JAPANESE LEGAL SYSTEM PART II DAY 2 (JUNE 5, 2018) Kyoko Ishida

DAY 2

- 1. Legal Profession System
- 2. Civil Dispute Resolution System
 - 1. Civil Procedure
 - 2. Alternative Dispute Resolution

THE JUSTICE SYSTEM REFORM AND **LEGAL PROFESSION**

REFORMS UNDER THE 2ND PILLAR OF THE JSR

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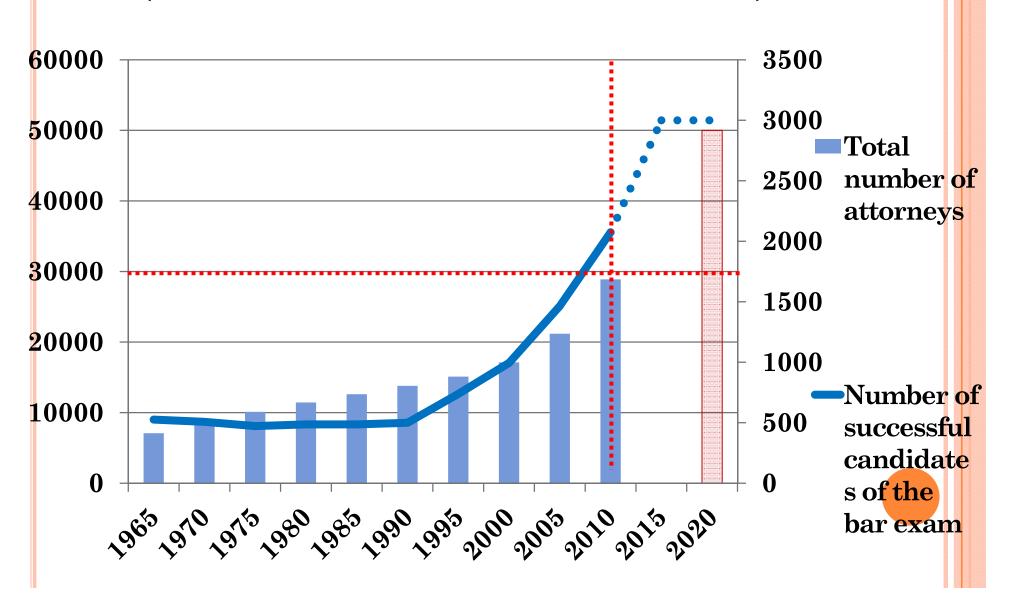
Chapter III. How the Legal Profession Supporting the Justice System Should Be

- Part 1. Expansion of the Legal Population
- Part 2. Reform of the Legal Training System
- Part 3. Reform of the Lawyer System
- 1. Fulfillment of Lawyers' Social Responsibility (the Public Interest)
- 2. Expansion of the Scope of Lawyers' Activities
- 3. Expansion of Access to Lawyers
- 4. Strengthening Lawyers' Business Structure and Strengthening Expertise
- 5. Internationalization of Lawyers
- 6. How Bar Associations Should Be
- 7. Utilization of Specialists in Fields Adjoining Law
- 8. The Status of Persons Engaged in Corporate Legal Affairs, etc.
- Part 4. Reform of the Public Prosecutor System
- Part 5. Reform of the Judge System
- Part 6. Mutual Exchanges Among the Legal Professions

EXPANSION OF THE LEGAL PROFESSION [EXCERPT FROM THE REPORT]

- Increasing the number of successful candidates for the existing national bar examination should immediately be undertaken, with the aim of reaching 1,500 successful candidates in 2004.
- While paying heed to the progress of establishment of the new legal training system, including law schools, the aim should be to have 3,000 successful candidates for the new national bar examination in about 2010. (Pass rate was expected at around 80%)
- Through the progress of these types of increases in the legal population, by about 2018, the number of legal professionals actively practicing is expected to reach **50,000**.

INCREASE THE NUMBER OF ATTORNEYS (TARGET NUMBER UNDER THE JSR)



REFORM OF THE LEGAL TRAINING SYSTEM

- o A new legal training system should be established, not by focusing only on the "single point" of selection through the national bar examination but by organically connecting legal education, the national bar examination and legal training as a "process." As its core, law schools, professional schools providing education especially for training for the legal profession, should be established.
- Law schools should be established, with the aim of starting to accept students as of April 2004.

IN THE DAYS OF THE OLD EXAM...

- Passing rate of the bar exam was around 3 %.
- On average, candidates have to try 6 times before passing the exam.
- Average age of the successful candidates are 28.



"Law schools shall be core advanced specialized educational institutions for the purpose of establishing the human base necessary for the justice system to play its expected role fully in Japanese society in the 21st century."

INTRODUCTION OF LAW SCHOOL SYSTEM

- Three years in general. When a student is, however, admitted on the basis of having obtained basic legal knowledge, the law school assumes that such a student has equivalent of one year law school study.
- Law schools are required to provide course subjects not only such as basic legal subjects but also practical subjects such as "mock trial" or "legal clinic." (HOWEVER, there is no "student practice rule" in Japan.)

A NEW PATH TO TAKE THE BAR INTRODUCED

- Yobi shiken (preliminary examination for the national bar examination) was introduced in 2011.
- Those people who passed the preliminary exam can take the bar even without graduation the law school.
- In 2017, 400 candidates took this path and 290 candidates passed the bar exam (71.8%).
- The preliminary exam itself is very competitive. In 2016, the pass rate was 3%. 37% of them were law school students and 44% of them were undergraduate students.

