Overview of Civil Code of Japan

Part1-Part3

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Boissonade,
the drafter of olde Civil Code Japan

Tomii, Ume and Hozumi,
the drafters of current Civil Code Japan

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Preface

(1) Aims of this lecture

What kind of law is the Japanese Civil Code? What kind of characteristics does it have among the civil laws of the world? And what kind of usefulness does the Japanese Civil Code have for us?

In this lecture, in order to answer the above questions, we will overview the whole picture of the property law (from Part 1 to Part 3) of the Japanese Civil Code, i.e., the general provisions, property rights, and claims, taking up the history of the Civil Code, the application of the Civil Code and typical cases.

In recent years, the purpose of the law or the intent of the law is stipulated in the first article of the law. However, the Civil Code, which is the earliest form of Japanese law, does not specify the purpose of the law. Therefore, in this lecture, I propose that the purpose of the Civil Code be defined as follows.

Article1_a (My proposal of amendment of Civil Code of Japan)
The purpose of this Act is to realize the dignity of individuals and the essential equality of the sexes by providing for,
(a) the subject enjoying private rights
(b) the object of private rights
(c) the creation, modification and extinction of private rights.

In line with the above objectives of the Civil Code, this lecture focuses on the property law of the Civil Code, from Part 1 to Part 3, taking up important issues and explaining them, with the aim of helping students understand the basic concepts of the Civil Code.

(2) Reasons for studying Civil Law

The purpose of our study of civil law is as follows:

Since we are social animals, we can only live in relationship with others. Therefore, we need to do the following three points.

First, we need to take care of others, second, we need to nurture ourselves, and third, when we know what we need to do, we need to challenge ourselves.

1) To respect others

In order to take care of others, it is important to not only not do things that others do

not like, but also to do things that others want and that benefit others. To do this, we need to know the following things:

(a) It is necessary to study the "tort" provisions of the Civil Code, which give information on what precautions must be taken to avoid harming others.

(b) In order to practice what the others want, we must infer their intentions, and if we cannot infer them, we must take steps that are compatible with maximizing the benefit of their interests. For this purpose, we need to study the provisions of the Civil Code on "Benevolent Intervention in Another's Business (Business management)".

2) To nurture yourself

Second, in order to develop ourselves, we need the help of others. In order to learn from others, or to learn by teaching others, it is necessary to establish a relationship of trust and solidarity with others. In order to do this, we need to keep our promises, and we need to learn the "Contract Law" of the Civil Code.

In addition, it is necessary to learn the provisions of "unjust enrichment" and "Business management" in the Civil Code as a method of terminating a contract when a relationship of trust is broken and the contract is terminated, as well as a method of settling accounts when the contract is terminated.

3) To Challenge yourself

Third, in order to take on challenges without fear of failure, we must believe in ourselves, but when we fail, we must try again. In order to do so, we need to learn about "(emergency) business management," "unjust enrichment," "torts," and "non-performance of obligation" in the Civil Code, which prescribe the methods of making amends.

Thus, in order for us to live a life of respecting others, nurturing ourselves, and boldly taking on challenges, it is very useful to study the Civil Code, which provides us with the information we need to do so.

(3) Features of this lecture

The special feature of this lecture is that, while introducing the important provisions of the Civil Code according to the order of the Civil Code sections, it also explains the Civil Code from the viewpoint of providing essential information for "taking care of others," "nurturing oneself," and "challenging without fear of failure," which are very important in our daily lives.

It is for this reason that not only the law of torts, which is the most widely applied

law in civil law, but also "business management," which has only been covered in a few conventional textbooks, is covered in great detail, including specific examples, and then the fundamental concepts of joint and several obligation and joint and several liability, which are the most important bonds of solidarity in our lives, are explained in detail.

In conventional overviews of civil law, the civil law has been treated as an absolute entity, and explanations have focused on its interpretation.

However, in this lecture, I believe that it is natural for the Civil Code to have errors since it was created by human beings, and I do not hesitate to attempt to correct or supplement any systematic inconsistencies or deficiencies in the Civil Code.

The motto of this lecture is that interpretation is useful for rational and precise legislation, and I would like you to be bold enough to propose amendments when you find errors in the Civil Code.

I hope that through this lecture, you will be able to grasp the whole picture of civil law and spend your life in a meaningful way.

Introduction

The Civil Code of Japan consists of five parts.

Part 1: general rules, Part 2: real rights, Part 3: claims, Part 4: relatives, and Part 5: inheritance.

I would like to give an overview of the first three parts of the Civil Code, namely the Property Law (General provisions, Real rights, and Claims).

Unfortunately, due to time constraints, I have to exclude the latter two parts of the Civil Code, namely the Family Law (Relatives and Inheritance).

Before I give an overview of the Japanese Civil Code, I would like to make the following three points as an introduction.

First, I would like to introduce myself.

Second, I will give an overview of the history of the Japanese Civil Code up to its enactment.

Third, I will clarify how often clauses of the general provisions, property rights, claims, relatives, and inheritances of the current Japanese Civil Code are applied by the courts.

And as for the third point, I will clarify what are the “best 20 articles” which are most frequently applied in the Civil Code of Japan.

(1) Self-Introduction

I am a emeritus professor of Nagoya University and Meijigakuin University.

17 years ago, I was a professor of Nagoya University. During 1997-2004 I was going to Asian countries: State of Mongolia, Vietnam, Cambodia, Laos, Uzbekistan and China to cooperate development of civil law. Fortunately, these activities were evaluated from this university, I became to an emeritus professor of Nagoya University in 2008.

Shigeru KAGAYAMA

My specialty is civil law, but I also study consumer law, legal informatics (AI & Law), law & management, and copyright law. I am currently writing a book titled "Introduction to Law for Children" on legal education for young children.

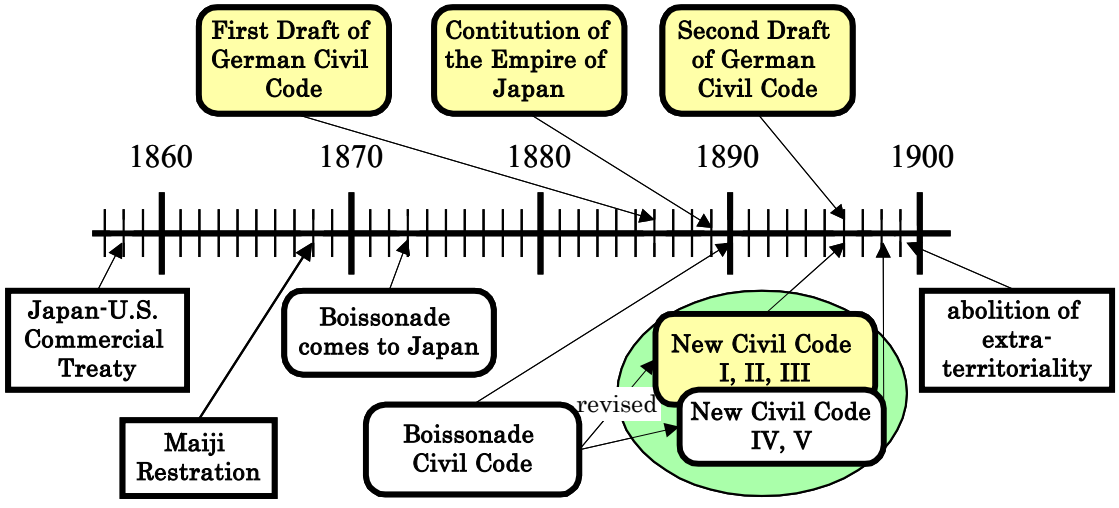
My study room in Oita, Kyushu

Since retiring in 2017(4 years ago), I have moved to Oita Prefecture where my mother (95 years old) live (My father, 97 years old died 2 years ago).

I have been conducting research on copyright law at the Graduate School of Intellectual Property Studies (correspondence course) in Kibi International University of Junsei Gakuen. In addition, I am an intensive lecturer of civil law for international students at Nagoya University Graduate School(in English), and "Contract Law" at the Faculty of Law, Meiji Gakuin University(in Japanese).

(2) History of Civil Code of Japan

The Japanese Civil Code was enacted after the Meiji Restoration (1867) as part of the modernization of the Japanese legal system and the movement to abolish extraterritoriality which was imposed by the Western Powers in the 1850's and had finally abolished in 1899.



History of Civil Code of Japan

1) Outline of the historical background of Civil Code

The Japanese Civil Code which was enacted in 1896 was greatly influenced by two civil law systems.

One was French civil law or the Code Napoléon.

The first Japanese Civil Code was drafted by the French legal scholar, Boissonade in 1890.

The other great influence was that of the German legal system.

The Meiji Constitution was based on the Prussian Constitution (1889), and the first (1887) and the second drafts (1896) of the German Civil Code were a great influence in the revision of the Boissonade Civil Code.

2) Comparison of the Three Civil Codes

The Old Civil Code of Japan drafted by Boissonade was promulgated in 1890 but was not put into force because of the strong objections of Japanese legal scholars and politicians. As a result, the new Japanese Civil Code adopted the German Pandekten System which consists of general provisions (“Main routine” in computer language) and particular provisions (“Subroutine” in computer language).

Boisso-nade Civil Code	Institutional System
Book 1	Person
Book 2	Property
Book 3	Acquisition of Property
Book 4	Security of Obligation
Book 5	Evidence

German Civil Code	Pandekten System
Book 1	General Provisions
Book 2	Obligation
Book 3	Real Property
Book 4	Family
Book 5	Succession

Civil Code of Japan	Pandekten System
Book 1	General Provisions
Book 2	Real Property
Book 3	Obligation
Book 4	Family
Book 5	Succession

Comparison of the Three Civil Codes

Therefore, most Japanese legal scholars, both then and even now, believe that the new Japanese Civil Code of 1896 is a copy of the German civil code, not only in its structure but also in its contents.

This, however, is not correct. The new Japanese Civil Code is a revised edition of the Boissonade Civil Code, and more than half of its provisions remained without changing

nevertheless the superficial structure is wholly changed.

(3) Current situation of Civil Code of Japan

Here, first, I will clarify the overall structure of the Japanese Civil Code, i.e., (1) General provisions of the Civil Code, (2) Real rights, (3) Claims, (4) Relatives, and (5) Succession.

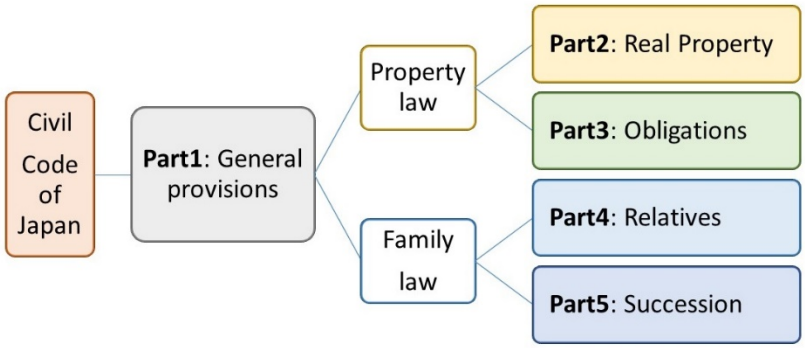
Secondly, I will explain how frequently each Part of the Japanese Civil Code is applied by the courts, and what are the "Top 20 articles" which are most frequently applied.

1) Structure of Civil Code of Japan

The Japanese Civil Code is governed by the General Provisions in Part 1.

And under the General Provisions of the Civil Code, the Civil Code is divided into two parts.

One is property law and the other is family law.

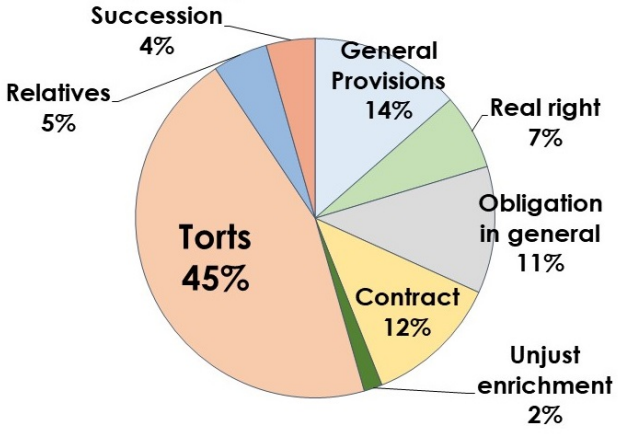


Structure of Civil Code of Japan

The first, property law, is divided into the law of property rights (Part 2) and the law of claims (Part 3).

The second, family law, is divided into relatives law (Part 4) and inheritance law (Part 5).

2) Frequency of application of civil law by Japanese courts



Frequency of application of civil law by courts

As mentioned earlier, the Japanese Civil Code is divided into five parts, but the frequency with which the articles in each section are applied by the courts varies greatly.

The most frequently applied Part is the Law of Obligations (the Law of Torts, the Law of Contracts, the General Theory of Obligations,

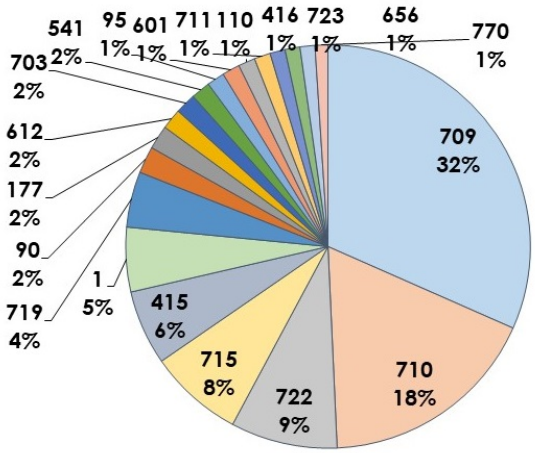
and the Law of Unjust Enrichment), which accounts for 58% of the total.

The next most frequently applied section is the General Provisions, which accounts for 14% of the total.

The remaining sections are all applied less frequently, with the Law of Real Rights accounting for 7% of the total, the Law of Relatives accounting for 5% of the total, and the Law of Succession accounting for 4% of the total.

Best 20 articles of Civil Code of Japan -- from the view point of frequency of application(1945-2013)

① Art.709(General tort law), ② Art.710(Compensation), ③ Art.722(Comparative Negligence), ④ Art.715(Employers' Liability), ⑤ Art.415(Non Performance), ⑥ Art.1(General Principle), ⑦ Art.719(Joint Tortfeasor), ⑧ Art.90(Public Order), ⑨ Art.177(Transfer Real estate), ⑩Art.612(Restriction of sublease),



No.	Article	Title of Article
1	Art.709	General tort law
2	Art.710	Compensation
3	Art.722	Comparative Negligence
4	Art.715	Employers' liability
5	Art.415	Non Performance
6	Art.1	General Principles
7	Art.719	Joint tortfeasor
8	Art.90	Pubic policy
9	Art.177	Transfer real estate
10	Art.612	Restriction of sublease

Best 20 articles of Civil Code of Japan
-- from the view point of frequency of application(1945-2013)

⑪ Art.703(Unjust Enrichment), ⑫ Art.541(Termination of contract), ⑬ Art.95(Mistake), ⑭ Art.601(Lease contract), ⑮ Art.110(Apparent Agency), ⑯ Art.711(Next kin's right for compensation), ⑰ Art.416(Scope of Damages), ⑱ Art.723(Defamation), ⑲Art.656(Quasi-Mandate), ⑳Art.770(Judicial Divorce)

I am the only one in Japan who has conducted a survey of the 20 most frequently applied articles in the Civil Code.

If you are interested in this point, I think it would be interesting to use the database of precedents in your country to research the 20 most frequently applied articles and compare them with the 20 most frequently applied articles in Japan.

