

# Japanese Law (LAWS 48102-01: Winter 2006)

## **- Instructor**

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Office Hours: by appointment (send e-mail)

## **- Course Time and Location**

We meet Wed 6:00-8:00 pm at the classroom B (subject to change).

## **- Course Description**

This seminar examines selected topics of the Japanese law. Because there are many differences (and similarities) between the US law and the Japanese law, the seminar mainly adopts comparative law approach and functional approach. We identify what the differences are and then try to explain causes of the differences mainly from functional viewpoint. Differences (and similarities) can be caused from many factors, such as underlying social background, interaction between multiple legal rules, subtle difference of evaluation, or maybe just historical coincidence. Understanding these mechanisms will enhance understanding of various aspects of legal systems.

The topics that we discuss in this course are two-fold: in the first half, we discuss selected topics on contract, tort, property, and law on commercial transactions. In the second half, we discuss topics on corporate law, which is reformed dramatically in 2005, and the Japanese corporate governance system, which shows several peculiar characteristics, such as main bank system and lifetime employment system.

## **- Grading**

Grading is based on class participation (30%), memoranda (30%), which are assigned each week, and three short papers (40%), which consist of two short papers (5-10 pages) and one final paper (20-30 pages). There is no midterm or final exam.

If you want to receive a substantial writing credit, please contact me in advance. In general, you need (1) to present a satisfactory proposal to me for a final paper requiring substantial legal research and analysis, (2) to submit a paper that I believe fulfills that requirement, within somewhat longer deadlines.

## **- Materials**

J. Mark Ramseyer & Minoru Nakazato, Japanese Law: An Economic Approach (U of C Press, 1999)

You need to get a course packet at the copy center after Dec 29, but most of the materials will be posted on the chalk site.

## **- Chalk**

The syllabus, homework assignments, handouts, and PowerPoint slides will be available at the Chalk cite (<https://chalk.uchicago.edu/>).

## **- Homework assignments**

There are two types of homework assignments: memorandum and short paper.

Memoranda aim to enhance your participation in classes and will be assigned for each class. This type of homework is due the day before each class at noon. Page limit is three, although shorter memoranda will not be rejected.

Short papers test how you can broaden your idea after discussion in class or catch up what cannot be discussed sufficiently in class. Short papers are assigned occasionally and their deadlines vary.

Homework shall be typed in 12 point double-spaced and within specified pages limit. One copy shall be submitted to Lorrie Ragland, my secretary. I kindly ask that you *do not e-mail* assignments to me. If you want to email or fax homework, you need to make an arrangement with Ms. Ragland. Homework left anywhere, as well as those overdue, will not be graded.

## **- Tentative Schedule**

Week 1: Jan 4	Session 1, 2
Week 2: Jan 11	Session 2, 3
Week 3: Jan 18	Session 4
Week 4: Jan 25	Session 5
Week 5: Feb 1	Session 6,7
Week 6: Feb 8	Session 7,8
Week 7: Feb 15	Session 9,10
Week 8: Feb 22	Session 9,10
Week 9: Mar 1	Session 11

## **- First class assignment**

Get the course packet, access the chalk site and read the materials for Session #1 (and preferably #2).

## **- Sessions**

(The materials marked as \* are supplementary; others are required readings.)

### **[Session 1] Liquidated damages and penalty doctrine**

Ugo Mattei, Comparative Law and Economics, ch. 7 (1997)

Ramseyer & Nakazato, ch. 2 (particularly 60-61)

Civil Code 1, 90, 420

Consumer Contract Act 9

Labor Standards Act 16

Interests Rate Limitation Act 1, 4

Commercial Code 631

Carriage of Goods by Sea Act 12-2I (same as Hague-Visby Rules)

UCC 2-718, 2-719

**[Session 2] Remedy against breach of fiduciary duty: function of disgorgement**

In re Estate of Sweicicki, 477 N.E.2d 488 (Ill. 1985)  
Magruder v. Drury, 235 U.S. 106 (1914)  
Matter of Rothko's Estate, 372 N.E.2d 291 (N.Y. 1977)  
Trust Act  
Unfair Competition Act 5  
Frank H. Easterbrook and Daniel Fischel, Contract and Fiduciary Duty, 36 J. L. & Econ. 426, 444 (1993)