Results in 2017

Rank	Law School	# of passers		Successful rate		Volume
1	Preliminary Exam		290		71.08%	18.79%
2	Keio University TOP5 a	nd	144		45.43%	9.33%
3	University of Tokyo Yobi-sh	_	134		49.45%	8.68%
4	Chuo University occupio	S	119		26.15%	7.71%
5	Kyoto University 58.3%	- I	111		50.00%	7.19%
6	Waseda University		102		29.39%	6.61%
7	Osaka University	66		40.74%		4.28%
8	Hitotsubashi University		60		49.59%	3.89%
9	Kobe University		55 38.7		38.73%	3.56%
10	Tokyo Metropolitan University		31		26.96%	2.01%
11	Meiji University		30 11.0		11.67%	1.94%
12	Hokkaido University		29		24.58%	1.88%
13	Nagoya University	28		23.73%		1.81%
14	Ritsumeikan	21		12.07%		1.36%
15	Doshisha University	20		17.86%		1.30%
TOTAL			1543		23.29%	100.00%

LAW SCHOOLS TODAY

- As of 2017, there are 35 law schools which decided to withdraw (39 survive so far).
- Graduate students of a law school can take the bar exam up to five times within five years.
- Passage rate for the new bar exam in 2017 was 23.29 % (1,543 candidates passed).
- 40% of total passer graduated from either Chuo U., Keio U., U. of Tokyo, Kyoto U, Waseda U, and 20% from YOBI-SHIKEN.

CURRENT STATE

- o In 2013, the Government officially withdrew the target number of 3,000 successful passer.
- In 2015, the government policy paper on population of the legal profession was published. It pointed out that "... still we should keep the number of 1,500 at least."
- In 2017, the number of successful candidates of the bar exam was actually 1,543.

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
# of passer	1009	1851	2065	2043	2074	2063	2102	2049	1810	1850	1583	1543
Pass rate	48.3%	40.2%	33.0%	2736.0%	25.4%	23.5%	25.1%	26.8%	22.6%	23.1%	22.9%	23.3%

AFTER PASSING THE BAR EXAM...

- All passer are required to have practical training at the Legal Training Institute for one year composed of 8 months practical training, 2 months optional training, and 2 months lecture class.
- After completion of one year training, all apprentices are required to take "the second examination." Passing this exam is the qualification to become a member of *Hoso* (judges, prosecutors, and attorneys).
- During apprenticeship, the government paid salary by 2010, but now it is shifted just to loan life expense. (apprentices cannot work during the training)
- OBut the new law has passed and today apprentices can receive 135,000 yen from this year.

OTHER LEGAL SERVICE **PROFESSIONALS**

"7. UTILIZATION OF SPECIALISTS ADJOINING LAW" (RECOMMENDATION)

- "... in light of the necessity to immediately remedy the present situation whereby rights of the public are not sufficiently protected, measures must be taken to meet the existing demands for legal services from the public's point of view.
- From this standpoint, to utilize the expertise of quasilegal professionals in legal proceedings, at the least, after highly reliable measures to secure their ability have been taken, judicial scriveners should be granted the authority to serve as representatives for litigation in the summary courts, and patent attorneys should be granted the authority to serve asrepresentatives in patent infringement lawsuits."

BACKGROUND TO EXPAND THE SCOPES OF LEGAL PROFESSIONALS OTHER THAN ATTORNEYS

- As of 2007, 11,194 attorneys (48% of all attorneys in Japan) practice in Tokyo and 3,052 attorneys (13%) practice in Osaka.
- Distributing legal services all over Japan requires distribution legal professionals all over Japan.
- o "Utilization of 'quasi-legal profession"

License holders (2017)	Major Practice BEFORE the Reform	Expanded areas of Practice		
Judicial Scriveners (22,283)	Draft documents submitted to court. Represent clients in real property registration proceedings.	Conditionally represent a client in summary court.		
Administ. Scriveners (46,957)	Draft documents submitted to administrative agencies.	Draft contracts and give legal advice.		
Patent Attorneys (11,057)	Registration of intellectual property, representing a client in arbitration etc.	Conditionally represent a client in patent infring. cases.		
Tax Attorneys (76,935)	Deal with tax laws.	Appear in court as an assistant to attorneys.		

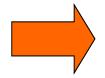
EXPANDED SCOPES OF PRACTICE (CONT'D)

Certified
Social
Insurance
Labor
Consultants
(40,609)

Deal with particular social insurance and labor laws.

Draft documents, represent a client in administrative proceedings, and consult on issues about labor and insurance laws.

Represent a client in labor disputes committee of the prefecture.



More than 190,000 people are able to give legal advice in certain area.

RELATIONSHIP WITH THE REGULATION OF UNAUTHORIZED PRACTICE OF LAW UNDER THE ATTORNEY ACT

(Prohibition of the provision of legal services by non-attorneys) Article 72 No person other than an attorney or a Legal Professional Corporation may, for the purpose of obtaining compensation, engage in the business of providing legal advice or representation, handling arbitration matters, aiding in conciliation, or providing other legal services in connection with any lawsuits, non-contentious cases, or objections, requesting for re-examination, appeals and other petitions against administrative agencies, etc., or other general legal services, or acting as an intermediary in such matters;

provided, however, that the foregoing shall not apply if otherwise specified in this Act or other laws.

SIGNIFICANCE OF THESE REFORMS

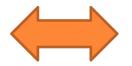
- The Justice System Reform occurred in a wider administrative reform. These increased legal services are expected to make up the decreased administrative regulations in society.
- Expansion of authorized scopes of practice by license holders other than attorneys will make the legal services market more complex.



Increased access to justice has significant impact both inside legal professionals and to the society.

REGULATORY REGIMES FOR QUASI-LEGAL PROFESSIONALS

- Judicial scriveners: Legal Affairs Bureau under the Ministry of Justice
- Administrative scriveners: Prefectural governor
- Patent Attorneys: Minister of Economy, Trade and Industry
- Tax Attorneys: Minister of Finance
- Social Insurance and Labour Consultants: Minister of Health, Labour, and Welfare



Attorneys: Self-regulation (ji-chi)

COMPLEXITY IN PRACTICE, INDIFFERENCE IN DISCOURSE

- o Still "lawyer" = "bengoshi"
- Empirical research finds that those who use "quasi-lawyers" do not try to approach BENGOSHI.
- →WHY?
- → What's the problem of not accessing to BENGOSHI?

