

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

## International Comparative Law at University of Sao Paulo

An international symposium was held on comparative law at University of Sao Paulo in Brazil, on October 22, 2012. From our GCOE Institute, Professor Tatsuo Uemura of Waseda University, who is Director of Waseda Global COE, Waseda Institute for Corporation Law and Society, and Professor Hiroshi Oda, University College, University of London, Visiting Professor of Waseda University were invited as speakers. This symposium was held as the 9<sup>th</sup> Meeting of the Chair of Japanese Studies Mitsui Bussan, organized by the Institute of International Law and International Relations and Chair of Japanese Studies Mitsui Bussan, Faculty of Law, University of Sao Paulo (FDUSP) and Faculty of Law, Waseda University under the auspices of the Department of International and Comparative Law, Faculty of Law, University of Sao Paulo and the Institute of Comparative Law and the Brazil-Japan Chamber of Commerce and Industry Japanese in Brazil.

Professor Kazuo Watanabe at University of Sao Paulo chaired the first session. Professor Tatsuo Uemura made a speech on "Corporate Governance in Japan".

Professor Uemura explained about Japanese corporate law and its amendment, comparing to the US. Securities market and stock companies constitute a unified body. It is a necessary premise that stock companies must respond to the requirements by securities market, and Securities and Exchange Act is a law for securing a market function. Depending on what extent we make use of securities market and trust it, the requirements to stock market law system will vary. In addition, management purpose, philosophy, result, and governance are required to carry out information disclosure, accounting, and auditing which securities market requires. The importance of the management that meets shareholder's expectation was mentioned in the speech.

Commentator: Carlos Portugal Gouvea (FDUSP)

The second session was chaired by Professor Fabio Nusdeo (FDUSP). Professor Hiroshi Oda (University College, University of London) presented on the theme of "Several Issues Concerning Arbitration in Japan".

Citing concrete numbers such as the number of arbitration and the ratio of arbitrations, Professor Oda elaborated on the activities of International Chamber of Commerce and International Court of Arbitration. Furthermore, he explained the current state of the use of arbitration organs by Japanese corporations.

Commentator: Professor Dr. Daniela Monteiro Gabbay, Getulio Vargas Foundation (FGV).



### [Forthcoming Book: Comparative Company Law -A Case-Based Approach]

A case book on comparative company act will be published at the beginning of 2013 by Hart Publishing. Professor Hiroyuki Watanabe, Waseda GCOE, participated as coauthor.

This book has an interesting format. Researchers in 10 countries in Europe, the US, and Japan respectively present hypothetical case and provide answers to each case. Then, the person who provides case conducts comparative law analysis based on the answers. Furthermore, to clearly highlight characteristics of company laws in each country, a new analytical method is also taken, which was recently developed by members of research group at Cambridge University including the editor of this book and are attracting attention. This book is very useful for those who need to know the characteristics of those countries from the practical and theoretical perspectives.

"Comparative Company Law -A Case-Based Approach"

Edited by Mathias Siems and David Cabrelli

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**The Quarterly Review of Corporation Law and Society**


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The Quarterly Review of Corporation Law and Society Vol.33 (Transnational Market and Publicness) was published. It can be viewed at our webpage (most of them are in Japanese).

**Feature: Transnational Market and Publicness (Vol.33)**  
 Message Shoichi Kidana

Part I Transnational Market and Publicness  
 The Purpose of the Symposium Yoshiaki Kurumisawa

The Logic of Market and the Logic of Democracy in  
 Corporate Law System Tatsuo Uemura

Nationality and Transnational Market Rolf Knieper  
 Legal Issues of TPP from the Viewpoint of Transnational  
 Public Governance Jane Kelsey

Comment Seigo Hirowatari  
 Comment on Professor Jane Kelsey's "Legal Issues of TPP  
 from the Viewpoint of Transnational Public Governance"  
 Akio Shimizu

Part II ISFR —Modern Issues Surrounding IFRS  
 Masaki Yoneyama, Tatsuo Uemura, Eiko Tsujiyama, Yuri  
 Biondi, Tomo Suzuki