Chapter 1. General Provisions of Civil Code of Japan

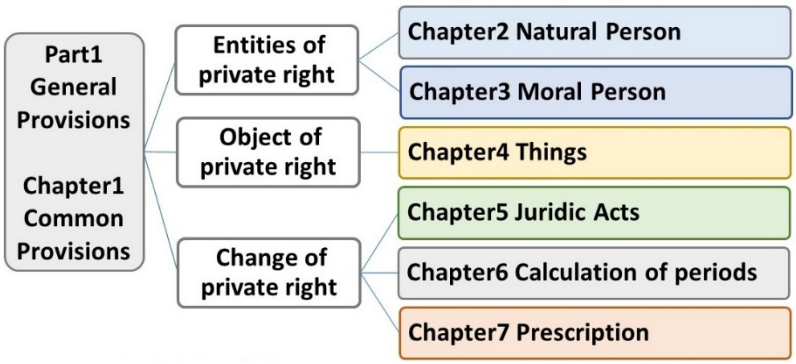
In Chapter 1, I will explain, first, the structure of Part 1 (General Provisions) of the Japanese Civil Code, second, the purpose of the Japanese Civil Code, and third, the validity of legal acts, which is the central issue of the General Provisions.

As for the second point, the purpose of the Japanese Civil Code, since the Civil Code is one of the most ancient laws, the purpose of the law is not explicitly stipulated, unlike the newer laws.

Therefore, after examining all the articles of the Civil Code, I have clarified what the purpose of the Japanese Civil Code is, and I have proposed an amendment of the Civil Code (Article 1a) as the result.

(1) Structure of General provisions of Civil Code

Part 1 (General Provisions) of the Japanese Civil Code is controlled by its Chapter 1 (Common Provisions).



Structure of General provisions of Civil Code

The provisions from Chapters 2 to 7, which are controlled by the Common Provisions, are divided into three parts.

The first is the subject of private rights, the second is the object of private rights, and the third is the change of private rights.

The first, the subject of private rights, is divided into natural persons and juridical persons.

The second object of private rights is considered to be tangible objects.

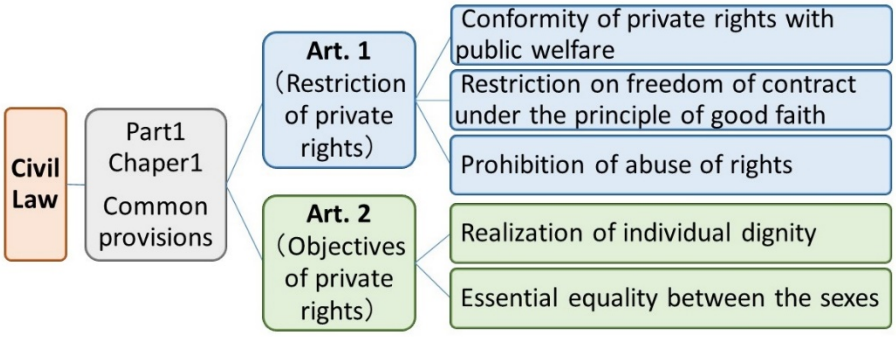
The third deals with changes in private rights, which contains mainly legal acts based on manifestation of intentions, and prescribes prescription as a factor for changes in legal relations due to the passage of time without manifestation of intentions, as well as the method of calculating the period of prescription.

(2) Common Provisions (Art.1 and 2) of Civil Code of Japan

Chapter1 (Art.1 and Art.2) of Civil Code of Japan is called Common Provisions of Civil Code of Japan.

Chapter 1 (Common provisions) of Part 1 of the Japanese Civil Code, i.e., Articles 1 and 2 of the Civil Code, is a true common rule in the sense that all articles of the Japanese Civil Code must follow it.

Well, the heading of Article 1 is "Fundamental Principles" and the heading of Article 2 is "Standards for Interpretation", but if we examine the contents of the articles strictly, Article 1 clarifies the standards for restricting private rights, and Article 2 clarifies that the Civil Code should be interpreted according to those ideals of the Civil Code.



Common Provisions (Art.1 and 2) of Civil Law of Japan
at the top of general provisions

Therefore, I believe that the heading of Article 1 should be amended to "Limitation of Private Rights" and Article 2 should be amended to "Objectives and Standards of Interpretation of Private Rights".

(3) Objectives of Civil Code of Japan (My proposal of amendment of Civil Code of Japan)

Since the Civil Code of Japan is one of the oldest laws in Japan, the purpose of the law is not defined in Article 1, unlike all recently enacted laws where the purpose of the law is defined in Article 1.

However, I thought it would be possible to clarify the purpose of the Civil Code if we take into account that Article 1, Section 1 which was newly added under the influence of Article 29 of the Constitution.

Then, before Articles 1 and 2 of the Civil Code I added Article 1a: “The purpose of the

Civil Code is to realize the dignity of the individual and the essential equality of the sexes by providing the subject who enjoys private rights, the object of private rights, and the mechanism of creation, modification and extinction of private rights."

In the combination of Art.1a, Art.1b and Art.2, we can understand the purpose of Civil Code of Japan and limitation of exercising private rights and how to interpret this code.

Article1_a (Purpose of Civil Code of Japan)

The purpose of this Act is to realize the dignity of individuals and the essential equality of the sexes by providing for,

(a) the subject enjoying private rights

(b) the object of private rights

(c) the creation, modification and extinction of private rights.

Article1_b (Limitations of Exercise of Private Rights)

(1) Private rights shall conform to the public welfare.

(2) The exercise of rights and the performance of obligations shall be carried out in good faith.

(3) No abuse of rights shall be permitted.

Article2 (Standards for Interpretation)

This Act shall be construed in accordance with the dignity of individuals and the essential equality of the sexes.

(4) Validity of Juridical Acts

The most important function of the general rules of the Civil Code is to clarify the conditions under which a legal acts (juridical acts), represented by a contract or will, is valid.

In the absence of this validity requirement, a juridical act may become invalid or be voidable (revoked by revocation).

(1) The first valid requirement is the ability of the principal or authority of agent.

A juridical act is void or revoked if the person who makes the manifestation lacks the capacity to do so.

(2) The second valid requirement is consistency of representation and intent in the manifestation of intention.

In the absence of this, the juridical act is void or voidable.

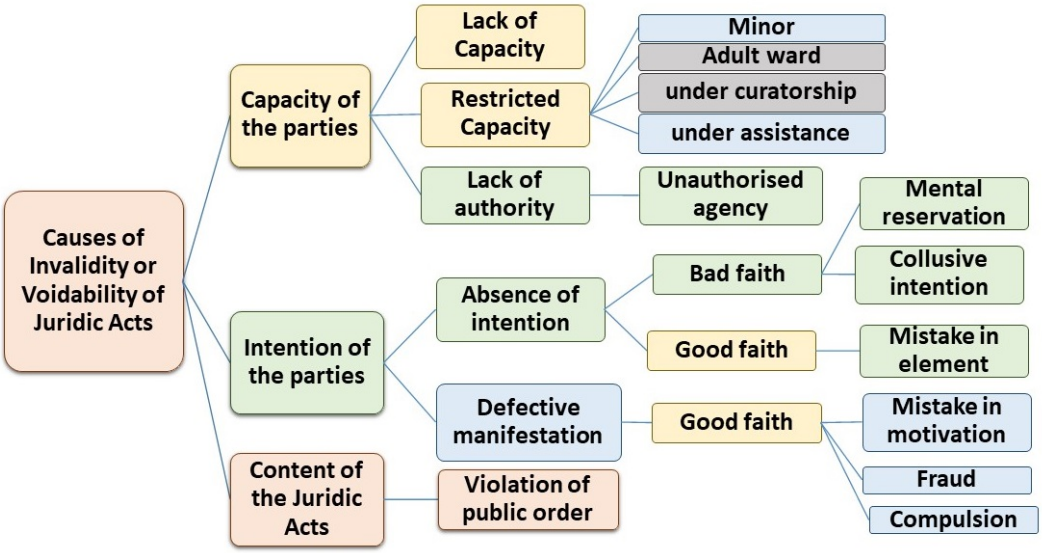
(3) The third effective requirement is that there is no undue interference in the process of forming the manifestation of intention.

If the person who makes the manifestation of intention is unduly interfered with by

the other party, the juridical act may be void.

(4) The fourth valid requirement is that the content of the manifestation of intention does not violate public order and morals.

Juridical acts that are contrary to public order and morals are void.



Validity of Juridical Acts

Relationship between gross negligence and mala fide

In the Civil Code, the validity or invalidity of a juridical act is often affected by whether the party concerned or a third party is in good faith or in bad faith.

In general, people who are malicious or, in good faith with negligence are less likely to be protected.

On the other hand, good faith and non-negligent persons are often protected.

Therefore, it is important not only to distinguish between good faith and bad faith, but also to distinguish between good faith without negligence, good faith with negligence and good faith with gross negligence in the

Bona fide (in good faith)			Mala fide (in bad faith)
Without negligence	negligence	Gross negligence	
Protected in almost all cases	Protected some cases	Evaluate as mala fide and not protected almost all but opponent is also mala fide cases	

Relationship between gross negligence and mala fide

case of good faith.

(1) It is easy to protect people who are in good faith without negligence.

(2) It is difficult to protect people who are negligent even in good faith.

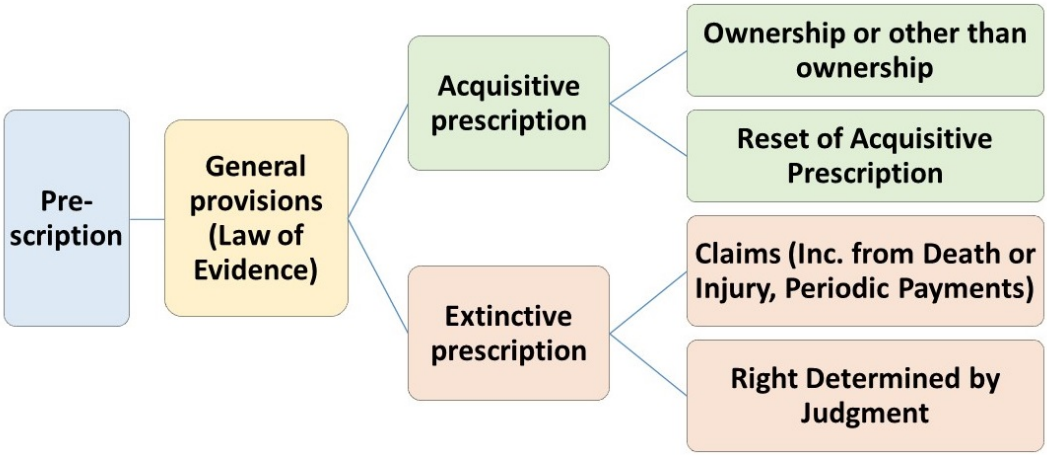
(3) In addition, a person who, in good faith with grossly negligent is treated the same as bad faith and thus has little protection.

(5) Prescription -- Evidence of acquisition and extinction of Juridical acts

1) Structure of Prescription

The provisions of prescription consist of three parts: General Provisions, Acquisitive Prescription, and Extinctive Prescription.

First, from the perspective of the law of evidence, the General Provisions provide for the submission of evidence ((Invocation of Prescription)), withdrawal of evidence (Waiver of Benefits of Prescription), effect of submission of evidence (Effect of Prescription), and effect of submission of contrary evidence (Postponement of Expiry of Prescription Period and Renewal of Prescription Period).



Structure of prescription (Law of Evidence)

Secondly, the acquisitive prescription includes for ownership, for other than ownership and the reset(renewal) of acquisitive prescription.

Thirdly, the extinctive prescription provides for claims(incl. claim for compensation for loss or damage resulting from death or injury to person, claims for periodic payments) and the extinctive prescription of rights determined by judgment.

2) Difficulty in Explaining the Prescription System and Reconstruction from the Law of Evidence

In the current Civil Code, there is a series of provisions which stipulate that a person acquires a right to a certain thing when a certain period of time passes after continuing to possess the thing (Acquisitive prescription) or loses a right to a certain thing when a certain period of time passes without exercising the right (Extinctive prescription).

The current Civil Code stipulates this as a substantive law system, but it is extremely difficult to explain the substantive law basis for why a substantive law right arises or disappears with the passage of time.

In this lecture, I will give up explaining the prescription system as a substantive law system, and reevaluate the fact that the former Civil Code drafted by Boissonade stipulated these systems as "the law of evidence," and reconstruct them as a system of statutory evidence that binds judges' evidentiary decisions.

In other words, in this lecture, I will consider the prescription system as the following system: The prescription system is the idea of the law of evidence that "the state of inertia that continues for a certain period of time is respected as a legal order and becomes legal evidence that is binding on judges.

3) An attempt to explain the prescription system from the perspective of the law of evidence

(a) Explanation of prescription of acquisition in the law of evidence

First, if it is proved that a person has been in possession for a certain period of time dating back from the present, it becomes legal evidence that the possessor is entitled to the real right indicated by the possession, and the judge is obliged to adopt the evidence. That is the system of prescription of acquisition.

Considering the prescription of acquisition in this way, even if it is unclear whether a thief or a rightful owner is in possession of an object, if the person continues to occupy the object peacefully and openly for a certain period of time, it can be considered as proof that a peaceful order exists and that the person is the owner.

On the other hand, if we try to construct the prescription of acquisition as a system in substantive law, we cannot answer the question that it is strange that even a thief becomes the rightful owner if he keeps possession for a certain period of time.

(b) Explanation in the law of evidence of prescription of extinction

Second, if it is proved that a person has not exercised a right for a certain period of time retroactively from the present, that right becomes legal evidence that the right has already

been extinguished, and the judge is obliged to adopt that evidence. That is the system of prescription of extinction.

Considering extinctive prescription in this way, even if it is unclear whether a certain claim has already been fulfilled by the debtor, the creditor has discharged the debt, or the debtor is simply ignoring the fulfillment, if the right has remained unexercised for a certain period of time in a peaceful manner, it can be considered as proof that the right has already been extinguished and the debtor is free from the right.

On the other hand, if extinctive prescription is used as a system in substantive law, the extinction of the right cannot be recognized unless there is proof that the obligation has been performed or the obligation has been discharged, even though there is no such proof.

4) Merits and Demerits of the Prescription System

(a) Danger of misuse of prescription

With respect to the prescription of acquisition, the purpose of the prescription system is to protect the original right holder by making it possible to prove the right of ownership, which is considered to be difficult to prove even for the original right holder.

With regard to the extinctive prescription, the purpose is to protect legitimate debtors from the danger of double payment by reducing the need for debtors who have already paid or been exempted to keep evidence of the extinction of debt, such as receipts.

However, such a system is also flawed, because a system that is designed to protect the true owner of the right cannot avoid simultaneously protecting the depriver of the right of possession and the dishonest person who tries to avoid the debt without paying it.

But these consequences are also flaws from which no system can escape.

(b) Cracking down on crime inevitably leads to false accusations.

For example, let's take the case of crime control. If we design a system where not a single criminal is allowed to go unpunished, then more and more people will cry about their innocence. On the other hand, if we design a system that ensures that no one is falsely accused, then many criminals will go scot-free.

Since we know that false accusations will occur, we need to make sure that false accusations are compensated to the fullest extent possible, and that there is a safety net in place, such as the abolition of the death penalty, so that false accusations can be redressed.

(c) To correct the defects of the prescription system

It must be admitted that the prescription system also has such institutional defects. However, for the sake of stability of social order, we cannot abolish the prescription system, just as we cannot abolish the crackdown on crime while recognizing its defects.

In order to correct the defects of the system, it is necessary to design it so that people can understand the prescription system well, and at the same time, citizens also need to manage evidence strictly so that they do not allow dishonest people to take advantage of the defects of the prescription system with good prescription.