THE SYSTEM OF FOREIGN LAWYERS AND THE IMPACT OF GLOBALIZATION

BASIC UNDERSTANDING (REVIEW)

- o In Japan, ONLY those who are licensed to practice law can handle legal business (Attorney Act, Art.72).
- What if a foreign corporation want to have a foreign lawyers to support legal aspect of forming a contract with a Japanese corporation?

ENTRY OF FOREIGN BUSINESS LAWYERS

From the 1970s onward, there was an increased number of foreign attorneys engaging in some sort of legal practice in Japan.

Several U.S. law firms opened offices in Tokyo in the 1970s.

Some predicated their activities on the reciprocity provision of Art. 8(2) of the October 1953, United States-Japan Treaty of Commerce, Navigation and Friendship; others on Article 8(1) of that Treaty, which permits companies of either signatory country to engage technical experts to give advice exclusively for such companies: and still others on the general lack of regulation of the giving of legal advice and counsel and interpretations of prohibited legal activities in Article 72 of the Practicing Attorney Law.

INTER-GOVERNMENTAL NEGOTIATIONS

The various interests in the debate about the entry of foreign lawyers sparred publicly and privately to little apparent effect until March 1982, when the U.S. government included prohibition on entry into Japan by foreign law firms on the list of non-tariff barriers that it wished Japan to remove.

The Japanese government responded in May of that same year that the prohibition was largely the result of differing legal systems and that regulation of the bar was largely the province of the profession itself.

The Japanese government promised, however, to assist in expediting talks between the Japan Federation of Bar Associations and the American Bar Association, an association the government apparently assumed was the nearest equivalent of the Federation.

LEGISLATION TO PERMIT FOREIGN LAWYERS TO PRACTICE LAW IN JAPAN

Various proposals and counterproposals, some by the Federation, some by the United States Trade Representative and finally even some by the Japanese government, were circulated.

Negotiations and consultations followed the issuing of various proposals, counterproposals and drafts of possible legislation.

Finally, in 1986, the Diet passed legislation which permits foreign attorneys to register and provide legal advice in Japan for the first time since 1955 (*Gaikoku bengoshi niyoru hōritsu jimu no toriatsukai ni kansuru hōritsu* or the Act Providing Special Measures for the Treatment of the Performance of Legal Business by Licensed foreign lawyers (1986, Law No. 66)).

QUALIFICATIONS

Persons who wish to practice in Japan under the Foreign Office Lawyer Law must measure up to certain prescribed standards.

The applicant, in addition to being a lawyer or its equivalent, must have actually practiced for more than three years (originally five years and revised in 1998) "in the country where the qualification [of a lawyer] was given."

This controversial requirement brought numerous complaints by American lawyers who had spent significant amounts of time practicing in Japan as employee "trainees" of Japanese attorneys. In 1998, the provision was modified and the working experience outside the country where the qualification of a lawyer was given may also be counted toward the three years.

QUALIFICATION (2)

Another controversial requirement in the original Law involved the treatment of Japanese attorneys under the law of the applicant's country. Originally, an applicant could be denied admission under the original Law, even if he or she was otherwise qualified, unless the country in which the applicant was a lawyer granted "substantially equal treatment as afforded under [the law] to [Japanese] attorneys" (Article 10 (3)).

However, a 1994 revision provided that even if the above situation is applicable, the Minister of Justice can approve the application if such denial prevents good faith performance of treaties or international agreements (Article 10 (3)-2).

QUALIFICATION (3)

Several other requirements exist for the protection of the bar and the clients of licensed foreign lawyers. An application will be rejected if the applicant has been sentenced to prison, disbarred, subjected to disciplinary action by the bar of original status, or has been judged an incompetent, quasi-incompetent or bankrupt (Article 10 (1)).

A person must pledge to practice in good faith and must offer proof of financial backing and the capability of indemnifying clients injured in connection with the licensed foreign lawyer's performance of duties. The applicant must also provide suitable references.

RESPONSIBILITIES

The law designates responsibilities for licensed foreign lawyers. The successful applicant must use the name "licensed foreign lawyer" and prominently display the name of the country in which he or she was originally qualified (Article 44).

Any special designations should also be displayed and used. A licensed foreign lawyer may establish one, and only one, office in Japan in the area in which the local bar association of choice is located. The name of the office shall designate some or all of the individual licensed foreign lawyers and, if a licensed foreign lawyer is a member of a foreign law firm, the name of the firm may also be used. The law also provides that the licensed foreign lawyer must remain in Japan for 180 days out of every year. (Article 48)

RECENT REFORMS (1)

• The 2003 revision significantly changed the relationship between licensed foreign lawyers and attorneys. Previously, licensed foreign lawyers were prohibited from employing Japanese attorneys, whereas Japanese attorneys may hire them. Even establishing joint office with Japanese attorneys has been strictly regulated. However, revisions in 2003, which took effect on April 1, 2004, enabled licensed foreign lawyers to establish a joint office with Japanese attorneys freely. Furthermore, they are now allowed to hire Japanese attorneys (Article 49).

RECENT REFORMS (2)

- Even under the new provision, however, licensed foreign lawyers may not direct Japanese attorneys about the practice of law relating to jurisdictions in which they themselves are not allowed to practice.
- The law requires to report to the JFBA if a licensed foreign lawyers employ Japanese attorneys. As of April 2013, there are 46 *bengoshi* employed.
- The latest amendment in June 2014 allowed the licensed foreign lawyers to incorporate (*hojin ka*), as Japanese lawyers could do.

REGISTRATION WITH THE JFBA AND A LOCAL BAR ASSOCIATION

- A licensed foreign lawyer under the law is subject to the Japan Federation of Bar Associations and the local bar association which he or she joins. A person who is qualified as a licensed foreign lawyer registers his or her name, date of birth, nationality, name of the jurisdiction where he or she qualified as a lawyer, home country address, office, bar association and other matters, in the licensed foreign lawyer's name register. The name register is administered by the Federation, but application is made through the local bar association which the candidate intends to join. The law provides that the Federation establish a registration screening committee to review the applications.
- As of May 1, 2018, there are 409 licensed foreign lawyers.