**[Session 3] Treatment of good faith purchaser**

Schrier v. Home Indemnity Company, 273 A. 2d 248  
UCC 2-403, 2-312, 1-201(19)  
Civil Code 192, 193, 194, 566  
Oda, Japanese Law, pp. 155-58 (2nd ed., Oxford UP,1999)  
Used Goods Dealing Act 22  
Schwartz and Scott, Sales law and the contracting process pp. 508-512 (2nd ed., 1991)

**[Session 4] Forgery: checks in the US and promissory notes in Japan**

UCC 4-401, 3-418, 4-208, 4-207, 3-420, 3-406, 3-405, 3-404, 4-103  
Keisuke Tani, Function and Practice of Bills of Exchange and Promissory Notes, in 2 Doing Business in Japan (Kitagawa ed.)  
cf. Tokyo District Court, Sep 27, 1982; Tokyo High Court, Nov 17, 1983  
Bill Act (same as Germany, France, or other countries which are party to the Vienna Treaty)  
Civil Code 109, 110, 112, 709, 715, 722  
Model Form for Checking Account Contract [Toza Kanjo Kitei Hinagata]

**[Session 5] Collateral source rule**

Richard A. Epstein, Cases and Materials on Torts, 809-16 (8th ed., 2003)  
Kenneth S. Abraham, The Forms and Functions of Tort Law, 214-19 (1997)  
Ramseyer & Nakazato, ch. 4  
Civil Code 709  
Commercial Code 662  
Welfare Pension Insurance Act 40  
Workers' Accident Compensation Insurance Act 12-4  
Hideo Tanaka & Akio Takeuchi, The Role of Private Persons in the Enforcement of Law: A Comparative Study of Japanese and American Law, 7 Law in Japan 34 (1974)

**[Session 6] Equity finance: protection of shareholders**

Ministry of Justice, Japanese Corporate Law: Drastic Change in 2000-2001 & the Future  
Delaware General Corporation Law; Revised Model Business Corporation Act (please use your own statute book)

NYSE listed company manual 312.03(c)

Henry Hansmann & Reinier Kraakman (ed.), *Anatomy of Corporate Law* (2004)

### **[Session 7] Corporate Governance: Legal Structure**

Ramseyer/Nakazato, ch. 5

Ministry of Justice, *Japanese Corporate Law: Drastic Change in 200-2001 & the Future*

Hansmann & Kraakman, *The End of History for Corporate Law* (2000)

Lucian A. Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Governance and Ownership* (1999)

Mark D. West, *The Puzzling Divergence of Corporate Law: Evidence and Explanations from Japan and the United States*, 150 U. Pa. L. Rev. 527 (2001)

Hideki Kanda and Curtis J. Milhaupt, *Re-examining Legal Transplants: The Directors' Fiduciary Duty in Japanese Corporate Law*, 51 Am. J. Comp. L. 887 (2003)

\* Andrei Shleifer & Robert W. Vishny, *A Survey of Corporate Governance*, JF 52:737- (1997)

\* Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, & Robert W. Vishny ["LLSV"], *Legal Determinants of External Finance*, JF 52:1131- (1997)

LLSV, *Law and Finance*, JPE 106:1113- (1998)

\* LLSV, *Corporate Ownership around the World*, JF 54:471- (1999)

### **[Session 8] Case Study: Daiwa Bank Case**

Tsuyoshi Yamada, *The Daiwa Bank Case* (1999), 15 Colum. J. Asian L. 193 (2002)

Bruce E. Aronson, *Reconsidering the Importance of Law in Japanese Corporate Governance: Evidence from the Daiwa Bank Shareholder Derivative Case*, 36 Cornell Int'l L.J. 11 (2003)

### **[Session 9] "Japanese Corporate Governance"**

Masahiko Aoki, *Toward an Economic Model of the Japanese Firm*, 28 J. Econ. Lit. 1 (1990)

Paul Sheard, *The Main Bank System and Corporate Monitoring and Control in Japan*, *Journal of Economic Behavior and Organization* 11:399-422 (1989)