Chapter 2. Real rights

The first part of the property law is the real rights section.

First, I will clarify the types of real rights and the structure of real rights law.

Second, I will clarify the distinction between real rights and claims.

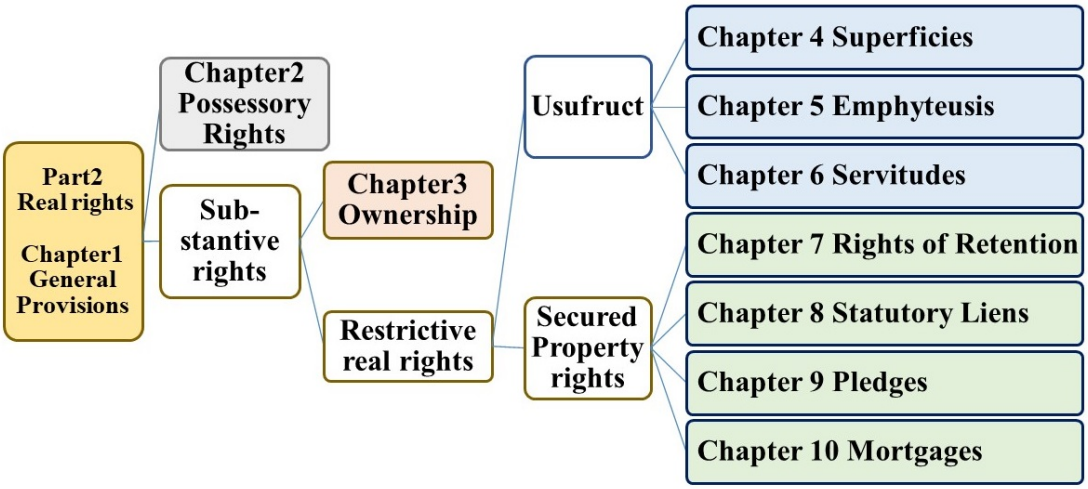
Third, I will explain the relationship between a sales contract, which is one of the claims, and real rights.

(1) Structure of Real Rights

In the Part II(Real Rights) , Chapter 1 is the general provisions of the Real Rights.

The detailed explanation following the general rules starts with possession. Possessory rights have the function of acquiring or proving the substantive real rights.

The title corresponding to the possession right is divided into the title right as a complete property right(ownership) and the restricted property right which restricts it.



Structure of Real Rights

Restricted property rights are further divided into usufruct rights related to use and profits and collateral rights related to realization and disposal.

A usufruct consists of superficies, farming rights, and servitudes.

A security interest consists of rights of retention, statutory liens, pledges and mortgages.

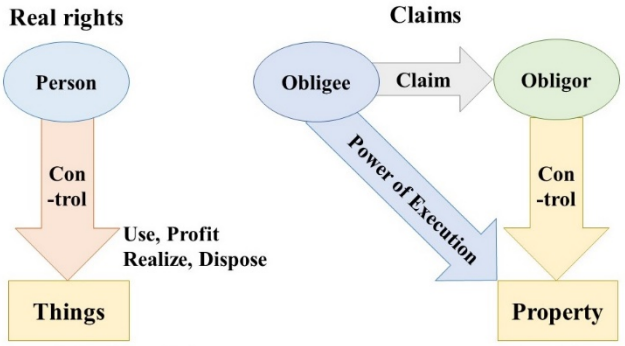
Although not stipulated in the Civil Code, a “security interest by transfer” is recognized as a security interest by judicial precedent and plays an important role.

(2) Distinction between Real rights and Claims

The Property Act consists of real rights and claims.

The real right is the right to control, use, profit, convert or dispose of tangible things.

On the other hand, man has no power of control over others. A person can only claim something from others.



Distinction between Real rights and Claims

A claim is the right of one person (the obligee) to demand another person (the obligor) to perform, that is, to do something (act) or not to do something (omission).

Provided, however, that, in cases where the obligor does not voluntarily perform the claim, the obligee may forcibly auction property that is controlled by the obligor and convert such property into cash and receive payment from such proceeds in an amount equivalent to the claim.

Therefore, the claim has the potential right to dispose of the obligor's property.

As will be described later, if the obligee has a security interest, the obligee also has the right to receive payment from the obligor’s property before other obligees. As a result, the claim becomes the right of priority over the real right.

(3) Relationship between sale contract and real right of land

A typical example of the intersection of claims and real rights in civil life is a sales contract.

A sales contract, as defined in Article 555 of the Civil Code, is a contract in which the seller promises to transfer ownership of the subject matter instead of the buyer paying the price.

Why are real rights transferred by a contract that is nothing more than a promise on a bond?

The reason is clarified in Civil Code Article 176 in the real rights section. Article 176 of the Civil Code provides that the transfer of real rights shall take effect only upon the manifestation of the intention of the parties concerned. This makes it clear that real rights are subject to transfer due to sales contracts.

1) The effect of sale contract (Art. 176 Code Civil of Japan)

When a sales contract is concluded, ownership of the subject matter of the sale transfers from the seller to the buyer.

The timing of the transfer of ownership is determined by the contents of the sales contract, but usually the ownership is transferred at the time of payment. If there is no such provision, the ownership is transferred at the time of conclusion of the contract.

Sale contract and real right of land

Article 176 (Creation and Transfer of Real Rights)

The creation and transfer of real rights shall take effect solely by the manifestations of intention of the relevant parties.

2) Relationship between sale contract and real right of land (2/2)

Ownership is transferred only under the sales contract, but in the case of sales of real estate, registration as a method of public notice of ownership is required in order to claim the transfer of ownership to a third party.

If the registered seller sells the property to a third party and the second buyer acquires the registration first, the second buyer becomes the true owner and the first buyer who fails to register the property loses ownership. Of course, the first buyer can claim damages from the seller, but the ownership will not return.

Article 177(Requirements of Perfection of Changes in Real Rights concerning Immovable properties)

Acquisitions of, losses of and changes in real rights concerning immovable properties may not be asserted against third parties,

unless the same are registered pursuant to the applicable provisions of the Real Estate Registration Act (Law No. 123 of 2004) and other laws regarding registration.

3) The effect of the double selling of a real estate (Art. 177 Code Civil of Japan)

Regarding the ownership transferred from the seller to the first buyer in accordance with Article 176 of the Civil Code, if the first buyer fails to register the ownership, the second buyer who obtained the registration from the seller first reverses the transfer of

ownership and the second buyer becomes the real owner in accordance with Article 177 of the Civil Code.

Relationship between sale contract and real right of land

According to Article 177 of the Civil Code, a second buyer who first obtains registration as a requirement for protection of rights may attack the first sales contract and deny the transfer of ownership that is the effect of the sales contract. If the transfer of ownership is denied as an effect of the sales contract, the seller acquires ownership retroactively, so that the sales contract between the seller and the second buyer becomes effective retroactively, and the second buyer can acquire ownership directly from the seller.

Chapter 3. Relationship between Law of Real property and Obligation

With regard to the relationship between real rights and claims, while real rights have absolute effect, claims are only relative rights that have effect only between the parties concerned, and it has been considered that real rights are stronger than claims.

However, this is a misguided way of thinking that ignores reality. The reasons are as follows.

First, if the obligor does not voluntarily perform his/her obligation, the creditor has the authority to execute the obligor's entire property, which should have been exclusively controlled by the obligor, and to convert and dispose of the entire property, that is, to deprive the obligor of his/her real rights.

Second, in addition to having direct effect on the third party obligor (direct right to sue), if the obligor transfers the property he/she controls to a third party for the purpose of harming the obligee, the obligee has the power to enforce the right by executing the right directly on the third party and receiving payment from the lost property (right to cancel fraudulent act).

In light of this, it can be said that claims are more powerful than real rights in that they deprive defaulters of real rights and have the power to pursue malicious third parties.

(1) Action paulienne

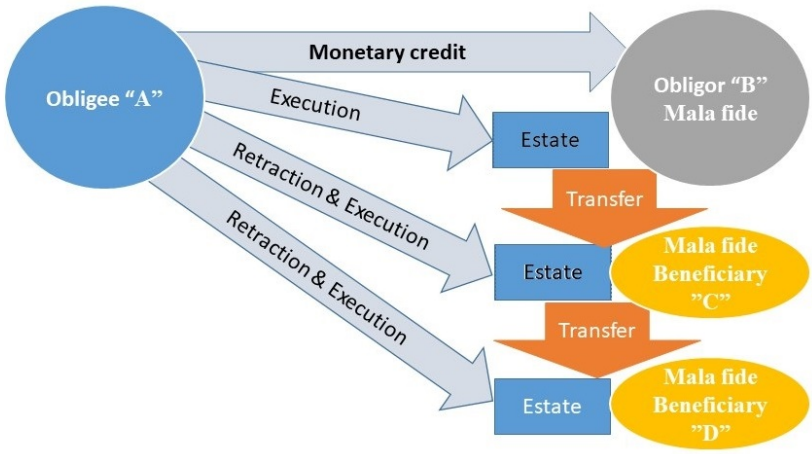
Obligee's right to demand rescission of fraudulent 〔Action Paulienne〕 is a system that allows obligees to execute the property of a beneficiary even if the obligor's property is transferred to the beneficiary in collusion with a third party (beneficiary) in order to prevent the obligee from executing the obligor's property.

This system is very similar to the system in which registered mortgages have the power to pursue the subject property. In the case of a mortgage, the registration justifies the ability to pursue a third party. In the case of a obligee's right to demand rescission of fraudulent〔Action Paulienne〕, the bad faith of a beneficiary or a subsequent acquirer justifies the ability to pursue a obligee.

Effect of the Action paulienne (droit de suit: tracing right)

Even if a simple creditor has no security interest, if the debtor transfers the debtor's property to three parties in collusion with a third party (beneficiary or subsequent purchaser), the obligee may enforce compulsory execution against the property transferred to the third party.

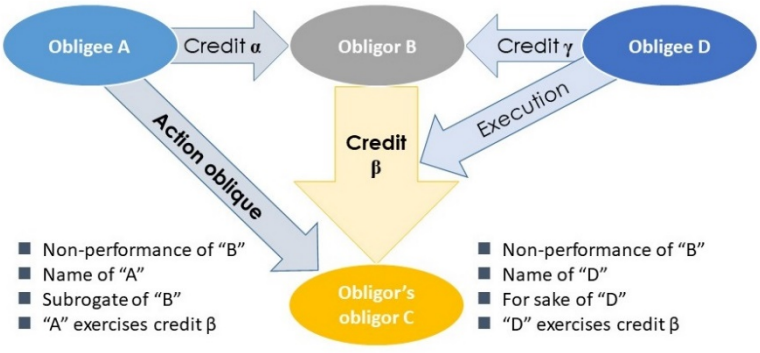
While the basis on which real rights have the power to pursue third parties is a registration that has the function of public notice to third parties, the basis on which claims have the power to pursue third parties through the obligee's right to demand rescission of fraudulent 〔Action Paulienne〕 is the bad faith of third parties.



Action paulienne (droit de suit: tracing right)

At first glance, public notice may appear to be different from bad faith. However, public notice is intended to harm a third party, and as a result, it can be seen that the essential basis of the power to pursue is the bad faith of a third party, and that the basis is the same for real rights and claims.

(2) Action Oblique and Attachment Dividend is equal among obligees



Action Oblique and Attachment Dividend
is equal among obligees

Regarding the principle of relativity of claims, there is a system in which creditors can extend the validity of claims against third party obligor through a chain of claims, in addition to the exception of the ability to enforce

claims, which is the right to cancel fraudulent acts against loss of property with bad faith by obligars and beneficiaries. The former is the right of subrogation of obliges (action oblique).

For example, suppose that Obligee A has a claim α against Obligor B, and Obligor B has a claim β against Third Party Obligor C.

If Debtor B becomes insolvent, Obligee A, on behalf of Obligor B, may request Third Party Obligor C to perform Claim β directly to Obligee A.

This is similar to compulsory execution of a claim under the Civil Procedure Law, but the difference is that obligee A can request the third party obligor to perform the obligation as a right under the substantive law.

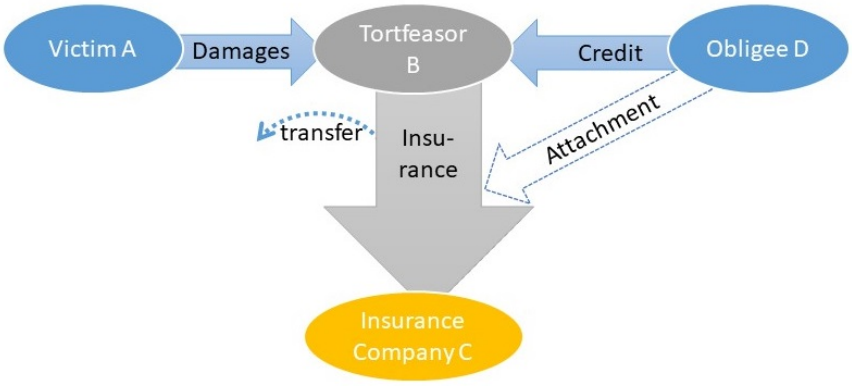
(3) Action directe" of a victim against insurance company

The direct right of action is a system in which the right of subrogation is evolved to recognize the exclusive and preferential effects of creditors on third party obligors.

1) Case Study of a traffic accident

For example, victim A of a car accident can request insurance company C, to which tortfeasor B belongs, to pay insurance money directly to A, not to B, within the scope of A's compensation for damage to B.

In this case, A, the victim, can receive payment from C with priority over D, the other obligee of wrongdoer B.



Action directe" of a victim against insurance company

Security Act of the Automobile Accident Liability Art. 16 (1)

A victim of automobile accident may claim for damages against insurance company of tortfeasor to the extent of the insurance amount.

2) Act on Securing Compensation for Automobile Accidents－Direct Action

Act on Securing Compensation for Automobile Accidents

Article 16 (Filing a Claim with the Insurer for Damages)

If a person[Y] in possession becomes liable to compensate for damage as under Article 3, the injured party[X] may file a claim with insurer for the insurer to pay the injured party damages of up to the amount of insurance coverage, pursuant to Cabinet Order.

Insurance Law

Article 22 (Statutory Lien on Liability Insurance Contracts)

(1) Any person who has a right to claim against the insured of a liability insurance contract for damages pertaining to an insurance accident of such liability insurance contract shall have a statutory lien on the right to claim insurance benefits.

(2) The insured may exercise the right to claim insurance benefits against the insurer only to the extent of the amount paid for the obligation pertaining to the right to claim for damages set forth in the preceding paragraph or the amount approved by the person who has such right to claim for damages.

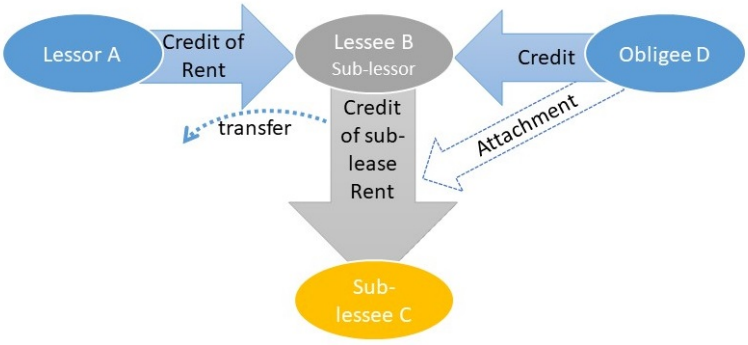
(3) The right to claim insurance benefits under the liability insurance contract may not be transferred, pledged or seized; provided, however, that this shall not apply to the following cases

(i) Cases where the right to claim the insurance benefits pursuant to the provision of paragraph (1) is transferred to a person who has the right to claim the insurance benefits or is seized with respect to such right to claim the insurance benefits

(ii) The case where the insured person may exercise the right to claim the insurance benefits pursuant to the provision of the preceding paragraph

3) "Action directe" of sub-lease contract

The system of the victim's direct claim to the insurance company of the tortfeasor has developed into a system in which the lessor can directly claim the sublease amount from the



"Action directe" of sub-lease contract

sublessee in relation to the tenant's rent claim to the sublessee.