Part III The Current Conditions and Issues in Compliance  
 The Current Conditions and Issues in Compliance  
 —The Direction of Corporate Compliance and Legislative  
 Controls Katsunori Kai  
 Survey on Corporate Compliance

Part IV Japan-Korea Comparison / International IP Law  
 Research (9)

Limitations on Transfer and Licensing of Patent Technology  
 in Taiwan Chang Minghuang  
 The Third Revision and Proposal of Chinese Copyright Law  
 Li Mindge

Various Issues of IP and Information Management in  
 Solution Business in China Masatoshi Nishida  
 The Significance of Contract as Preventive Measure  
 against Outflow of Technologies Yasushi Ishizuka  
 Technology Transfer Management in China  
 —Raising Issues from Practical Perspectives—  
 Ko Wakabayashi

Legal Issues Concerning Licensing and Technology  
 Transfer under "Private International Law Guideline on  
 Intellectual Property Right (Japan-Korea Joint Proposal)"

Lee Gyuhoo  
 Private International Law Principles Concerning Intellectual  
 Property Right and Licensing/Technology Transfer

Shunichiro Nakano  
 Legal Issues in Licensing and Technology Transfer under  
 Korean Private International Law

Rho Tae-Ak  
 Significance of the Laws of the Country Where Protection Is  
 Claimed in the IP precedents in Japan

Yoshiaki Nomura  
 Part V Japan-China Maritime Law Joint Workshop  
 The 7<sup>th</sup> Japan-China Maritime Law Joint Workshop<sup>13</sup>  
 Recent Trends in Chinese Maritime Law

Zhang Yongjian  
 Translation Supervision and Comment: Norio Nakamura  
 Translation: Shi Hengzhi  
 The 7<sup>th</sup> Japan-China Maritime Law Joint Workshop<sup>14</sup>  
 Legal Issues Concerning Insurance of International  
 Multimodal Transport in China

Zhang Jinlei  
 Translation Supervision and Comment: Miyuki Fukuda  
 Translation: Li Xiaonan

Shan Hongjun, Professor of Dalian Marine University  
 Comment: Teruyuki Sago, Attorney at law, member of  
 Institute of Maritime Law  
 Lecture (3): Marine Insurance in China  
 Speaker (3): Zhang Jinlei, Full-time Lecturer at Dalian  
 Marine University

Part VI Individual Articles and Translations  
 'Humanising' the Intellectual Property System  
 —Securing a Fair Balance of Interests through  
 Fundamental Rights at European and International Level—  
 Christophe Geiger  
 Translation: Lea Chang

Regulations on Insider Trading in China  
 —Focusing on Judicial Interpretation  
 Chen Jingshan  
 Publishing Contracts and Publisher's Rights in UK  
 —Suggestion to the Discussions on Granting of the Rights  
 to Publishers in Japan

Tetsuya Imamura  
 Historical Development of Independent Directors System  
 under the US Investment Company Act  
 —from its enactment to 1970's (1)

Masato Shimizu  
 Supervision on Governance of Public-listed Companies in  
 Australia  
 —Focusing on Supervision by Australian Securities &  
 Investment Commission

Takamune Hayashi

GCOE Note

## Symposium & Seminar

### ■“Constitution and Economic Order” Workshop No.20 (2012/09/16)

The “Constitution and Economic Order” Workshop No.20 invited Professor Kouichi Aoyagi at Meiji University and Yasuyuki Watanabe, Professor at Hitotsubashi University as speakers.

First, Professor Aoyagi spoke on the theme of “Redistribution of goods – preliminary consideration”. Concerning the major theme such as redistribution of goods, he focused on three persons: Rawls, Sen, and Dworkin and examined their fundamental ideas and criticisms against them, mainly concerning the theory of capability. In the QA session, various topics were discussed including the difference between constitutional interpretation and constitutional policy.