TOP FIVE JAPANESE LAW FIRM

	Law firm	Number of lawyers
1	Nishimura Asahi Law firm	525
2	Anderson Mori Tsunetomo Law firm	414
3	Nagashima Ono Tsunematsu law firm	379
4	Mori Hamada law firm	374
5	TMI Law firm	361

GLOBALIZATION OF LAW FIRMS

	Law Firm (Home country)	No. of lawyers	No. of countries	Ratio of foreign lawyers
1	Baker & McKenzie Int'l(US)	6,045	47	85%
2	DLA Piper (US)	3,756	32	66%
3	Jones Day (US)	2,562	18	36%
4	Hogan Levellis (US)	2,503	21	73%
5	Clifford Chance(UK)	2,250	21	71%

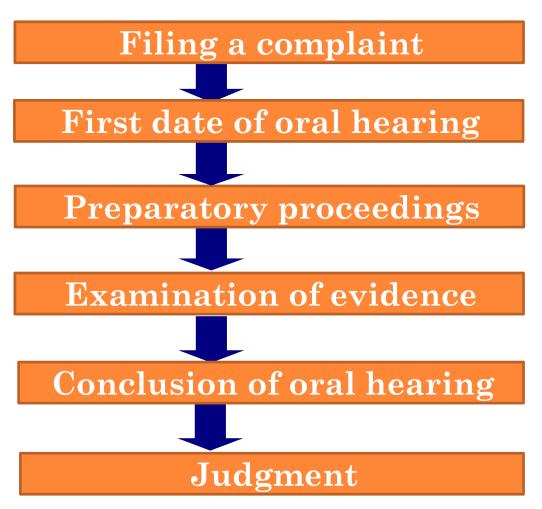
What kind of impact does the globalization give to Japanese legal profession community???

OVERVIEW OF THE PROCEEDINGS AND REFORMS AFTER 1996

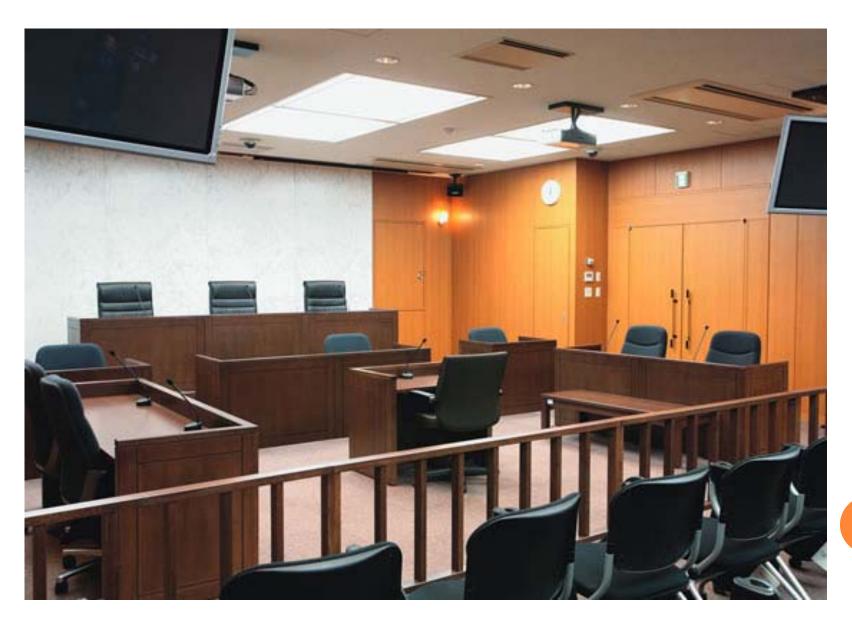
HISTORY ON THE CCP IN JAPAN

- First legislation in 1891, modeling after German law.
- o Overall revision in 1927, modeling after Austrian law.
- After WWII, some Anglo-American principles were introduced.
- Overall revision in 1996.
- Some amendments in 2004, reflecting the Justice System Reform.
- Amendment in 2011 clarified the jurisdiction of Japanese court over international dispute.

CIVIL PROCEDURE IN JAPAN (VERY ROUGH OUTLINE)



SOME COURT ROOM PHOTOS



SOME COURT ROOM PHOTOS



SOME COURT ROOM PHOTOS



Types of Actions

- Civil litigation commences when a plaintiff files an action (uttae). An action is a request to the court seeking a hearing and judgment, as well as a pleading presenting a legal "claim ($seiky\bar{u}$)" with regard to a legal relationship with the defendant. There are three types of actions based on the contents of claims and judgment sought:
- (1) an action for performance (kyūfu no uttae);
- (2) an action for confirmation or declaration (*kakunin no uttae*); and
- (3) an action for creation (keisei no uttae).

ACTION FOR PERFORMANCE

• The action for performance is a suit seeking a judgment with a court's order against the defendant to perform a specific obligation. Examples of litigation involving the action for performance are claims for payment of money or delivery of an item based on sales contracts, claims for specific performance or non-performance (injunctions), and claims seeking an expression of the defendant's intentions (ishi hyōji). In order to obtain a judgment for this type of action, the plaintiff must present concrete legal claims as a basis for seeking the defendant's performance.

ACTION FOR CONFIRMATION

• The action for confirmation is a suit seeking a judgment to confirm the existence or non-existence of a certain right or legal relationship between the plaintiff and the defendant. Examples are actions requesting the court to confirm land ownership for the plaintiff and actions requesting the court to confirm the non-existence of a plaintiff's debt allegedly owed to the defendant.

ACTION FOR CREATION

• The action for creation is a suit seeking a judgment to alter a legal relationship. "Alteration" includes generation, extinction, and modification. Examples of this type of litigation are an action seeking divorce and an action to vacate the resolution of a shareholders' meeting. Some substantive laws provide certain requirements to alter legal relationships such as marriage or effectiveness of a resolution, and that such alteration of legal relationships occurs when the court declares a judgment to alter the relationships based on those laws' requirements.