Article 613 (1)

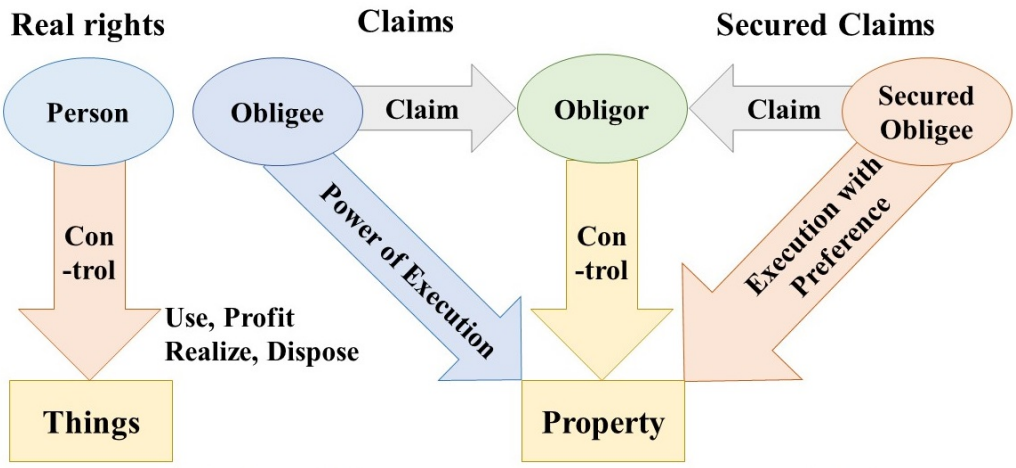
(1) If a lessee lawfully sub-leases a leased Thing, the sub-lessee shall assume a direct obligation to the lessor. In such cases, advance payment of rent may not be asserted against the lessor.

(2) The provisions of the preceding paragraph shall not preclude the lessor from exercising his/her rights against the lessee.

In addition, the system is moving toward extending the subcontractor's direct claim to the subcontractor's orderer.

(4) Dominant position of claims under modern law

Real rights are considered to be exclusive rights that have effect on third parties and are stronger than claims that are only relative rights that have effect only between the parties.



Dominant position of claims under modern law

However, an owner's exclusive control over a thing is limited to the time when the owner has no debt or has performed the debt properly.

If the owner has a debt to the obligee and the payment is delayed, the obligee shall have the right to dispose of and receive payment from all the owner's property. In addition, a obligee who holds a security interest may receive payment from the owner's property before other obligees.

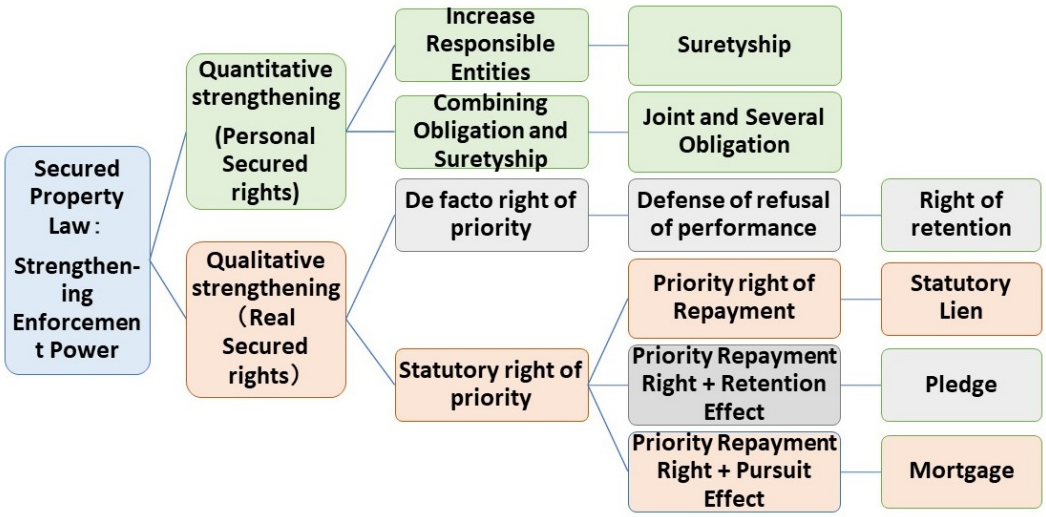
In this way, it can be said that under modern law, claims have a position superior to real rights.

(5) Structure of Secured Property rights

In one sentence, a security interest strengthens the enforcement power of creditors. There are two types of security interest.

The first is to expand and strengthen the liability assets quantitatively, that is, to increase the number of people who bear the debt. This is called "personal security."

There are two types of personal security: guarantees and joint and several obligations. A guarantee makes a person other than the obligor liable. A joint and several obligation is a combination of an obligation and a guarantee, in which the obligor is liable for the entire amount of the obligation.



Structure of Secured Property rights

The second is to expand and strengthen the liability property qualitatively, that is, to make it available for repayment before other creditors. This is called “real collateral."

Real collateral has four rights.

The first is the right of retention that strengthens the right of defense of refusal of performance (the right to refuse the return of things until the obligation is satisfied).

The second is a statutory lien as the right of preferential payment itself.

The third is a pledge that adds a detentive effect (the right not to return the debtor's property until the debt is repaid) to the right of priority.

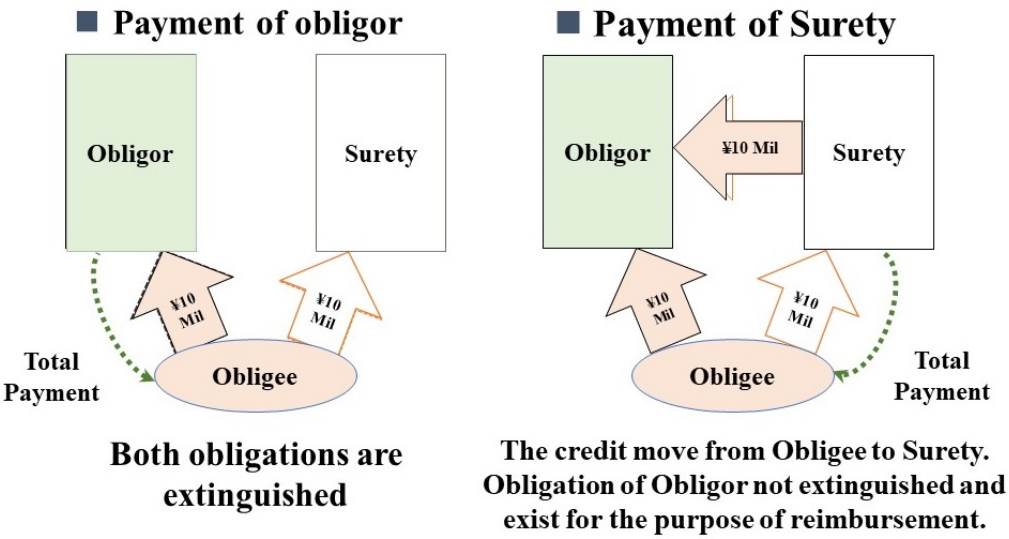
The fourth type is a mortgage in which the pursuit effect (The right of a mortgagee as an obligee to realize the subject matter against a third party, even if the property is assigned to a third party) is added to the right of preferential payment.

In addition, although there are no clear provisions in the Civil Code, there is a security by transfer as a security interest approved by judicial precedent. This mortgage is used very often in practice and has important significance.

1) Two types of payments cause completely different results

The key to understanding collateral (guarantees) is to make a strict distinction between the original obligation and the collateral. Security (guarantee) is the responsibility of being subordinated to a debt and not the ultimate obligation.

This is clearly manifested in two phenomena.



Two types of payments cause completely different results

First, if there is no obligation, there is no security (guarantee), and if the obligation disappears, the security (guarantee) will surely disappear. This is called "collateral (guarantee) subordination."

Second, when the obligor pays, the obligation is extinguished. However, if the guarantor performs the obligation, the obligation will not be extinguished, and the guarantor may claim the obligation against the obligor in subrogation of the obligee in order to secure the guarantor's right to obtain reimbursement. This is called "subrogation by repayment" of the guarantor.

In other words, in the case of a obligation with a guarantor, if the guarantor performs the obligation, the obligor will leave the stage with satisfaction, but at that point, the liquidation has not been completed and the obligation will not be extinguished. The

obligation is extinguished and the liquidation is completed only when the obligor reimburses the guarantor in response to the guarantor's demand.

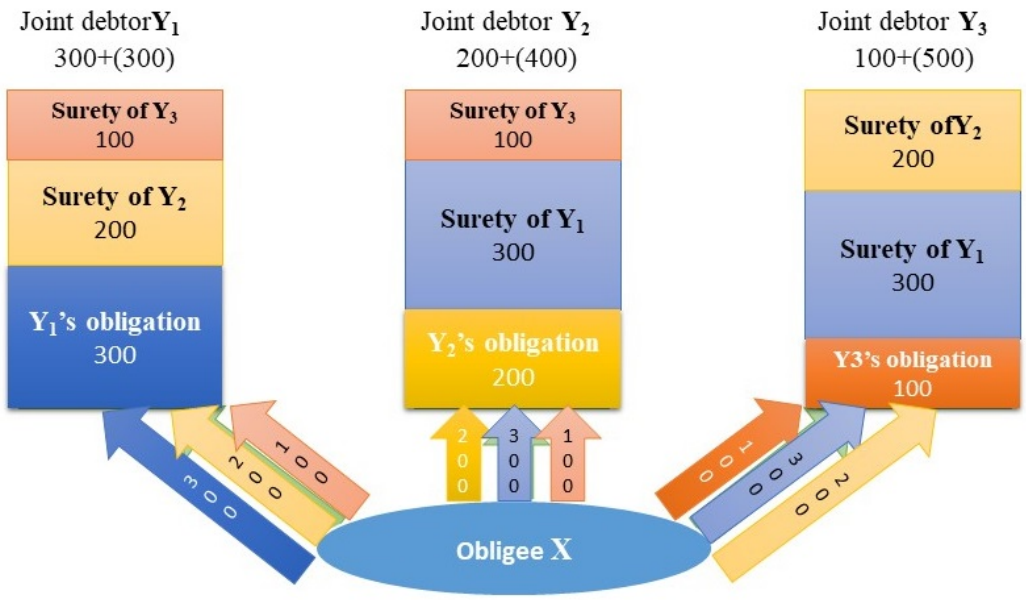
This is important because it is easy to miss.

2) Structure of several and joint liability

Because the term “joint and several obligation” is an obligation in literally word, the majority of scholars believe that a “joint and several obligation” is a real obligation, not a guarantee.

However, this idea is completely wrong (a classic example of a myth that is not always true).

The “joint and several obligation” is actually combination of an “original obligation (the portion to be borne)” and a “guarantee (the portion to be guaranteed) to other joint several obligors”.



Structure of several and joint liability

This can be easily proved with a simple example.

For example, suppose that obligee X borrow 3 million yen from Y1, 2 million yen from Y2, and 1 million yen from Y3, and jointly and severally promise to repay X.

In this case, X can request payment of 6 million yen from Y1, Y2, and Y3. Therefore, the majority of scholars believe that Y1, Y2, and Y3 have separate joint and several obligations of 6 million yen.

However, since X lent only 6 million yen, it is not possible for X to receive repayment

of 6 million yen × 3 = 18 million yen. The maximum amount X can receive is limited to 6 million yen.

Then, how does the formula 6 million yen + 6 million yen + 6 million yen = 6 million yen hold?

The answer is that since the original obligations are only 3 million yen, 2 million yen, and 1 million yen, X can only receive repayment of 6 million yen.

Then, why can X claim 6 million yen against each joint and several obligor?

It is easy to understand that a “joint and several obligation” actually consists of an “original obligation (the portion to be borne)” and a “guarantee (the portion to be guaranteed) to other joint several obligors”.

In other words, in addition to the portion of the original obligation of ¥3 million, Y1 is expected to bear the portion of the guarantee for Y2 of ¥2 million and the portion of the guarantee for Y3 of ¥1 million.

In the same way, in addition to the 2 million yen burden portion, Y2 is assumed to bear the 3 million yen guarantee portion for Y1 and the 1 million yen guarantee portion for Y3.

In the same way, Y3 is expected to pay 3 million yen for the guarantee portion for Y1 and 2 million yen for the guarantee portion for Y2, in addition to the 1 million yen burden portion.

This makes it possible to clearly explain all the difficulties that have traditionally been difficult to explain about joint and several debts.

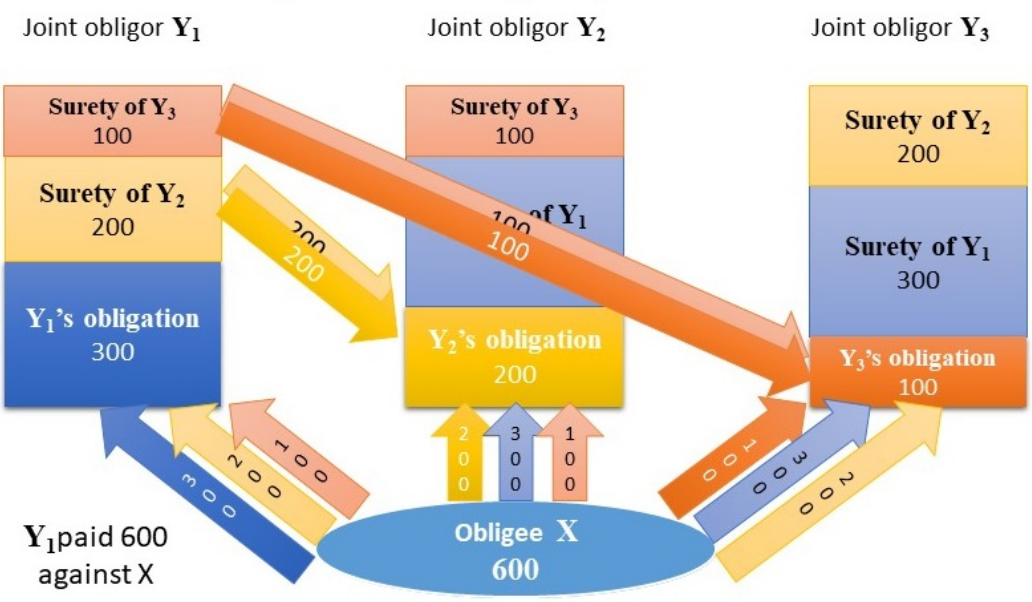
3) Subrogation of joint obligor by total payment

If 1 person pays the joint and several obligation in full (6 million yen) to the joint and several obligor, most scholars believe that the joint and several obligation will be extinguished by that.

But this is also a mistake.

If one of the joint and several obligors, for example Y1, pays the entire joint and several obligation, the effect of the payment must be analyzed in two stages.

■The first step is to reimburse the portion of Y1's burden (3 million yen). In this case, since the portion to be borne by Y1 (3 million yen) is an original obligation, that portion (the portion to be borne: 3 million yen) will be extinguished. When the obligation is extinguished, not only the guaranteed portion of Y2 for Y1 (¥3 million), which guaranteed the obligation, but also the guaranteed portion of Y3 for Y1 (¥3 million), will be extinguished by default.