Next, Professor Watanabe spoke on the review criteria as to conformance to the principles of separation of politics and religion—organizing and analyzing case law doctrine—. He subdivided Japanese cases about separation of politics and religion. Then, based on such a sub-classification, he examined that what types brought the issue of separation of politics and religion into conflict the most and how courts and the Supreme Court reacted. Also, he stated that it was possible to attempt a two-tiered approach in organizing the review framework of separation of politics and religion, from the analysis of cases. Vigorous discussions were made on the issues including usefulness or strategic risk of two-tiered framework as such, and the understanding of the Supreme Court on this matter.

### ■Brazil IP Seminar

(2012/09/20)

【Program】

Opening Remarks

Mr. Kazuhiro Ando, Waseda University IIIPS-Forum,  
Visiting Senior Researcher

Professor Ben Hauptman, Franklin Pierce Law Center

<Part I>

“Trends and Issues on Brazil Trademark and Copyright Law”

Mr. Roberto Carapeto, Brazilian Attorney /Waseda  
Graduate School of Law

<Part II>

“Recent improvements on patent examination activity by the Brazilian Patent Office”

Mr. Luiz Otavio Beaklini, Brazilian National Industrial  
Property Institute (INPI) General Coordinator of the Quality



<Part III>

“The Brazilian patent system: Lessons from the recent past, current issues & planning for the future”

Mr. Otto B. Licks, Licks Attorneys Partner

Closing Remarks

Mr. Kazuhiro Ando, Waseda University IIIPS-Forum,  
Visiting Senior Researcher

【Organizer】 Franklin Pierce Law Center, School of Law,  
University of New Hampshire

【Co-organizer】 Waseda Global COE, Research Center for  
the Legal System of Intellectual Property (RCLIP)

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

### ■The JASRAC Open Lecture of 2012 No.1

(2012/10/6)

Part I

【Theme】 International Consideration on Public  
Transmission Right in the Age of Cloud

As result of the development of cloud technology, we see a growing importance of the issues surrounding public transmission rights or right to make transmittable on the Internet. As to the transmission on the Internet, WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (1996) have already accomplished a certain harmonization. However, considering the rights stipulated in national laws, it seems that their concrete contents do not necessarily correspond. This symposium

aimed to clarify the international positioning of public transmission rights under Japanese Copyright Law in comparison with Europe or the US and to examine the ideal shape of public transmission rights in the age of cloud.

**【Moderator】**

Tatsuhiko Ueno, Professor of Rikkyo University

**【Speakers】**

Shigeki Chaen, Professor of Osaka University

Koji Okumura, Associate Professor of Kanagawa University

**Part II**

**【Theme】** The Acceptable “Minor” Use of Copyrighted Works within Companies

Triggered by increasing recognition of corporate compliance, there is a growing concern as to whether there is a scope for allowing “minor” business use of documents or web-published materials within companies or if so, to what extent. Traditionally, it was understood that the provision in Article 30 (private copy) of Copyright Act was not applicable to copying within companies or work-related copying. However, a way of considering the Article flexibly to a certain extent is arising. Concerning the topics as such, we had a free discussion at this seminar.

**【Moderator】** Tetsuo Maeda, Attorney at law

**【Speakers】**

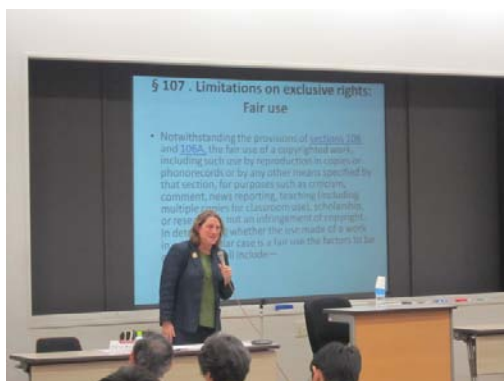
Hiroki Saito, Attorney at law

Yoshiyuki Miyashita, Attorney at law

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

**■The JASRAC Open Lecture of 2012 No.2**

**(2012/10/13)**



**【Theme】** Criticism, Commentary and Just for Laughs: Fair

**Use and Humor in US Copyright Law**

We invited Professor Jane C. Ginsberg at Columbia University School of Law to speak on the theme of “Criticism, Commentary and Just for Laughs: Fair Use and Humor in US Copyright Law”.

