Conflict-of-interest transactions without permission of directors meeting

■ **Organizational and Financial Economics Seminar 2011**(Co-organized by Research Institute of Contemporary Japanese Systems, Waseda Institute for Corporation Law and Society, and Institute of Financial Studies)

2011/10/24

【Speaker】 Takaaki Hoda, Otaru Business School, Otaru University of Commerce

【Theme】

Positive analysis on public stock offering in Japan

Impact of investor sentiment and the ratio of floating stock on price formation of IPO stock

Waseda Global COE Program

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