JURISDICTION

• In contrast to the United States where each jurisdiction applies different state laws, in Japan, all jurisdictions apply the same law. In that sense, the issue of jurisdiction in Japan is merely a procedural rule to determine which court handles a suit.

JURISDICTION BY COURT'S RESPONSIBILITY (SHOKUBUN KANKATSU)

- The CCP and other related laws stipulate jurisdiction of the courts. These rules are provided for the purpose of public interest judicial management and therefore parties cannot alter them by agreement.
- First, courts rendering judgment and execution are bifurcated; a motion for civil execution of a judgment must be filed with an execution court (*Civil Enforcement Act*, Art. 3). Second, simple procedures and procedures that require expeditiousness must be filed in Summary Courts (CCP, Art. 368). Third, personal affairs suits must be filed in family courts (*Court Organization Act*, Art. 3(1)(ii)). Finally, the Court Organization Act provides which court can be the first instance court or the second. The first instance courts are Summary Courts, family courts or District Courts. The second instance courts are District Courts or High Courts. The final (jōkoku) instance courts are High Courts and the Supreme Court.

SUBJECT MATTER JURISDICTION (JIBUTSU KANKATSU)

• Subject matter jurisdiction mainly regulates the responsibility of the Summary Court and the District Court as the first instance court. The Court Organization Act provides that the Summary Court (kan'i saibansho) has jurisdiction over cases involving claims not exceeding 1,400,000 yen (Art. 33). Thus, small claims suits are also handled by Summary Courts.

TERRITORIAL JURISDICTION (TOCHI KANKATSU)

- Territorial jurisdiction is a rule which determines which court should exercise the jurisdiction over a case where there is more than one court located in different locations which satisfy the requirement of subject matter jurisdiction. In general, the CCP provides that a plaintiff should file an action in the court in the place where the defendant resides (Art. 4(1)). However, the CCP also provides alternatives to decide territorial jurisdiction. For example, a suit seeking property can be filed in the court of the place where the obligation should be performed; a suit involving a tort can be filed in the court of the place where the tort was committed; and a suit involving real property can be filed in the court of the place where the real property is located (Art. 5).
- In addition, the CCP provides that the Tokyo District Court and the Osaka District Court have jurisdiction over cases involving intellectual property issues (Art. 6(1)). On the other hand, the Intellectual Property High Court, which was established in 2004 as a special division of the Tokyo High Court, has jurisdiction over cases that are appealed from either Tokyo or Osaka District Courts involving intellectual property issues (Art. 6(3)).

JURISDICTION BY AGREEMENT

• Parties involved may agree to a court of first instance having the jurisdiction over the matters concerned, except when the law provides exclusive jurisdiction regarding the case (Art. 11). Such an agreement must be in writing. However, when an agreement provides jurisdiction for all disputes among parties, such an agreement is not effective. An agreement to decide on the jurisdiction must be completed before filing a suit.

JURISDICTION IN CONSEQUENCE OF DEFENSE

 When a plaintiff files a suit in a court that does not have jurisdiction to deal with the matter, yet the defendant defends himself or herself by submitting an answer without filing an objection contesting wrong jurisdiction, the CCP recognizes the court's jurisdiction over the case (Art. 12). However, if the law provides exclusive jurisdiction over the case, the court still does not have the jurisdiction and the case must be transferred to an appropriate court.

PARTY

- o Japan has several systems for joint party and/or multiparty litigation, but no extensive system such as a "class action" where a representative plaintiff is not required to have its own legal interest to bring the case nor to have official mandates by individual litigants. Joint parties (kyōdō tōjisha) are required to have common rights or obligations, and/or same grounds in fact, to be jointly examined pursuant to Art. 38 of the CCP.
- (Exception is product liability suit.)

MATTERS TO BE WRITTEN IN A COMPLAINT

(Form of Filing of Action)

Article 133 (1) An action shall be filed by submitting a complaint to the court.

- (2) A complaint shall state the following matters:
- (i) The parties and statutory agents
- (ii) The object and statement of the claim

FIVE METHODS OF EVIDENCE EXAMINATION

- 1. Witness examination (shonin jinmon) (Art.190)
- 2. Party examination (tojisha jinmon) (Art.207)
- 3. Expert testimony (Art.212)
- 4. Document examination (Art.219)
- 5. Observation (kensho)(Art.232)

PROCEDURE TO EXAMINE EVIDENCE

- 1. (Facts not required to examine (Art.179))
- 2. Offer of evidence (Art.180(1)) by a party
- 3. The court decides whether to conduct evidence examination or not with regard to the requested evidence (Art.181)
- 4. Intensive examination of evidence (Art.182)

The burden of proving a specific fact is provided by the applicable law. As a general rule, statutes provide the following three rules:

- (1) when a party claims the existence of a right based on a statute, that party has the burden of proving the facts forming a basis for the right;
- (2) when a party claims extinction of a right based on a statute, that party has the burden of proving the fact forming a basis of extinction of the right;
- (3) when a party claims that a right generally exists but in the right does not exist because of a particular fact provided in a statute, that party has the burden of proof regarding the fact that barred emergence of the right.

FIVE METHODS OF EVIDENCE EXAMINATION

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FREE EVALUATION OF EVIDENCE

o Article 247 of the CCP provides that "when making a judgment, the court decides whether an assertion regarding a fact is true or not with its free impression taking account of the overall purport of oral argument and the results of the examination of evidence". This principle is called the principle of free evaluation of evidence (*jiyū shinshōshugi*). Judges are granted freedom to evaluate evidence submitted by parties.

CONCLUSION OF LITIGATION: THREE PATHS

- Judgment
- Settlement
- Withdrawal

CCP Article 267 Effect of Record of Settlement, etc. When a settlement or a waiver or acknowledgement of a claim is stated in a record, such statement shall have the same effect as a final and binding judgment.

CIVIL PROCEDURE IN JAPAN (VERY ROUGH OUTLINE)

Filing a complaint

First date of oral

hearing

Pre-trial proceedings

Examination of evidence

Conclusion of oral hearing

Judgment

- Judges can recommend the parties to settle the case at any stage.
- •Parties can settle the case at any stage.