**【Moderator】** Akiko Ogawa, Research Associate, Waseda University

**【Speaker】** Jane C. Ginsberg, Professor at Columbia University School of Law

**【Comments】** Yasuto Komada, Professor at Sophia University

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

**■Festschrift Conference in Honor of Prof. Haley  
“Law in Japan and its role in Asia: Between East and West Sponsored by Waseda Faculty of Law”**

**(2012/10/22)**

Waseda University Faculty of Law hosted “Festschrift Conference in Honor of Prof. Haley, Law in Japan and its role in Asia: Between East and West” in celebration of Professor John O. Haley who received The Order of the Rising Sun (it was co-organized by Univ. of Washington School of Law, and Asian Law Center).

Professor Haley has served as Director of the Asian Law Center (1974-2000) and significantly contributed to the discipline of Japanese law and education to Japanese legal professionals and academics. Among many distinguished articles and books, “the Myth of the Reluctant Litigant” (Journal of Japanese Studies, Vol.4, No.2, 1978) which was later published also in Japanese translation gave a great impact to Japanese practitioners and scholars.

This conference comprised of two parts: Part I focused on the function of judiciary in Japanese law and its impact to Asian law; and Part II looked to the whole Asia and discusses its judicialization.

**<<Program>>**

**【Welcome Speech】**

Dean Waichiro Iwashii, Waseda Faculty of Law

Dean Kellye Testy, University of Washington School of Law  
Congratulatory Speech

Judge Atsuo Nagano, Director-General of the Civil Affairs Bureau, Supreme Court of Japan, Tribute to Prof. Haley

(2012/10/27)

Role of Courts in Law in Japan and its Influence in Asia

Moderator: Prof. Kyoko Ishida (Waseda University)

## 【Keynote Speech】

Prof. John O. Haley, Vanderbilt University, Former  
Director of Asian Comparative Law Program of  
University of Washington

## 【Keynote Speech】

Justice Emeritus Itsuo Sonobe, Former Japanese  
Supreme Court Justice

Comments:

Prof. Shigeo Miyagawa, Waseda University

Prof. Daniel Foote, University of Tokyo

Yoshihiro Otsuji, National Graduate Institute for Policy  
Studies

Masahiro Iseki, Kyoei Law Office

Judicialization in Asia

Moderator: Prof. Toshiko Takenaka (University of Washington)

## 【Speech】 Role of Precedents in Chinese Law

Prof. Donsheng Zang, University of Washington

Comments: Prof. Ryu Takabayashi, Waseda University

【Speech】 Judicial Use of “Religious Arguments” in Islamic  
Asia

Prof. Clark Lombardi, University of Washington

Comments: Prof. Masayuki Tanamura, Waseda University

【Speech】 Law and Politics in Korean Constitutional  
Adjudication

Prof. Jonathan Kang, University of Washington

Comments:

Prof. Norikazu Kawagishi (Waseda University)

Toshiaki Iimura, Intellectual Property High Court

Tsubasa Matsuo, Matsuo General Law and IP Firm

Closing Remarks

Prof. Katuichi Uchida, Waseda University

Prof. Pat Kuszler, University of Washington

【Organizer】 Waseda University Faculty of Law

【Co-organizer】

Univ. of Washington School of Law, Asian Law Center

Waseda Global COE, Research Center for the Legal

System of Intellectual Property (RCLIP)

【Sponsor】 ANA Sales America

【Theme】 The Current Conditions and Challenges in  
Music Copyright Business

【Moderator】 Kazuhiro Ando, Visiting Senior Researcher,  
Waseda University IIIIPS-Forum

【Speakers】

Kazuo Munakata, SEPTIMA LEY

Kazuhiro Hara, Media Pulpo

【Theme】 Problems and Future Challenges in Criminalizing  
Downloading

【Moderator】 Ryuta Hirashima, Prof. of Tsukuba University

【Speakers】

Toshimitsu Dan, Attorney at law

Taro Komukai, Infocom Research

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

## ■ Fundamental Law Workshop No.2

(2012/10/29)