Subrogation of joint obligor by total payment

■The second stage is the occurrence of the right to reimbursement (subrogation by repayment) due to the repayment of the guaranteed portion. Y1 acquires the right to obtain reimbursement of 2 million yen from Y2 through the repayment of Y2 Guarantee Portion (2 million yen). In the same manner, Y1 acquires the right to obtain reimbursement of 1 million yen from Y3 through the performance of the guaranteed portion of Y3 (1 million yen).

In this way, even if Y1 makes a full payment of 6 million yen to X, the joint and several obligation will not be extinguished immediately. In order to secure Y1's right to obtain reimbursement, Y1's debt of 2 million yen to Y2 and Y1's debt of 1 million yen to Y3 will continue to exist (Civil Code Article 499 and below).

Therefore, in order for the joint and several obligation to be fully extinguished, it will be necessary to wait until Y2 has completed repayment of 2 million yen against Y1 and Y3 has completed repayment of 1 million yen against Y1 in response to the demand of Y1.

Chapter 4. Contract Law

When dealing with a contract problem, it is helpful to consider the problem along the flow of the contract to get an overall picture of the problem.

It is also easier to solve the problem if you know which type of contract the problem belongs to.

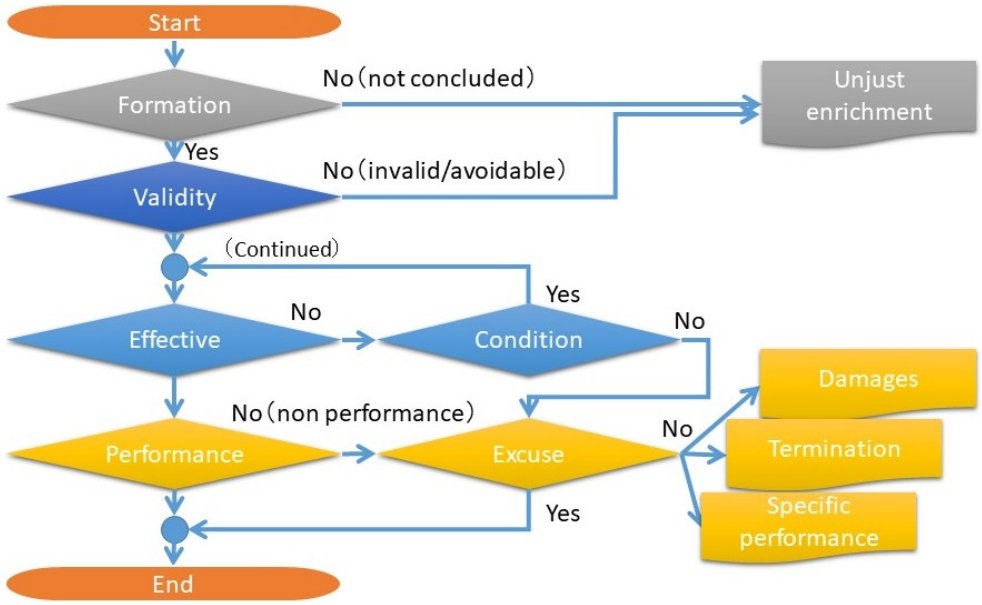
(1) Flow of Contract

When resolving contract issues, it is important to consider the following sequence.

■First, is there a contract in place? If not, it becomes an issue of administration and unjust enrichment.

■Second, if it has been formed, the question is whether the contract is valid or not. If the contract is invalid, it becomes an issue of administration and unjust enrichment.

■Thirdly, if the contract is valid, when does the contract take effect? If the contract has a condition of suspension or an initial term, the contract takes effect when the condition is fulfilled. If the contract has a termination condition, the contract terminates when it is fulfilled.



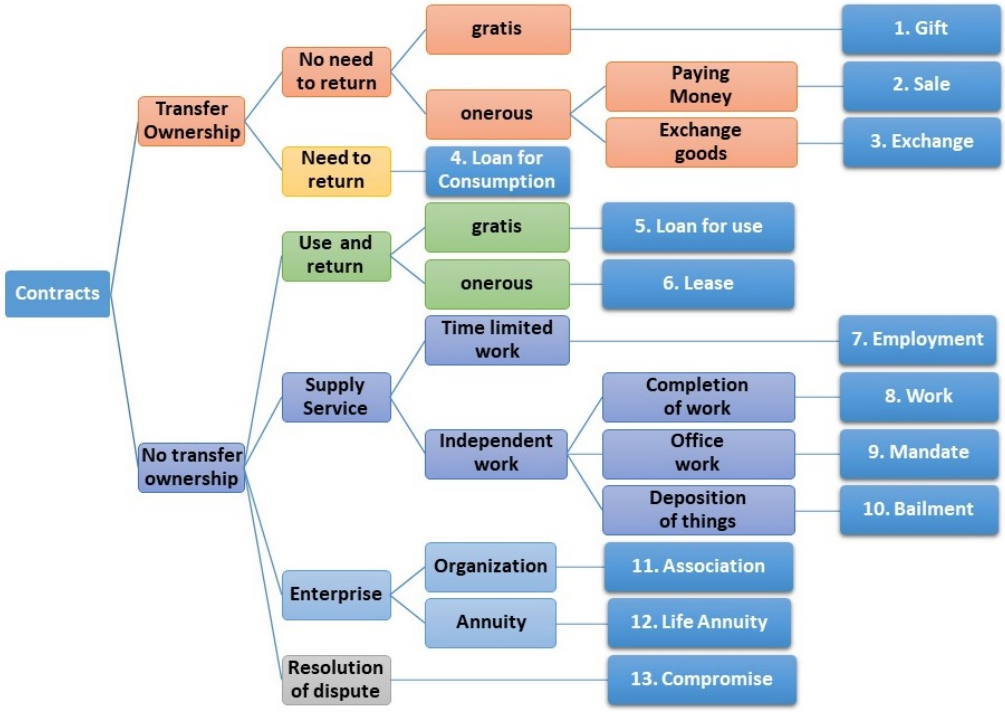
Flow of Contract

■Fourth, if the contract is in effect, the question is whether the contract has been performed. If the contract has not been performed, and there is no excuse for not performing, the party who has not received performance of the contract is entitled to three

remedies: compulsory performance, termination of the contract, and damages.

(2) Type of Contracts

There are various types of contracts, and the Japanese Civil Code provides for 13 types.



Type of Contracts

The first is a contract for the transfer of property rights. The first type is a contract to transfer property rights.

If the property rights are transferred without compensation, this is a “gift” contract.

If the consideration is money, it is a contract of “sale”. If the consideration is a thing, it is an “exchange” contract.

A “loan for consumption” contract requires the return of the property right once it has been transferred.

The second type is a contract that does not transfer property rights.

The second type is a contract that does not transfer property rights. Of these, a contract for the use or profit of an object is a “loan for use” contract if it is free of charge, and a “lease” contract if it is for a fee.

There are four types of contracts for the purpose of providing labor as follows.

An “employment” contract is one in which labor is provided on a time-based basis.

Contract for the completion of work is “contract for work”.

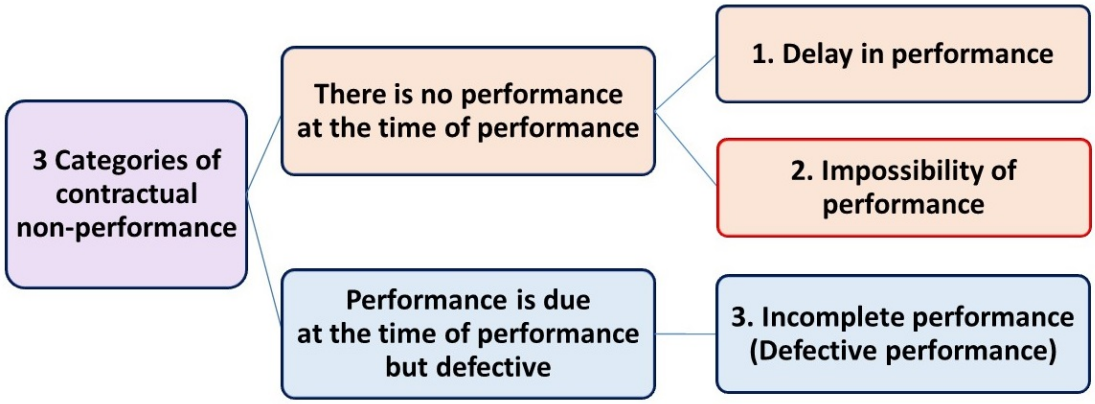
A “mandate” contract is a contract for the purpose of processing work.

A contract for the deposit of goods is a “bailment” contract.

A “partnership” contract is a contract to form an association, and a life time deposit contract is a “life annuity” contract. A “settlement” contract is a contract for the purpose of resolving a dispute.

(3) Requirements for Non-performance of Contract

If the obligor does not perform the contractual obligation voluntarily, i.e., in the case of breach of contract, the obligee may, as a contractual remedy, demand compulsory performance, termination of the contract,and if the obligor is responsible for the breach of contract, then obligee can also claim compensation for damages.



3 Categories of Non-Performance of Contract

1) From three to four Categories for Non-performance of contract

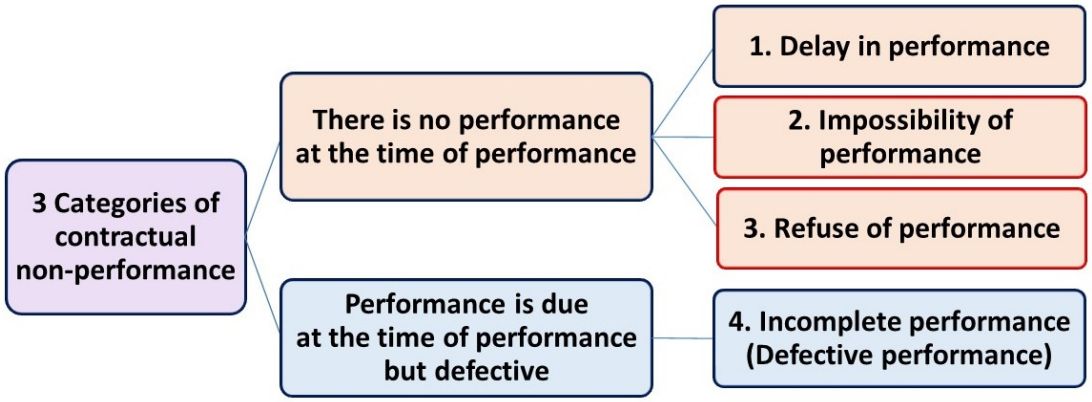
In the past, the three main categories of contractual non-performance were "delay in performance" , "impossibility of performance" and "incomplete performance (defective performance). However, this classification could not explain "refusal to perform," which is neither delay nor impossibility of performance, but simply the intention of the obligor.

Therefore, with the amendment of the Law of Obligations, the following four classifications of contractual default were adopted: "delay in performance," "impossibility of performance," "refusal to perform," and "incomplete performance (defective performance)" .

2) Three New Categories of Breach of Contract

a) Ambiguous and difficult to prove "impossibility of performance"

With the addition of the concept of "refusal to perform" to the list of breaches of contract, the four categories of breach of contract have become the norm, but new problems have arisen.



4 Categories of Non-Performance of Contract

The center of the problem is the impossibility of performance, which is extremely difficult to prove. The concept of impossibility of performance includes not only physical impossibility but also economic impossibility, which is very vague and extremely difficult to prove.

This is because the scope of physical impossibility of performance alone has been significantly reduced with the development of science.

b) Partial absorption of non-performance into delayed performance

In the past, the sinking of a ship was considered a typical example of impossibility, but advances in salvage technology have made it possible to raise a sunken ship. Fire loss was also considered a typical example of impossibility, but with the development of reconstruction techniques and 3D printers, it is now possible to recreate a house that has burned down.

In other words, if we take the time axis into consideration to the fullest extent, we can see that what is thought to be a present impossibility of performance is often just a future delay in performance.

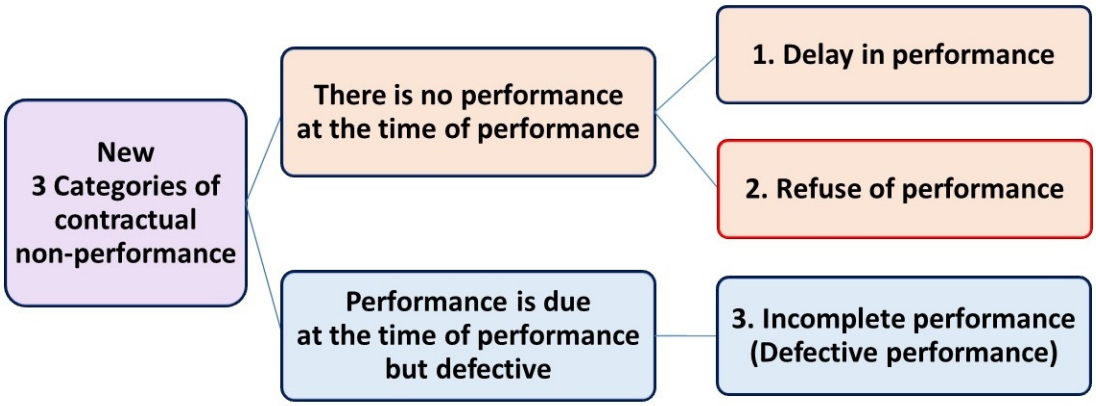
c) Absorption of impossibility of performance into refusal of performance

The concept of refusal to perform has been incorporated into breach of contract,

resulting in a situation in which much of the impossibility of performance is absorbed by refusal to perform, as follows.

For example, when a contractual obligation is not performed at the time of performance, the obligee asks the obligor whether he intends to perform within a reasonable period of time. If the obligor replies that he can perform within a reasonable period of time, it will be treated as an issue of delay in performance.

On the contrary, if the debtor answers that he cannot perform within a reasonable period of time, the legal problem can be easily solved by avoiding the difficult issue of deciding whether or not he is impossible to perform, if it is considered as the issue of "refusal to perform" in a broad sense, including the case where the cause of the refusal is impossibility of performance.



New 3 Categories of Non-Performance of Contract

In other words, when there is no performance at the time of performance, the obligee only needs to ask whether the performance can be made within a reasonable period of time. If the obligor answers that the performance can be made within a reasonable period of time, it becomes a problem of delay in performance. If the obligor answers that the performance cannot be made within a reasonable period of time, it can be handled as a problem of "refusal of performance" without asking whether the performance is impossible. If the obligor answers that he cannot perform within a reasonable period of time, the issue can be handled as a "refusal to perform" issue without asking whether he is unable to perform.

3) The needlessness for the concept of impossibility of performance

In this way, it is clear that the concept of impossibility of performance is unnecessary

in practice as long as we have the concepts of delay and refusal of performance, although it certainly makes sense in conceptual jurisprudence to consider the concept of impossibility of performance.

Therefore, the "new three categories" of "delay in performance," "refusal to perform," and "incomplete performance (non-conformity)" are sufficient for the requirements of contractual non-performance.

Again, if there is no performance at the time of performance, the obligee only needs to ask, "Can you perform within a reasonable period of time?

If the obligor says "I cannot perform within a reasonable period of time", the issue becomes one of delay in performance, and the obligee can cancel the contract if the performance is not made within the notice period.

On the contrary, if the obligor says "I cannot/will not perform within a reasonable period of time", the obligee can terminate the contract without notice as "refusal to perform".

Obligations outside Contracts

Man is a social animal, and must live in cooperation with others. Therefore, rules for preventing conflict with others and maintaining peace are required.

In order to achieve this purpose, it is necessary to construct rules for individuals to realize the following actions.

(1) Take care of others ... while respecting the will of others, support shall be provided in a manner consistent with maximizing their interests (rules of business management). And do not do what others dislike (the rule of tort).