REFORMS AFTER THE JUSTICE **SYSTEM REFORM**

SOME REFORMS AFTER THE JSR

- Introduction of "advance notice"
- Jurisdiction for intellectual property disputes → Tokyo & Osaka District Courts for the 1st instance, and establishment of the Tokyo High Court
- The Act Concerning Speeding up of the Trials established. (the proceedings to be closed within two years)
- Introduction of "expert commissioners" system (senmon in).

ADVANCE NOTICE (ART.132-2)

As a result of the CCP amendments in 2003 in order to foster. collecting of evidence, a party may use inter-party inquiry to obtain necessary information for a suit even prior to filing. In addition, the court may, upon a motion of a party, make preaction dispositions to collect evidence. These may involve a request for transmission of a document, a request to government offices and/or other bodies for an investigation etc., after hearing the views of the other party so as to decide whether the relevant evidence will be clearly necessary for the case and should be preserved prior to the action (Art. 132-4). written notice indicating the intent of a prospective plaintiff to sue a prospective defendant shall be given by the former to the latter for proceeding regarding those evidentiary procedures. This is useful, for example, to clarify the names of the doctors involved in surgery giving rise to medical malpractice litigation, a growing field in Japan.

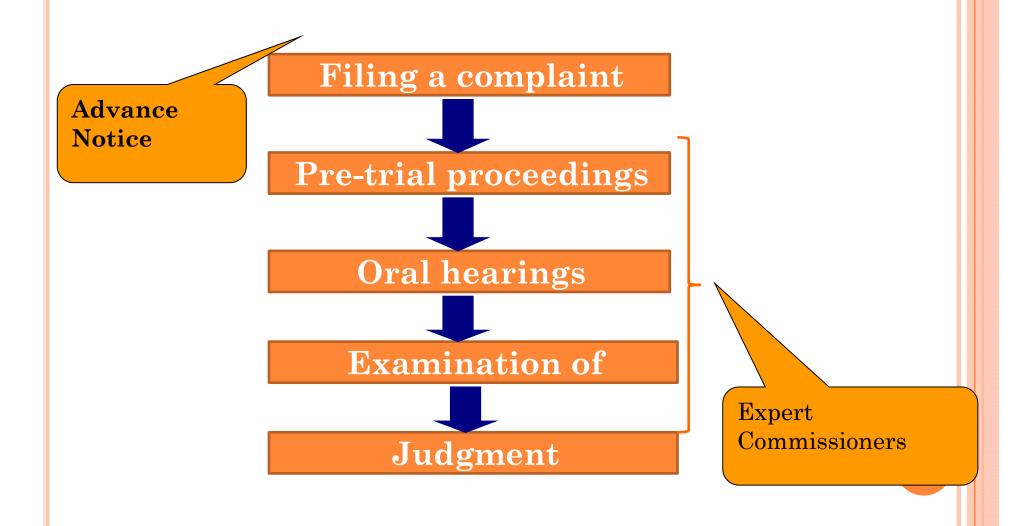
EXPERT COMMISSIONER/ADVISOR (ART.92-2)

• Since it is sometimes difficult to find experts to come to court to be examined under oath, the 2003 amendments of the CCP established a system of "expert commissioner/ advisor' (senmon i in). They can commit the proceedings from the preparatory stage to the settlement conference in order to advise judges based on their professional knowledge. Judges may rely on experts' knowledge but not when a decision is being taken. Judges may only ask their general opinions regarding issues involved in the case, before decisionmaking.

EXPERT COMMISSIONERS INVOLVED IN 2015 AT THE DISTRICT COURTS

Types of cases	TOTAL	EC involved
Construction subcontract cases	1518	93
Damages for construction deficit	446	76
Damages for medical malpractice	750	45
Cases involving intellectual property	525	14
Other cases	137760	309
TOTAL	140999	537

CIVIL PROCEDURE IN JAPAN



BASIC PRINCIPLES OF THE JAPANESE **CIVIL PROCEDURE**

BASIC PRINCIPLES OF JAPANESE CCP

- 1. Principle of party disposition
- 2. Principle of party presentation
- 3. Principle of the court's power to manage proceedings
- 4. Principles in oral proceedings
- 5. Free evaluation principle

PRINCIPLE OF PARTY DISPOSITION (SHOBUNKEN SHUGI)

- It is the parties who has the right to dispose their rights. The plaintiff defines the scope and content of the controversy, and the judge may not grant relief of a larger amount or relief that differs from the relief requested by the plaintiff.
- Parties also have the right to settle or withdraw the case at any state based on this principle.

PRINCIPLE OF PARTY PRESENTATION/ ADVOCACY (BENRON SHUGI)

- Parties are solely responsible in submitting facts and evidence in order to obtain a judgment by the court. It is generally explained by the following three rules:
 - 1. The court may not rely on facts not asserted by either party as a basis to make a judgment;
- 2. The court must adopt the facts as they are for the basis of making a judgment when no party raises an objection concerning the facts; and
- 3. The court must resolve the evidentiary issues over the facts disputed by the parties solely based on the evidence submitted by either party.

PRINCIPLE OF THE COURT'S POWER TO MANAGE PROCEEDINGS

- While the parties take the initiative in the submission of allegations and evidence, to avoid delaying proceedings, the power to conduct oral proceedings is vested in the court. In concrete, the court has the following powers in the proceedings:
- (1) To designate and alter the schedule; (2) to control parties' activities; (3) to exercise the power to clarify;
 (4) to limit, separate, or consolidate the oral proceedings; (5) to close or reopen the proceedings; and
 (6) to dismiss the methods of offense or defense.

COURT'S POWER TO CLARIFY

• The CCP gives the court authority to clarify a situation on the basis of the following provision:

Article 149 (1) The presiding judge, on the date for oral argument or a date other than that date, in order to clarify the matters related to the suit, may ask questions of a party or encourage him/her to show proof with regard to factual or legal matters.

