

Comparative Law

*Law and the Process of
Law in Japan*

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Comparative Law

Law and the Process of Law in Japan

THIRD EDITION

Kenneth L. Port

WILLIAM MITCHELL COLLEGE OF LAW

Gerald Paul McAlinn

KEIO UNIVERSITY LAW SCHOOL

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G.P.M.

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Preface to the Third Edition

Japan is a modern, sophisticated, legitimate and complex system. There is far more to law in Japan than the stereotypes and clichés too often perpetuated by Americans, Japanese and others. It is our mission to challenge these stereotypes by presenting and objective and accurate view of the process of law in Japan.

Now in its third permutation, this book has come a long way since the First Edition was published in 1996. So, too, has Japanese law come a long way in these 18 years. The First Edition of this book was prepared by Kenneth Port. For the Second Edition, Gerald McAlinn of Keio University Law School joined the project. For the Third Edition, Salil Mehra of Temple University James E. Beasley School of Law has joined the project. These three co-authors bring a broad and diverse range of expertise to the area of Japanese law.

Building on the Second Edition, the Third Edition presents Japanese law in a manner familiar to American and Common Law students. Cases have been translated and/or edited to reflect Common Law usages of common terms where a literal translation would be less helpful, all the while attempting to be as faithful to the original as possible. Supreme Court cases are relied upon when available.

Some cases were translated by or for the Japanese Supreme Court. These cases are included to provide the student with perspective, not only on Japanese law, but also on how the Japanese Supreme Court perceives the law. Many times, this is as instructive as the law itself.

This book is intended to provoke comparative thought and analysis. Often times, when engaged in comparative analysis, one learns as much about one's own system as one does about another's system. It is in this context that we present these materials.

Editors' Note

For the sake of conserving space, nearly all footnotes of excerpted law review articles and judicial opinions have been omitted without indication. Footnotes that do appear do not correspond to footnote numbering in the original article or case. For documentation of the contributing author's various propositions, the reader is encouraged to refer to the original article or case. We have painstakingly provided citations to all material in readily available publications to facilitate this inquiry. All diacritical marks have been omitted in Japanese words transliterated in the English alphabet. Japanese names appear in the Western fashion where given names appear first and family names appear second. In some instances, there are multiple possible readings for Japanese names. In such instances, we provide the most common reading for the name, realizing that there may be some instances where local convention or personal choice may render that reading in error. We apologize to any individual whose name we have misspelled.

All translations that appear in this book are intended as pedagogical tools to elucidate the process of law in Japan. For this purpose, it was occasionally necessary to translate the meaning of a case or a set of words rather than literally translate them. As such, no case or statute originally translated for purposes of inclusion in these materials is an "official" translation. It should not be relied upon as the official or final word of any Japanese court or agency.

There are no "official" reporters of Japanese cases. There are many commercial reporters upon which we relied for case material. When a case is about a sensitive subject such as criminal law or family law, Japanese judges usually do not report the names of the parties. In some such circumstance and with no indication that they have done so, Japanese judges adopt a pseudonym for the parties to the action. The favorite male pseudonym is Taro Kono; the favorite female pseudonym is Hanako Kano. For criminal cases, the favorite male pseudonym used to be Suzuki Ichiro but had to be abandoned after a baseball player by that name became famous. As there is no way to judge for certain which names are pseudonyms and which names are real, we have left all names as they appeared in the original text. Sometimes, no party name is provided by the court. In such instances, we indicate this fact by the appellation "party names not provided."

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As usual, we remain indebted to Meg Daniel, Administrative Assistant to Professor Port at William Mitchell College of Law, for her assistance, her patience, her attention to detail, and, mostly, for her sense of humor.

All mistakes remain ours.