(2) Raise yourself ... Improve your skills to support others. Once support is begun in a way that is compatible with the interests of people, it is not abandoned, and support is continued until the goal is achieved or a failure is identified (rules of business management).

(3) Challenge ... Challenge good deeds without being asked. If the challenge fails, a rework is attempted (unjust enrichment rule). If rework is not possible, liability to recover damages is assumed only in cases of gross negligence (tort rules).

Chapter 5. Business Management

Man is a social animal. Human beings live by helping each other as a starting point. Therefore, the rules for helping each other should be considered first.

The business management determines the method in the case in which the human supports the other person even in the case in which there is no agreement, and therefore, it is the most important rule in the human rule.

If you understand how a country defines and positions the rules by which people help each other, you will know the essence of its civil law.

First, the French Civil Code, which was the first modern civil code, placed importance on respecting individual freedom, and positioned business management in unjust enrichment, with a focus on giving business managers the right to claim the minimum reimbursement of costs.

Second, the German Civil Code regards interference with others in the business management as a mandate without agreement, and places importance on the authority of the manager, and places the business management in the contract law by making provisions similar to mandates such as the duty of care of a prudent manager.

Third, the Japanese law positions business management as an independent system, since business management is not a contract in the absence of agreement, and it is also a mistake to position business management as unjust enrichment because not only the right to claim reimbursement but also the authority of the manager should be regulated. In addition, in cooperation with the contract, the delegation provisions are applied mutatis mutandis, the right to claim reimbursement of costs is provided in the same manner as unjust enrichment, and the manager is protected by the provision that mitigates the responsibility of the manager in case he/she neglects the duty of care of a prudent manager from tort.

(1) Law of Management of Business

Article 697(Benevolent Intervention in Another's Business)

(1) A person that has begun to manage a business for another person without being obligated to do so (hereinafter in this Chapter referred to as a "manager") must manage that business, in accordance with the nature of the business, in the way that best suits the interests of the principal (hereinafter referred to as "benevolent intervention in another's business").

(2) A manager must engage in benevolent intervention in another's business in accordance with the intentions of the principal if the manager knows, or is able to

conjecture that intention.

1) Applicable articles in Maizuru City Grand Sumo Case (2018)

Applicable articles in Maizuru City Grand Sumo（Case 2018）

On April 4, 2018, at the “Spring Grand Sumo Tournament” held in Maizuru City, Kyoto Prefecture, when mayor Ryozo Tatami was giving a speech in the Sumo stage, he suddenly fell on his back (Later found to be critical due to a subarachnoid hemorrhage: serious disease caused by bleeding from blood vessels in the brain).

Mayor Ryozo Tatami was suddenly fell on his back.

The hall was in an uproar, and while the people on the ring were panicking, two women in the audience stepped into the Sumo stage for life-saving treatment.

When the women were immediately started artificial respiration, the event in charge of the announcement repeatedly announced to them, "Women should get off the Sumo stage.".

The announcement repeatedly announced to them, "Women should get off the Sumo stage.".

■Urgent Management of Business

Article 698

If a Manager[woman] engages in the Management of Business[artificial respiration] in order to allow a principal[Mayer] to escape imminent danger to the principal's person, reputation or property, the Manager[woman] shall not be liable to compensate for damages resulting from the same unless he/she has acted in bad faith or with gross negligence.

■Continuation of Management of Business by Managers

Article 700

A Manager[woman] must continue the Management of Business[artificial

respiration] until the principal[the mayer] or his/her heirs or legal representatives[male rescue team] can undertake it;

provided, however, that this shall not apply in cases where it is evident that the continuation of the Management of Business is contrary to the intentions of the principal, or is disadvantageous to the principal.

2) After the Maizuru City Grand Sumo Case

After the Maizuru Sumo Case, the male rescue team arrived and took over the rescue work with the two women, and the mayor was rushed to the hospital and admitted to the hospital, where he survived.

The rescue operation of two women, ignoring the announcement "Women should get off the stage.", saved lives (The mayor of Maizuru is now recovering his health and returning to work.).

Subsequently, President Hakkaku of the Japan Sumo Association explained that the announcement of the event was "inappropriate as an emergency response".

On the other hand, there are opinions that the tradition of “Nyonin kinsei(女人禁制：No women allowed in the Sumo stage)" should be respected and that announcements should be followed.

Chapter 6. Unjust Enrichment

Unjust Enrichment is a system for adjusting losses and gains from the perspective of fairness when one party suffers a loss and the other a gain due to an event lacking a legal cause.

When one party suffers a loss and the other party suffers a gain due to a cause other than the cause of the claim, such as a contract, administration, or tort, the system of unjust enrichment allows the loser to return the gain.

■The problem of unjust enrichment arises even when the contractual cause of the loss or gain is unsuccessful or invalid(Benefiting unjust enrichment).

■The problem of unjust enrichment arises even in the case of mismanagement of affairs(Redeeming unjust enrichment).

■In the case of a tort, if there is no intentional or negligent act, an issue of unjust enrichment may arise (Violating unjust enrichment).

(1) Type of unjust enrichment

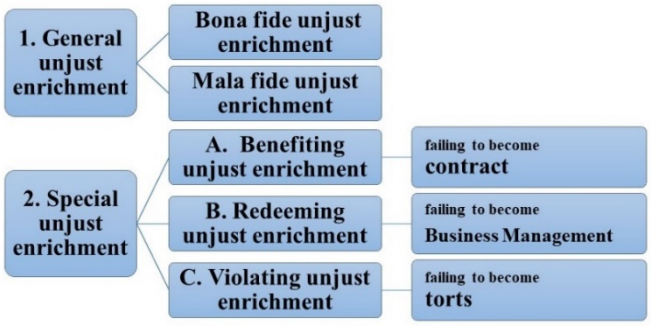
Unjust enrichment can be divided into two types.

The first is general unjust enrichment, which is divided into two types:

(1) unjust enrichment in good faith (implied management of affairs) and

(2) unjust enrichment in bad faith (management of affairs against one's will).

The second is special unjust enrichment, which has the following three types



Type of unjust enrichment

1) Unjust enrichment that fails to become a contract, which is called Benefiting unjust enrichment.

2) Unjust enrichment for failure to manage affairs, which is called Redeeming unjust enrichment.

3) Unjust enrichment is a kind of unjust enrichment that fails to be a tort, and is called Violating unjust enrichment.

As you can see, unjust enrichment plays the role of a receiver when the other causes of occurrence of a claim are not established or are extinguished.

However, office administration is also given this role, and there is a dispute as to which

of office administration and unjust enrichment is the ultimate receiver, and it is left to the future development of the theory.

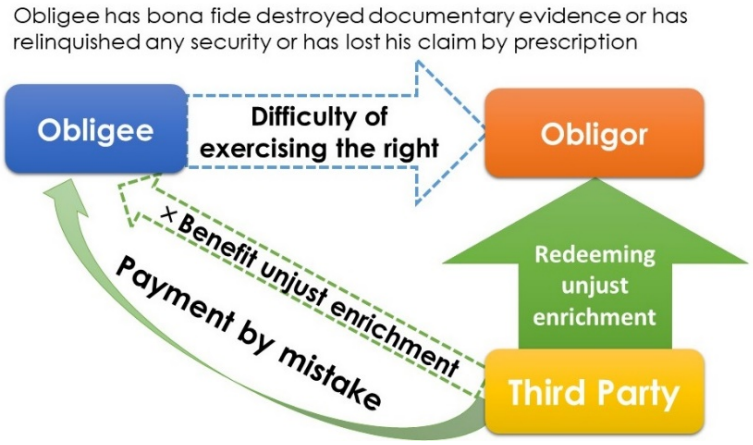
Redeeming unjust enrichment (Art. 707)

Among the provisions of unjust enrichment, there is a provision that is difficult to classify. That is Article 707 of the Civil Code.

(Case study) A typical example of the application of this article is as follows.

After receiving the payment from third party who believed that he/she was a obligor or garantor, the obligee has bona fide destroyed documentary evidence or has relinquished any security or has lost his claim by prescription.

(1) Can a third party who has mistakenly repaid a obligee as a obligor or guarantor claim restitution of unjust enrichment from the creditor based on a miscomprehension?



Redeeming unjust enrichment (Art. 707)

(2) Can a third party who has made a miscomprehension payment make a claim for reimbursement of expenses against a debtor who is exempt from payment based on the administration of affairs?

(Answer)

(1) In order to protect the creditor who is unable to make a claim against the debtor, unjust enrichment of benefits by a third party who has made a payment in error is not recognized.

(2) A third party who has made a payment in error does not have the right to claim for reimbursement of expenses based on the administration of affairs against the debtor who is exempted from payment, because the requirements for administration of affairs are not met, and recognizes unjust enrichment of expenditure as unjust enrichment for failing to manage affairs.

However, the result is the same as the result of admitting the right to claim for

reimbursement of expenses based on office administration. It remains to be clarified theoretically whether this is an affirmation of special unjust enrichment or an acknowledgment of implied office management.

Chapter 7. Tort Law

(1) The most frequently applied Article of Civil Code of Japan

The law of torts is the group of articles most frequently applied by the courts in the Japanese Civil Code.

Among them, Article 709 of the Civil Code, which defines general torts, is the most frequently applied article in the entire Civil Code.

The frequency of its application accounts for about 30% of the total number of articles in the Civil Code.

(2) The Role of General Tort Law

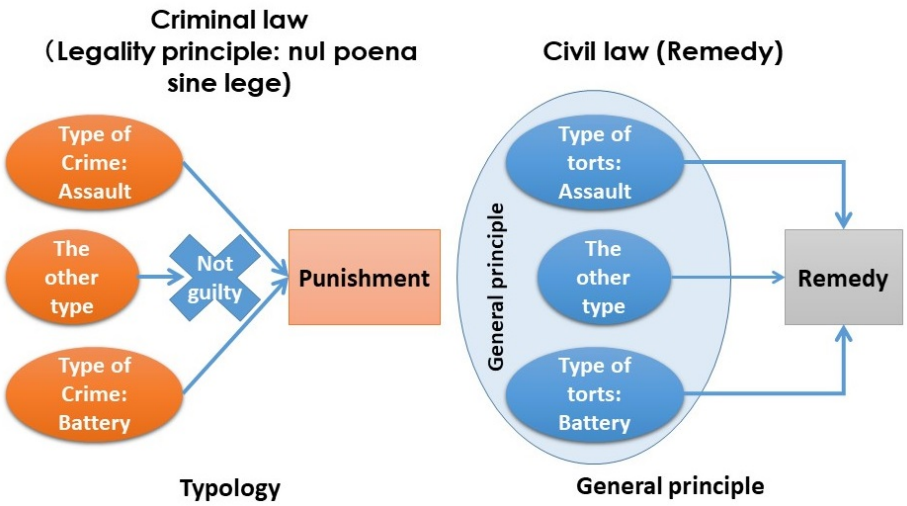
In the postwar period, when resolving many social problems such as pollution lawsuits, drug lawsuits, product liability, medical malpractice, etc., which were regarded as major social problems, until the establishment of special laws, all the victims were rescued by Article 709 or Article 719 of the Civil Code.

The reason why all these problems have been solved by Article 709 or 719 of the Civil Code is that these articles are the simplest and most comprehensive provisions for victims to seek atonement from the offender.

(1) Difference between Criminal law and Tort law

When one person's act causes harm to another, the state has two ways of resolving the problem.

(1) The first is to reduce the harm by punishing the perpetrator. This is the role of punishing the perpetrator.



Difference between Criminal law and Tort law

(2) The other is to provide relief to victims who have suffered harm. The Civil Code's Tort Law imposes liability for damages on the perpetrator, and the Penal Code fulfills this role.

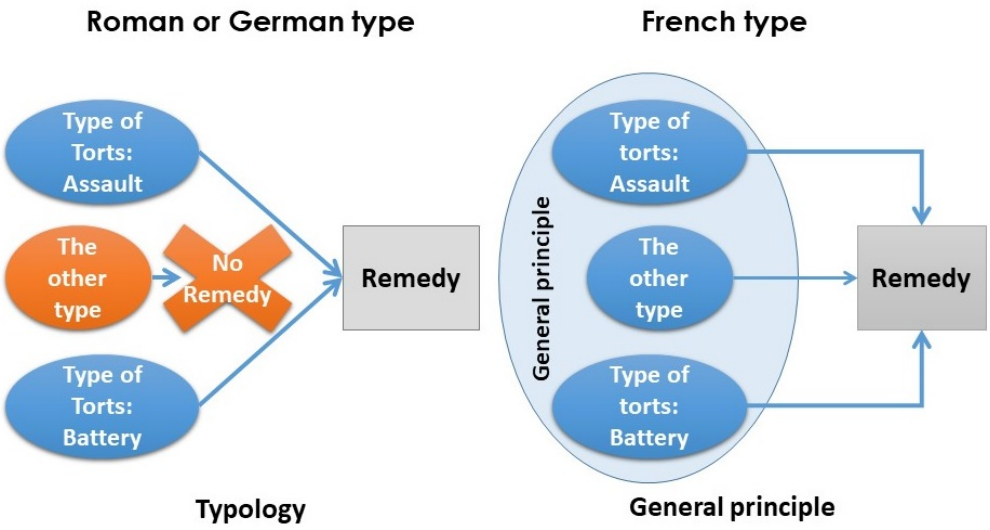
(1-1) The Penal Code stipulates the relationship between crimes and punishment as individually and concretely as possible, because imposing punishment violates the human rights of the perpetrator. This is called the legal principle of punishment.

(2-1) In order to provide relief to victims, the Civil Code not only defines each type of tort, but also expands the scope of relief for victims through comprehensive general provisions.

(2) Types of tort law in the world

The world's general tort law can be divided into two types.

(1) The first is the one that respects the tradition of Roman law and considers the human rights of the tortfeasor by clearly defining the type of tort in order to impose sanctions on the perpetrator, as in criminal law, and the general tort law in German Civil Code is of this type.



Types of tort law in the world

(2) The other is French Civil Code of which role of the general tort is to focus on the relief of the victim rather than the sanction of the perpetrator, to eliminate the typology, and to give the victim the right to compensation for damages based only on the three

requirements of the culpability of the perpetrator, the occurrence of damage by the victim, and the causal relationship between the two.

(3) Japan has adopted the concept of the general tort law in the French Civil Code, and emphasizes the three requirements of the culpability of the offender (intentional or negligent), the occurrence of the damage by the victim, and the causal relationship between the offender's act and the damage by the victim, without any typology.

At the time of the legislation of the present law, in addition to these three requirements, the requirement of infringement of rights was added, but nowadays, infringement of rights is not necessary, and the requirement has been changed to the requirement that the victim's legally protected interest has been infringed, which is the same as the legal damage, so it can be said that the general tort law in Japan is similar to the French Civil Code, not the German Civil Code.

1) French Civil Code(1804)

Art. 1382 (Civil responsibility in general) → Art. 1240 New article

Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.

(Tout fait quelconque de l'homme, qui cause a autrui un dommage, oblige celui par la faute duquel il est arrivé, a le réparer.)

Characteristics

There is no term of right in this provision.

It means that all of rights and legal interests can be compensated.

Prerequisite is only 3: fault, damage, and causation between fault and damage.

2) German Civil Code(1900)

§ 823 (Duty to compensate for damage)

(1) A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another is bound to compensate him for any damage arising therefrom.

((1) Wer vorsaetzlich oder fahrlaessig das Leben, den Koerper, die Gesundheit, die Freiheit, das Eigentum oder ein sonstigers Recht eines anderen widerrechtlich verletzt, ist dem anderen zum Ersatz des daraus entstehenden Schadens verpflichtet.)