MAJOR PRINCIPLES IN ORAL PROCEEDINGS

- 1. The principle of oral statements (*kōtōshugi*): the parties' conduct in hearings must be done orally and the basis of judgment must be what the parties orally stated. (Art. 87 (1) CCP.) However, written documents are also indispensable to ensure accuracy of the proceedings.
- The principle of equality (*taitō shugi*). There is a Roman saying that "judges should have two ears, both alike".
- 3. The principle of directness (*chokusetsu shugi*). This principle requires a judge who will render a judgment to have directly heard the arguments and examined the evidence.
- 4. The principle of openness ($k\bar{o}kai\ shugi$). The Japanese Constitution (Art. 82(1)) provides that "trials shall be conducted and judgments declared publicly". This constitutional principle is applied to the oral argument stage and declaration of a judgment in civil litigation.

BURDEN OF PROOF

The burden of proving a specific fact is provided by the applicable law. As a general rule, statutes provide the following three rules:

- (1) when a party claims the existence of a right based on a statute, that party has the burden of proving the facts forming a basis for the right;
- (2) when a party claims extinction of a right based on a statute, that party has the burden of proving the fact forming a basis of extinction of the right;
- (3) when a party claims that a right generally exists but in the right does not exist because of a particular fact provided in a statute, that party has the burden of proof regarding the fact that barred emergence of the right.

FREE EVALUATION OF EVIDENCE

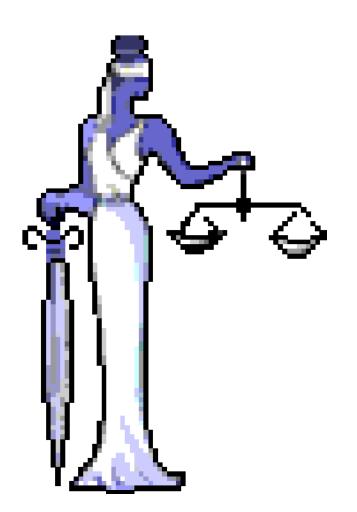
o Article 247 of the CCP provides that "when making a judgment, the court decides whether an assertion regarding a fact is true or not with its free impression taking account of the overall purport of oral argument and the results of the examination of evidence". This principle is called the principle of free evaluation of evidence (*jiyū shinshōshugi*). Judges are granted freedom to evaluate evidence submitted by parties.

EXAMPLE OF ONE SUPREME COURT CASE

 Supreme Court Judgement, June 26, 1964, Minshu Vol.18, No.5, 954.

X filed an action seeking damages on the ground that Y illegally trimmed the trees on X's field. Both X and Y contested the ownership of the field, but the judge believed that X owned only a part of the field. Because X failed to show the partial ownership of the field, the court dismissed the case.

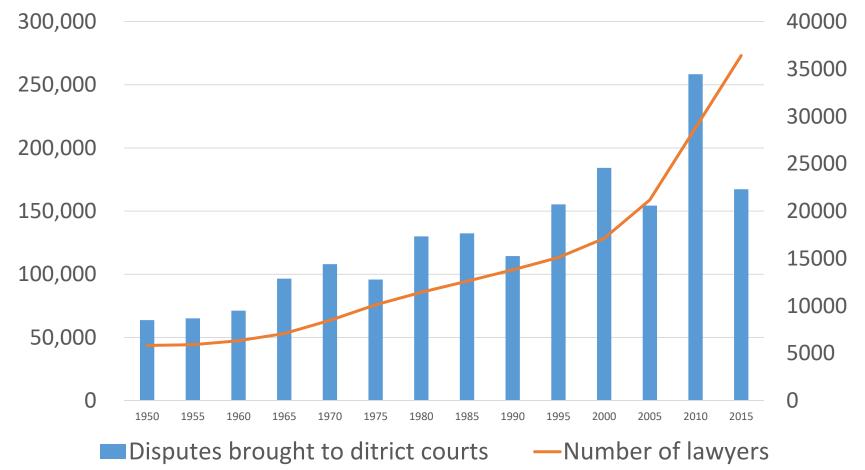
The Sup. Ct. remanded the case on the ground that the judge failed to perform the duty of clarification.



O Does Japanese goddess REALLY fair?

STATISTICS ON CIVIL LITIGATION

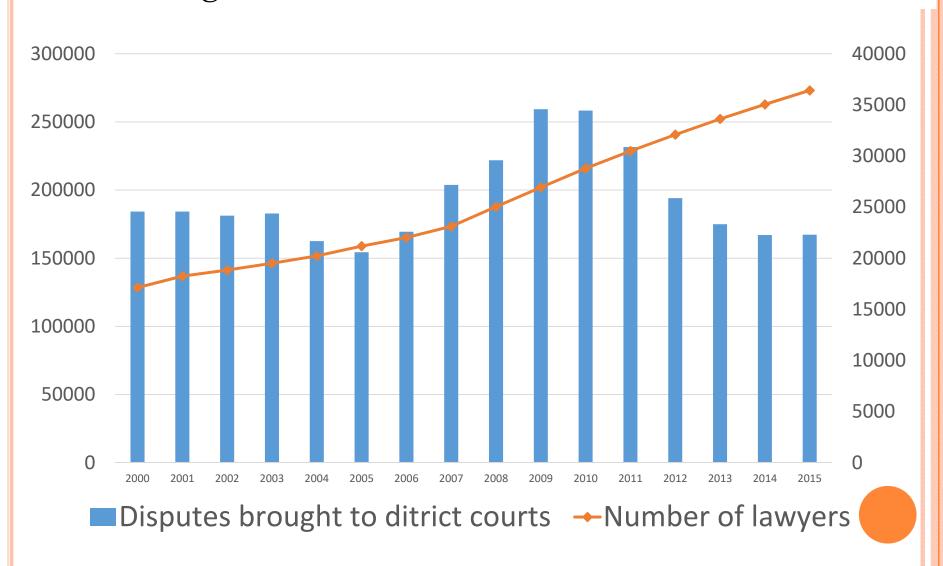
Changes of cases brought to District Courts/number of lawyer population