We invited Associate Professor Gakuto Takamura, Ritsumeikan University, to have a speech on the theme of “Commons Doctrine and Property Rights Theory / Standing to Sue – Execution Process of Outdoor Advertising Regulations and Theory of Compatible Interest”. In the speech, he explained what is Commons Doctrine, application of Ostrom Commons doctrine to cities, Kyoto city’s new landscape policy and outdoor advertising regulation, execution of regulations, and so on, citing concrete examples. He discussed the necessity of public aspects and common aspects (commons) in city landscape and the importance of commons doctrine.

Comments: Hiroyuki Ogawa, Nagoya University

## ■ The JASRAC Open Lecture of 2012 No.3

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 ※The following section introduces other major regulatory workshops(Aug-Oct). Please visit our website for the future schedule of workshops and registration information.  
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### ■ Consumer Law Precedents Workshop

**2012/10/05**

【Speaker】 Yoshihiro Maruyama, Professor, Aomori Chuo Gakuin University

【Theme】 The First Petty Bench of the Supreme Court's decision on July 14, 2011, Hanrei Times vol.1361, p.94, Ji vol.2135, p.46, Kin-Han, vol.1391, p.44

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

**2012/09/27**

【Speaker】 Yoichiro Hamada, Professor, Aoyama Gakuin University

【Theme】 The Framework of COSO Internal Control

**2012/10/19**

【Speaker】 Yasunobu Wakabayashi, Associate Professor of Waseda University

【Theme】 Market Law Research on Public Bonds

### ■ Commercial Law Workshop

**2012/08/24**

【Speaker】 Hong Jesik, Associate Professor, Shimane University

【Theme】 Osaka District Court's Decision on October 31,2011, Hanrei Times Vol.2135, p.121

【Speaker】 Kazunori Shintsu, Associate Professor, Okayama University

【Theme】 Osaka District Court's Decision on October 4, 2010, Kin-Hou, vol.1920, p.118

**2012/09/28**

【Speaker】 Tatsuya Sakamoto, Associate Professor of Shizuoka University

【Theme】 Fukuoka District Court's Decision on February 17,2011, Kin-Han, vol.1364, p.31

【Speaker】 Yukimi Ozeki, Professor, Seikei University

【Theme】 The First Petty Bench of the Supreme Court's decision on December 15, 2011, Kin-Han, vol.1387, p.12

**2012/10/18**

【Speaker】 Kiichiro Yoneyama, Professor of Okayama University

【Theme】 Tokyo District Court's Decision on January 7, 2011, Shiryō-ban Shōji Vol.323, p.67 (Missha Japan case)

【Speaker】 Osamu Miura, Professor, Okayama University

【Theme】 Fukuoka High Court's Decision on April 13, 2012, Kin-Han, vol.1399, p.24 (Appeal Court Decision on Fukuoka Fish Market Case)

### ■ Organizational and Financial Economics Seminar

**2012/10/08**

【Speaker】 Konari Uchida, Associate Professor, Kyusyu University

【Theme】 The dark side of independent venture capitalists: Evidence from Japan

**2012/10/29**

【Speaker】 Atsuyuki Kato, Associate Professor, Waseda University

【Theme】 Markups, Productivity, and External Market Development

### ■ Prewar Corporate Finance and Corporate Governance

**2012/09/27**

【Speaker】 Masafumi Aochi, Professor, Toyama University

【Theme】 Preincorporation Stock Transfer: Rise of Corporation and Stock Market

### ■ Economic Law, International Economic Law Research Group Relating to the Execution of International Economic Law with a Focus on Antitrust Law

**2012/09/28**

【Speaker】 Yoshio Ohara, Professor Emeritus, Kobe University

【Theme】 Reconsideration of Single Economic Unit Theory under EU Case Law

【Speaker】 Yasumi Ochi, Professor, Waseda University

【Theme】 Extraterritorial Application of FTAIA and Antitrust Law

#### Waseda Global COE Program

#### Waseda Institute for Corporation Law and Society

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