Characteristics

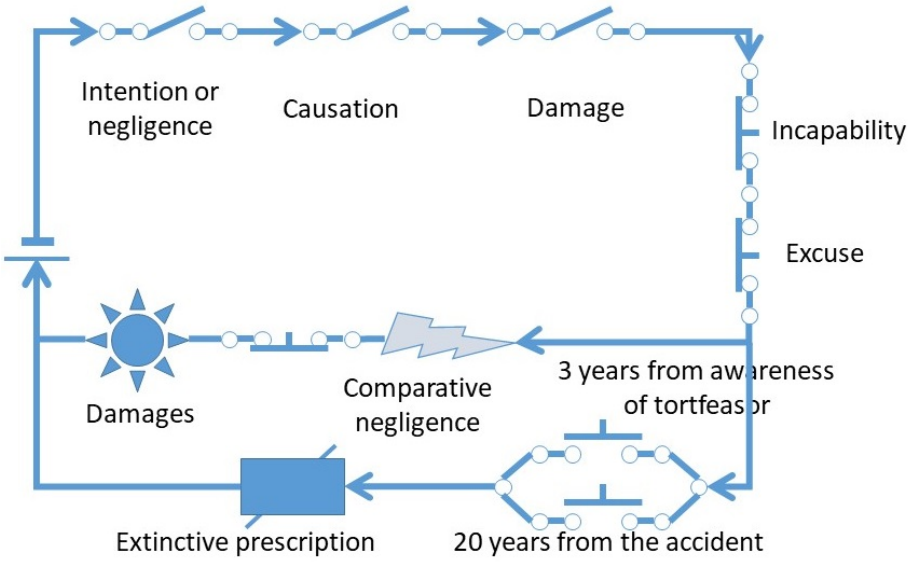
Limited list of rights: Pure economic loss is excluded

(3) Dynamic understanding of general tort law (1/3)

The current diagram illustrates the entirety of Japan's general tort law by comparing it to an electric circuit.

When the general tort law is illustrated in this way, it becomes clear that Article 709 of the Civil Code, which is the general tort law that boasts the largest application rate in the Japanese Civil Code, is actually not complete by itself.

Indeed, it appears that a tort is established when the requirements for a general tort, namely, (1) the willfulness or negligence of the perpetrator, (2) a causal relationship between the perpetrator's act and the occurrence of the damage, and (3) the occurrence of the damage, are proven.



Dynamic understanding of general tort law (Total overview)

First, however, if the perpetrator is a minor or has lost the capacity to act, the tort will not be established.

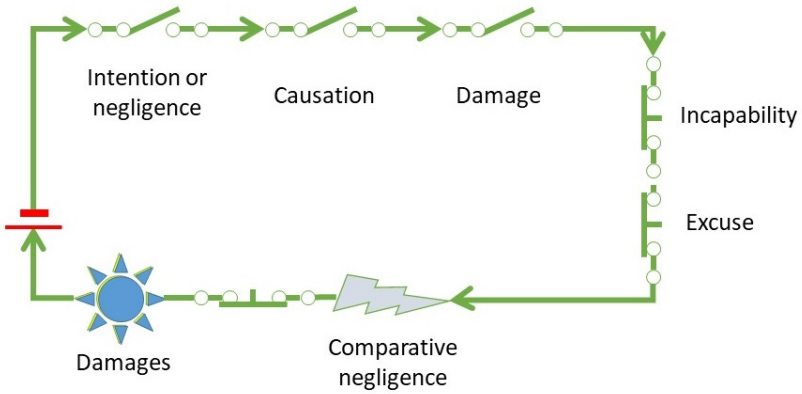
Second, even if the perpetrator has the capacity to take responsibility, the tort will not be established if there are reasons to prevent the occurrence, such as self-defense or emergency evacuation.

Third, if the victim is also at fault, the amount of damages will be reduced.

Fourth, if three years have passed since the victim became aware of the assailant, the right to claim damages will be extinguished. Even if the victim does not know the assailant, the right to claim for damages will be extinguished after 20 years have passed since the incident.

1) Dynamic understanding of general tort law (2/3)

It appears that a tort is established when the requirements for a general tort, namely, (1) the willfulness or negligence of the perpetrator, (2) a causal relationship between the perpetrator's act and the occurrence of the damage, and (3) the occurrence of the damage, are proven.

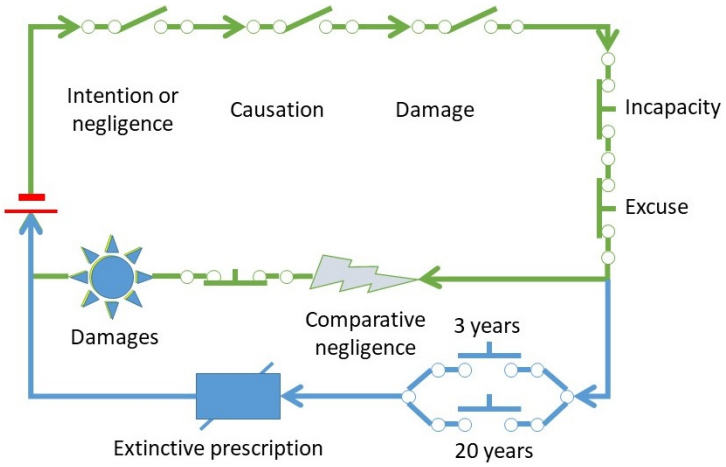


Dynamic understanding of general tort law (Formation)

However, if the perpetrator is a minor or has lost the capacity to act, the tort will not be established.

2) Dynamic understanding of general tort law (3/3)

It appears that a tort is established when the requirements for a general tort, namely, (1) the willfulness or negligence of the perpetrator, (2) a causal relationship between the perpetrator's act and the occurrence of the damage, and (3) the occurrence of the damage, are proven.



Dynamic understanding of general tort law (Extinction)

If the victim is also at fault, however, the amount of damages will be reduced.

And if three years have passed since the victim became aware of the assailant, the right to claim damages will be extinguished. Even if the victim does not know the assailant, the right to claim for damages will be extinguished after 20 years have passed since the incident.

3) What is fault?

Illustration of Point of Due Care

In the law of torts, the most important issue is whether or not the perpetrator's actions were negligent.

Whether or not the perpetrator is negligent depends on how much care the perpetrator took to prevent the accident.

The degree of care required is determined by whether or not the care was taken in a way that minimized the social costs.

■The right ascending line in blue in the figure shows that the more care one takes to avoid accidents, the more the cost increases proportionally.

■The red downward curve in the figure shows that the more one spends to be careful, the more the damage caused by the accident will decrease in a steady manner.

■The green upward curve in the figure is the sum of the cost of care and the amount of damage, and shows the amount of the social table.

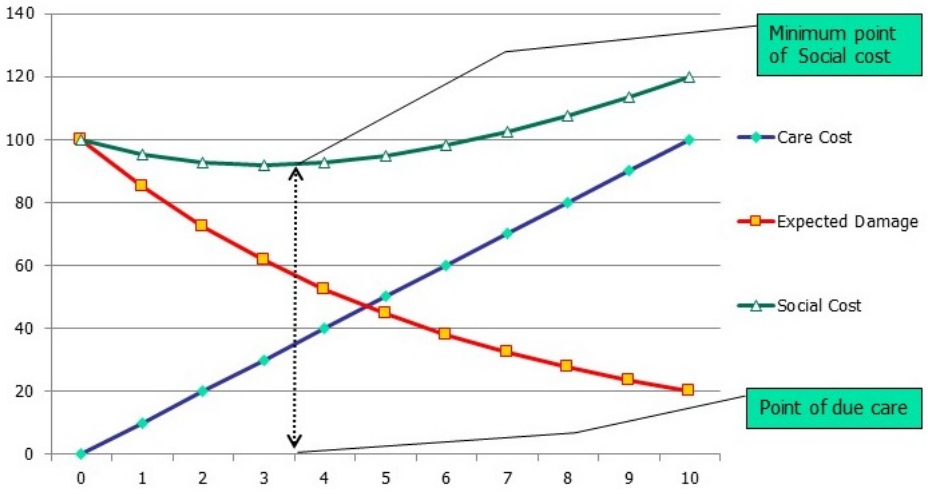


Illustration of Point of Due Care

The amount of the cost of care corresponding to the point where the last social cost is the smallest shows the limit point of whether there is negligence or not.

If the cost of attention is less than this limit, negligence will be found. On the other hand, if you have spent more than this limit, you are not negligent.

(4) Joint unlawful act

The reality is that crimes and torts are much more common when there are multiple perpetrators or multiple causes of accidents than when there is a single tortfeasor.

When an accident occurs due to multiple tortfeasors or multiple causes of an accident, it is important to determine the causal relationship.

Even in cases where multiple causal factors are involved, there is basically no other way but to resolve the issue based on the ratio of each cause's contribution to the occurrence of the damage.

However, when multiple people are involved in an accident, the concept of joint and several liability can be applied in order to provide relief to the victims.

And each of the tortfeasors can be held jointly and severally liable, considering the contributory portion as his/her burden portion and the other portion as the sureties' portion.

This is expressed in the provision of joint tort.

Article 719 of Civil Code of Japan

1. If two or more persons have by their joint unlawful act caused damage to another, they are jointly and severally liable to make compensation for such damage; the same shall apply if it is impossible to ascertain which of the joint participants has caused the damage.

2. Instigators and accomplices are deemed to be joint participants.

1) Fact of the "wine glass case"

It is important to note that in the case of joint torts, the usual law of causation, "Sine qua non," does not work at all. This is illustrated in the following hypothetical case of the "wineglass case," in which several assailants poisoned the victim by pouring a small amount of poison with a lethal dose of 10mg into the victim's wineglass.

Fact of the "wine glass case"

Suppose there is poison of which fatal dose is 10mg.

"A" poured poison of 5mg, "B" poured poison of 4mg, and "C" poured poison of 3mg into a victim's glass of wine and then killed the victim.

It caused damage of 12 million yen to the bereaved family (i.e. "10 mg fatal dose case"

or "wine glass case").

2) “Wine glass case ”No use of “sine qua non” theory

In the first case, if the tortfeasors A, B, and C each put an average of 4mg of poison into a wine glass, for a total of 12mg, then removing the actions of A, B, or C will not result in death. Therefore, according to the theory of "sine qua non" all the actions of A, B, and C are causally related to the result of death (to be precise, the result of death occurs only when the actions of A, B, and C are combined, so the conclusion that A, B, and C independently cause the result of death is incorrect).

Logical Type of cases	A	B	C	Total Fatal dose: 10mg
A∧B∧C	5mg	4mg	3mg	12mg
(A∧B)∨(B∧C)∨(C∧A)	7mg	6mg	5mg	18mg
A∨B∨C	10mg	10mg	10mg	30mg

Fact of the “wine glass case”

In the second case, if the tortfeasors A, B, and C each put an average of 6 mg of poison into a wine glass, for a total of 18 mg, the result of death will still occur even if the actions of A, B, or C are removed. Therefore, according to the theory of "sine qua non", all the acts of A, B, and C are not causally related to the result of death (even though each of them put in more poison than the first case, there is no causal relationship between their acts and death, and the result of applying the theory is obviously wrong).

In the third case, if the tortfeasors A, B, and C each put 10mg of poison into a wine glass, for a total of 30mg, then even if the actions of A, B, or C were removed, the result of death would still occur. Therefore, according to the theory of "sine qua non" all the acts of A, B, and C are not causally related to the result of death (even though more poison was put into the body than in the first case and more than in the second case, and each of them put in a lethal amount of poison, there is no causal relationship between each person's act and death. The result of applying the theory is clear as day.

In this way, we can see that the theory of "if there is no such thing, there is no such thing" cannot be used in the case of joint torts. In other words, the theory of "if there is no such thing, then there is no such thing" is only a legal principle that can be applied in the case of a single tort.

3) Combination between joint tort and pseudo joint and several liability

Combination between joint tort and pseudo joint and several liability

In the past, it has been considered one of three tortfeasors is responsible for the entire damages of 12 million yen.

If one of tortfeasor's act was removed, then the results of victim's death did not occur.

It was reason why each of tortfeasors was responsible for all damages.

And this responsibility has been referred to as a "pseudo (non-genuine) joint and several liability".

4) Unfair result of pseudo joint and several liability

Unfair result of pseudo joint and several liability

In the pseudo joint and several liability case, even if one of the tortfeasors paid the total damages of ¥ 12 million for the bereaved family of the victim, it has been impossible to obtain reimbursement for the other two tortfeasors because his/her payment has been considered as a responsibility of his/her own.

This result is, however, unfair. Because two of tortfeasors are completely acquitted, and then, there is no the joint and several liability, after all.

5) Joint and several liability of joint tort

Therefore, at present, even in the pseudo joint and several liability case, when one of tortfeasors “A” paid ¥ 12 million against the bereaved family of the victim, “A” obtain reimbursement ¥ 4 million from B and ¥ 3 million from C.

The result is the same as the case which A, B and C was borrowed ¥ 12 million in solidarity from creditors.

6) Combination of joint tort and pseudo joint and several liability still exsists

Indeed, looking at the current state of the world, the liability of the joint tortfeasors is believed not a genuine collective responsibility, but a pseudo several and joint liability.

The reason is that, the deep-rooted concept "sine qua non" theory is even now, believed to be applicable to the case of joint tortfeasors.

Once again, let us go back to "10 mg fatal dose case". In this case, it is believed that the theory of "sine qua non" is applied and there is a causal relationship between act of each tortfeasors and the death of the victim, therefore, “A” is liable for all damages of ¥ 12 million.

7) Logical calculation proved that “sine qua non” theory felt into contradiction

Alone “A”, however, it is impossible to kill the victim.

If “B” and “C” act jointly with “A”, then the result of victim's death occurs ("A, B and C ⇒ Result" case).

In other words, in a joint tort, the theory of "sine qua non" causes the serious error.

Because, if "sine qua non" theory is applied to the joint tortfeasors case, the phenomenon "A, B and C ⇒ R” case changes into the phenomenon "A , B or C ⇒ R" case.

8) History of theory of causation - from factual and adequate to partial causation

First, in "Thalidomide case" and "SMON case", these problems solved with theory of factual causation "sine qua non".

Second, "the birth of the incident killer case", or "wagoner case", adequate causation theory, have played a role in limiting the theory of factual causation. At this stage, however, the theory of factual causation have still survived.

Third, in "the wine glass case", it became clear that the theory of factual causation committed a serious mistake, and theory of "partial causation" led the correct result.

9) Theory of partial causation by supported by Bayesian statistics

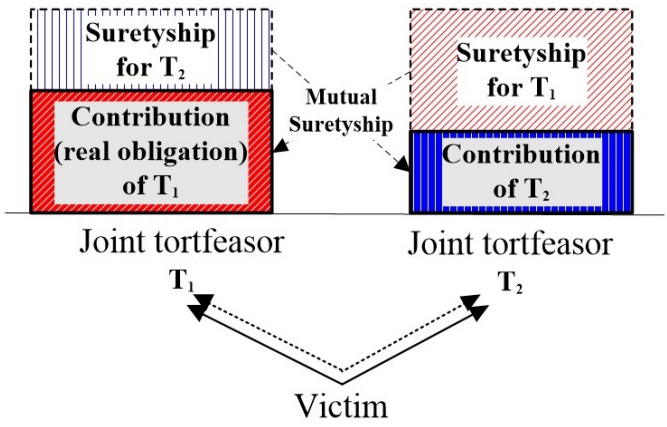
Indeed, the trend of the world has been dominated by not only the theory of factual causation, but also by the theory of pseudo joint and several liability.

However, from now on, all the problems of joint tortfeasors will be resolve by theory of partial causation combined with theory of joint and several liability.

Bayesian theory or Bayesian statistics theory will help the theory of partial causation with calculating the partial rate of causation or partial contribution of tortfeasors.