Ronald J. Gilson & Mark J. Roe, *Understanding the Japanese Keiretsu: Overlaps between Corporate Governance and Industrial Organization*, 102 Yale L.J. 871 (1993)

Mark J. Roe, *Some differences in Corporate Structure in Germany, Japan, and the United States*, 102 Yale L.J. 1927 (1993)

### **[Session 10] Looking for empirical foundations**

\* James R. Lincoln, Michael L. Gerlach, & Christina L. Ahmadjian, *Keiretsu Networks and Corporate Performance in Japan*, *American Sociological Review* 61:67- (1996)

Takeo Hoshi, Anil Kashyap, and David Scharfstein, *Corporate Structure, Liquidity, and Investment: Evidence from Japanese Industrial Groups*, QJE 106:33 (1991)

Steven N. Kaplan & Bernadette A. Minton, *Appointments of Outsiders to Japanese Boards: Determinants and Implications for Managers*, JFE 35:225-258 (1994)

- \* Jun-Koo Kang & Anil Shivdasani, Firm Performance, Corporate Governance, and Top Executive Turnover in Japan, *JFE* 38:29-58 (1995)
- \* Randall Morck, Masano Nakamura, & Anil Shivdasani, Banks, Ownership Structure, and Firm Value in Japan, *Journal of Business* 73:539- (2000)

Jennifer L. Frankl, An Analysis of Japanese Corporate Structure, 1915-1937, *Journal of Economic History* 59:997-1015 (1999)

- \* Yishay Yafeh, An International Perspective of Japan's Corporate Groups and their Prospects, 2002
  - \* Yoshiro Miwa & J. Mark Ramseyer, Does Relationship Banking Matter? Japanese Bank-Borrower Ties in Good Times and Bad (2003)
  - \* Yoshiro Miwa & J. Mark Ramseyer, Conflicts of Interests in Japanese Insolvencies: The Problem of Bank Rescues (2003)
- Yoshiro Miwa & J. Mark Ramseyer, Trade Credit, Bank Loans, and Monitoring: Evidence from Japan (2005)

Yoshiro Miwa & J. Mark Ramseyer, The Myth of the Main Bank: Japan and Comparative Corporate Governance, *Law and Social Inquiry* (2002)

Curtis J. Milhaupt, On the (Fleeting) Existence of the Main Bank System and Other Japanese Economic Institutions, *Law and Social Inquiry* (2002)

#### **[Session 11] Changing environment: Rise of takeover cases**

Sumitomo Trust Bank v. UFJ, Supreme Court, Aug 30, 2004

Notes on Livedoor v. Nippon Broad Casting

John C. Coffee, Jr., Opinion on Livedoor v. Nippon Broad Casting (2005)

D. James Wan Kim Min v. Mitsui Bussan K.K. 1232 Hanrei Jiho 110 (3-17-1987) Tokyo High Court, *Law and Investment in Japan* 255-61 (Yanagida et al, eds., 2000, 2nd ed.)

- \* Minoru Tokumoto, The Role of the Japanese Courts in Hostile Takeovers, 27 *Law in Japan* 1 (2001)

Ominicare, Inc. v. NCS Healthcare, Inc., 818 A.2d 914 (Del. 2003)

J.Mark Ramseyer, Takeovers in Japan: Opportunism, Ideology and Corporate Control, 35 *UCLA L. Rev.* 1 (1987)

Curtis J. Milhaupt, Creative Norm Destruction: The Evolution of Nonlegal Rules in Japanese Corporate Governance, 149 *U. Pa. L. Rev.* 2083(2001)

METI: Corporate Value Study Group, Summary Outline of Discussion Points, 2005

Tokyo Stock Exchange, Listing System Revision and the Adoption of Takeover Defense Measures (Draft Outline) (2005)

Curtis J. Milhaupt, In the Shadow of Delaware?: The Rise of Hostile Takeovers in Japan, *Colum. L. Rev.* 2005

Peng Xu, Increasing Bankruptcies and the Legal Reform in Japan, *Journal of Restructuring Finance*, vol 1, 2:1-18 (2004)

- \* Paul Gompers, Joy Ishii, & Andrew Metrick, Corporate Governance and Equity Prices, *QJE* 2003