10) General structure of liability of joint tortfeasors

The joint tort actually consists of the contribution of several tortfeasors to the result of the tort as the burden part of the joint and several liability, and the other part is the guarantee part of the other tortfeasors.



General structure of liability of joint tortfeasors

In the case of ordinary joint and several obligations, each person's portion of the burden is clear. This is because the amount borrowed by each person and the total amount to be borne by all joint and several debtors are clear.

As a matter of fact, in the case of joint torts, the total amount of damage will be determined in the end, and the percentage of contribution to the outcome of the individual tortfeasors can also be calculated. Moreover, if the percentage of contribution is not known, there will be no problem because the burden is presumed to be equal according to Article 427 of the Civil Code of Japan.

Chapter 8. Lawyers' way of thinking

Traditionally, it has been believed that legal thinking is based on the three-stage method (syllogism) of judgment (the major premise being the text, the minor premise being the authorized facts, and the conclusion being the judgment).

However, it has become clear that legal texts contain provisos (conditional clauses), which are propositions that cannot be dealt with by the syllogism, and it is now accepted among lawyers that the Toulmin's method of argumentation, which can incorporate provisos into logic, is effective.

IRAC, which incorporates Toulmin's art of argument, is now considered to be the way of thinking of jurists.

IRAC is a way of thinking in which (1) one clarifies what the issue is, (2) searches for multiple rules that should resolve the issue, (3) tries to apply those rules to the issue, compares and examines the results in favor of the plaintiff and those in favor of the defendant, and (4) draws one's own conclusion after arguing from each standpoint.

Analyze, argue and draw your Conclusion			
Analysis	Issue		Finding data & facts
	Rules		Finding Rules
	A	Application	Application of Rules, Tentative conclusions
Argument		Argument	Argument against / for tentative conclusions
	Conclusion		Finding final conclusion

IRAC: The way of legal thinking

A feature of IRAC is that it is essential to argue for and against, and it is strictly forbidden to come to a conclusion based on one opinion alone.

It is important not to ignore both sides of a dispute, but to argue from the standpoint of each side, and to come to a conclusion after strictly checking the merits and demerits of each argument.

(1) IRAC: The way of legal thinking

I: Issue

Find legal issues among facts.

R: Rules

Find applicable rules to facts.

A1: Application

Apply rules to facts and deduct tentative conclusions.

A2: Argument (Most Important)

Argue with tentative conclusion pro and con

C: Conclusion

Draw final conclusion after rigorous argument.

1) IRAC as the legal way of thinking

IRAC is a way of thinking in which (1) one clarifies what the issue is, (2) searches for multiple rules that should resolve the issue, (3) tries to apply those rules to the issue, compares and examines the results in favor of the plaintiff and those in favor of the defendant, and (4) draws one's own conclusion after arguing from each standpoint.

2) Substantive and procedural law

Legal syllogism

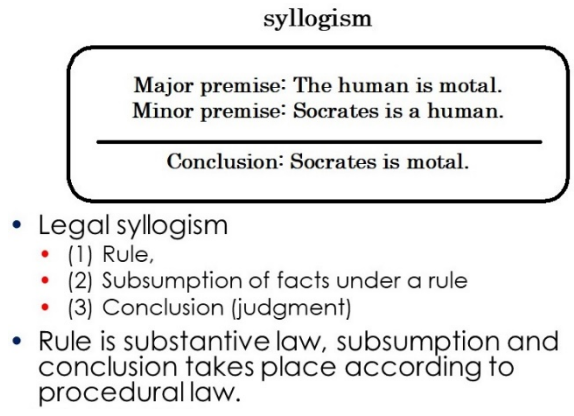
(1) Rule,

(2) Subsumption of facts under a rule

(3) Conclusion (judgment)

Rule is substantive law, subsumption and conclusion takes place according to procedural law.

(2) From Syllogistic to Toulmin Diagram



Substantive and procedural law

Example of Syllogism:

Major premise: All men are mortal.

Miner premise: Socrates is a man.

Conclusion: Socrates is mortal.

Toulmin Diagram (Admit of exceptions)

Data: Socrates is a man.

Claim: Socrates is mortal.

Warrant: All men are mortal.

Rebuttal: Socrates is a man of god of philosophy.

Backing: All living things are mortal. However, god and truth are immortal.

1) Application of Toulmin Diagram to Joke

Data: The person who made a manifestation knows that it does not reflect his/her true intention.

Claim: The manifestation is valid.

Warrant: The person who made a manifestation is liable to it.

Qualifier: Probably yes?

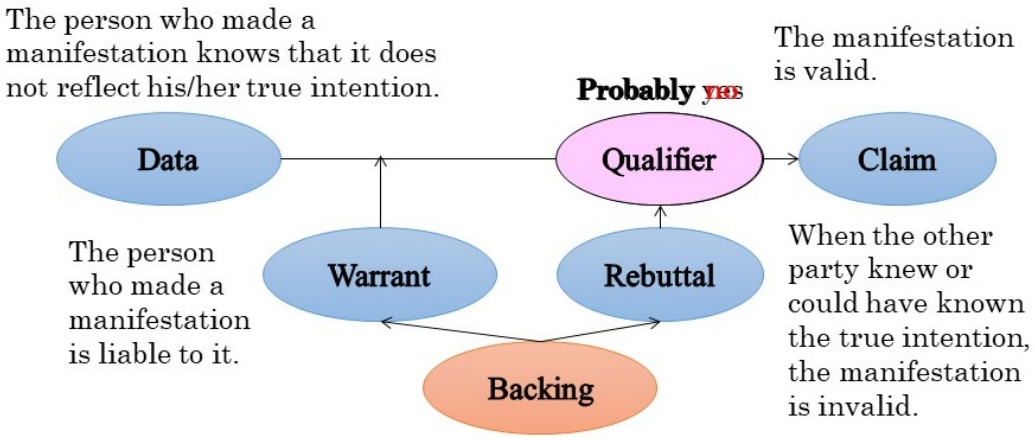
Rebuttal: When the other party knew or could have known the true intention, the manifestation is invalid.

Qualifier: Probably no?

Backing: The manifestation of intention which is concealed the true intention:

It is invalid in case the other party knew or could have known.

It is valid in case the other party is didn't know and without negligence.



Application of Toulmin Diagram to Joke

2) Legal structure of mental reservation and its amendment

Article 93 (Concealment of True Intention)

(1) Principle: If a party's manifestation is different with true intention(i.e. lack of intention), then the manifestation is null and void.

(2) Exception: If the other party, however, did not know and could have not known, the true intention of the one party, then the manifestation is not null and void but valid.

(3) Presumption: In order to protect the safety of transaction, if a party who makes the

manifestation knows that it does not reflect his/her true intention, then it is presumed that the other party did not know and could have not known, the true intention of the person who makes the manifestation.

(4) Burden of proof: If the party who makes different manifestation with true intention proves that the other party knew, or could have known, the true intention of the party who makes the manifestation, such manifestation of intention shall be void, as a principle, provided in first paragraph.

(3) Ideal Structure of Articles

What would an ideal article look like?

Do you, as students of law, accept the Articles as given and lack the desire or neglect the effort to make the Articles ideal and understandable to the general public?

Part of the blame for the large number of people who dislike laws and rules is also the fault of those who make the articles and those who study them.

While it is necessary to interpret difficult-to-understand clauses to make them easier to understand, it is also necessary for those who study law to keep in mind the need to bring the clauses closer to an ideal clause that can be easily understood by the general public.

Now, an ideal article is one that, just by reading it, an ordinary person can

clearly understand the intention of the legislator who drafted the article,

clearly understand what will happen and what result will occur (combination of requirements and effects), and

clearly understand the situation that the article anticipates through concrete examples.

As examples of articles that demonstrate such conditions, I will focus on Article 49 (Requirements for Termination of Contract) of the United Nations Convention on the International Sale of Goods (Vienna Convention on the Sale of Goods: CISG), which played a decisive role in the subsequent development of contract law by fusing Anglo-American and Continental law with respect to contract termination,

and Article 770 (Judicial Divorce) of the Japanese Civil Code and its proposed amendments.

Based on the above discussion, I would like to clarify that the legislative technique for creating an ideal article is to (1) clarify the true requirements and effects first, and

(2) provide concrete examples of those requirements as preconditions for legal presumption.

1) Art. 49 CISG

For a long time, Anglo-American law, which considers case law to be the center of law, and continental law, which considers codification to be the center of law and case law to be merely its interpretation, have been considered to be in a water-and-oil relationship, and it was thought to be difficult to fuse them.

However, the United Nations Convention on the International Sale of Goods (CISG), which was enacted in 1980, combined the ideas of Anglo-American law and continental law, which had been thought to be difficult, and this treaty was highly evaluated by both precedent-oriented countries and grammar-oriented countries.

What kind of legal technology has enabled the fusion of Anglo-American and Continental law?

A typical example is found in Article 49 of the treaty, so let's take a look at Article 49 of the CISG.

The first clause adopts the Anglo-American case law that the requirement for termination is "material breach of contract.

Paragraph 2 adopts the German law principle of "failure to perform the contract within the additional period set" as a concrete example of the requirement for cancellation.

In this way, the fusion of Anglo-American law and continental law, with an abstract but true requirement (paragraph 1) and a concrete example to realize that requirement (paragraph 2), has won high praise from many countries.

Art. 49 CISG

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

←Common Law

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

← Continental Law(German Civil Code)

Condition of　Termination of contract in Code Civil of Japan

Article 541(Cancellation After Demand)

If one of the parties does not perform that party's obligation, and the other party demands performance of that obligation, specifying a reasonable period of time, but no

performance is completed during that period, the other party may cancel the contract;

provided, however, that this does not apply if the non-performance of the obligations upon the passage of the period is minor in light of the contract and the common sense in the transaction.

Article 541 of the Japanese Civil Code is a provision that allows "termination by granting an additional period" in the German Civil Code.

The recent amendment to the Civil Code has placed a restriction on this provision. However, a recent amendment to the Civil Code has placed a limitation on this provision, namely, that this provision does not apply to cases where the default of the contract is not material.

This can be interpreted as a recognition of the Anglo-American requirement of termination of a contract when there is a serious breach of contract, so this provision, like the CISG, is a fusion of Anglo-American and Continental law.

2) Prerequisite of Judicial Divorce

Article 770 of the Japanese Civil Code stipulates the requirements for a judicial divorce.

The important part is the second clause, which states that divorce may not be granted in cases where items 1 through 4 of the first clause do not constitute serious reasons for not continuing the marriage, and that divorce is always granted in the case of item 5 (where there are serious reasons for not continuing the marriage).

This means that the true requirement in judicial decisions is "if there are serious reasons why the marriage cannot be continued," and the reasons listed in Items 1 through 4 of Paragraph 1 of Article 770 of the Civil Code are merely presumptive premises from which the true legal requirement is legally presumed.

Therefore, I have proposed an amendment to Article 770 of the Civil Code, declaring the true divorce requirement in Paragraph 1, and clarifying the amendment to list the presumptive prerequisite facts for presuming the true legal requirement in Items 1 through 4 of Paragraph 2 (with some provisions added as branch numbers).

My proposal of Amendment of Art. 770

(1) Either husband or wife may file an action for divorce only when there is a fundamental cause making it difficult to continue the marriage.

(2) In cases falling under any of the following items, it shall be presumed that there is a fundamental cause making it difficult to continue the marriage:

(i) if a spouse has committed an act of adultely;

(i b) if a spouse has committed DV(Domestic Violence).

(ii) if abandoned by a spouse in bad faith;

(ii b) if wife and husband have been separated for more than five years.

(iii) if it is not clear whether a spouse is dead or alive for not less than three years;

(iv) if a spouse is suffering from severe mental illness and there is no prospect of recovery

Conclusion

(1) What is the Civil Code?

The Civil Code is the basic law of civil life that defines the rules that citizens must follow in order to lead a happy life.

Since humans are social animals, we have no choice but to live in cooperation with others. Therefore, in order to lead a happy life in relation to others, citizens need to do the following three points:

(1) take care of others,

(2) nurture themselves, and

(3) challenge what needs to be done without fear of failure.

In order to realize these three guiding principles of life, the Civil Code stipulates what we should be careful about and what we should do in order to avoid hurting others and to do what we should do for others, and what we should do if we hurt others.

This is the reason why the Civil Code is called the constitution of civil life.

(2) What is the benefit of studying civil law?

As I mentioned earlier, there are three things we need to do in our lives:

(1) take care of others,

(2) nurture ourselves, and

(3) challenge what we need to do without fear of failure.

First, in order to take good care of others, we should not do what we do not want others to do, and we should do what we want others to do. Therefore, if you want to take good care of people, it is important to learn about torts and business management in civil law.

Secondly, in order to develop yourself, you can study on your own, but in order to develop yourself in the true sense, you must learn from your predecessors and teach your juniors. In order to do so, it is necessary to build a relationship of trust with others. The Civil Code stipulates the importance of keeping one's word in a contract, and how to dissolve and settle a contract when a relationship of trust is broken. Therefore, it is important to learn about contracts in order to develop yourself.

Third, what is important in taking on challenges without fear of failure is that if you make a mistake, you need to redo it, undo it, or, if you cannot redo it, make amends until the victim recovers. The Civil Code has detailed provisions on the fulfillment of obligations, emergency management of affairs, unjust enrichment, and torts, and learning

these provisions will enable us to take on challenges without fear of failure while taking the necessary precautions. In this respect, too, the Civil Code provides useful information, so it is important to study the Civil Code.

What is the guiding principle of your life?

1. Do for others.

■Do not do to others what you would not want done to you.←Tort law

■Actively do what others want you to do.←Business Management law

2. Nurture yourself.

■Reversing the saying, "The more you like something, the more you like it," realize that “you will only like it if you become good at it”, and strive to master the skill.

■"Continuity is power," so set a goal and make the necessary work a habit.

3. Challenge yourself.

■Challenge yourself without fear of failure.

■If you fail, try again. If you cannot try again, make amends.

(3) How to learn the law? Best way of learning is teaching

1) How to learn the law

■Those who study law should strive to be able to explain clearly and persuasively why law is necessary in all societies.

■Those who study law should not only acquire the skills to interpret the articles of the law in an easy-to-understand manner, but also acquire and practice the skills to propose amendments to difficult articles of the law so that they can be understood by the general public.

■Teaching is the best way of learning. Give students more time to teach, cutting your lecture time more than half.

2) How to teach the law

How to learn the law? Best way of learning is teaching.

■Don’t teach too much, and give students time to teach.

Reducing your teaching plan by half.

With a half part, let students teach others (including teaching teachers).

Then they will learn by themselves.

■Teach basic idea through solving one of the most difficult problems.

When student can solve such a difficult matter, she/he mastered basic ideas naturally.

■Try to become the most excellent teacher.
Imitate her/his（e.g. Prof. Kagayama's） methods first.
Create new methods after your experiences.

Reference of Japanese Civil Law

Hiroshi ODA, "Japanese Law", Oxford Univ Pr(2011/11/7)

Hiroshi ODA,"Basic Japanese Laws (Modern Japanese Law Series)" Oxford Univ Pr (1997/10/9)

Hiroyuki Kihara,"Tort Law in Japan", Kluwer Law Intl (2015/3/11)

Richard Powell=Shogo HOTTA=Fathima Marikkar, "Law in Japan, Law in the World", Asahi Publishing Company (2012/1/31)

Hiroo Sono=Luke Nottage=Andrew Pardieck=Kenji Saigusa,"Contract Law in Japan", Kluwer Law Intl (2018/12/5)

Translation of Civil Code of Japan Part1-Part3(2021)

(http://cyberlawschool.jp/kagayama/CivilLaw/CivilCode/English/CivilCodeOfJapanPart1_3_2021.html)