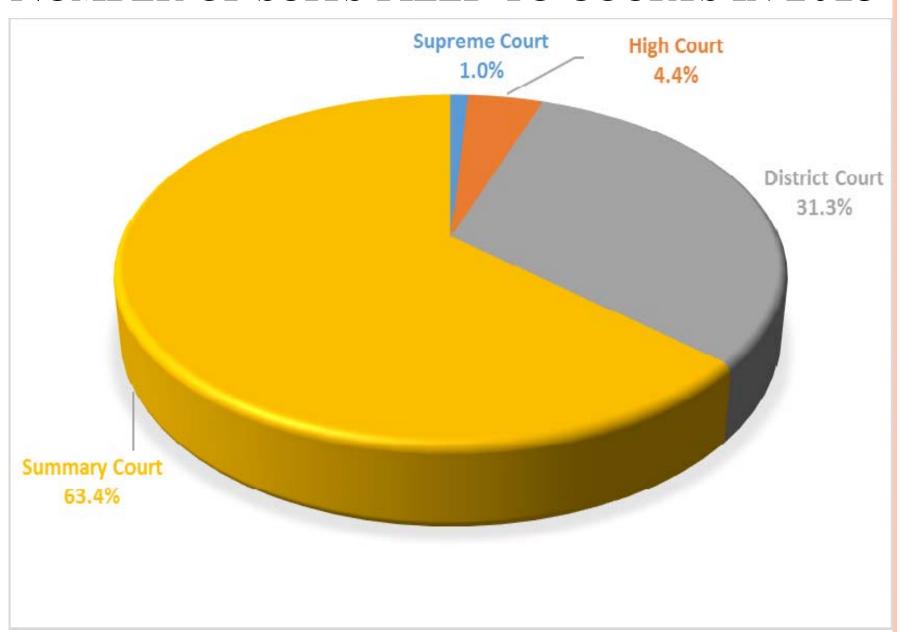
Cf. General jurisdiction courts in NY received 409,533 in 2009 and closed 390,225.

(Population of NY state is about 200,000, similar to Tokyo.)

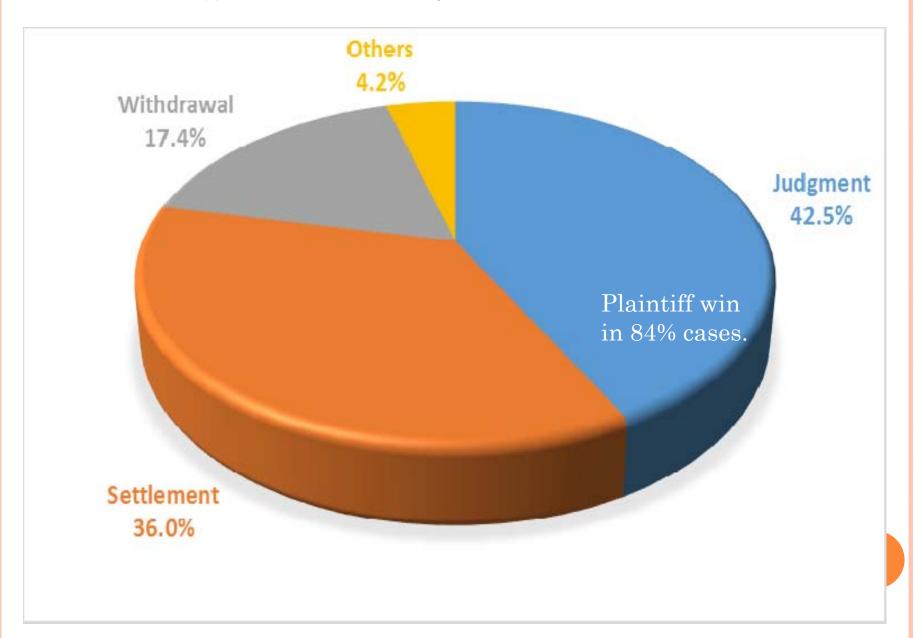
Changes of number of lawyers and lawsuits brought to district courts after 2000



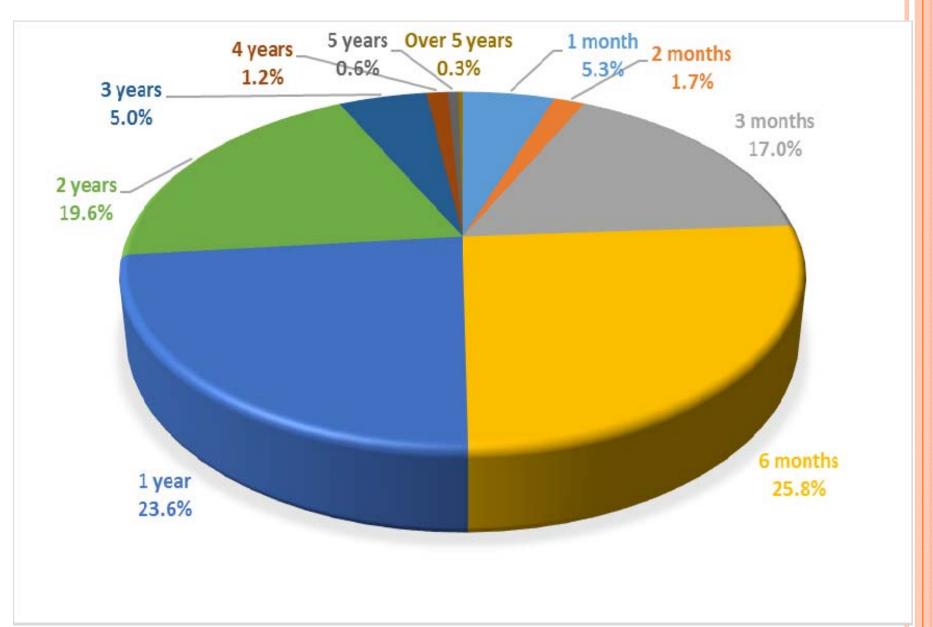
Number of suits filed to courts in 2015



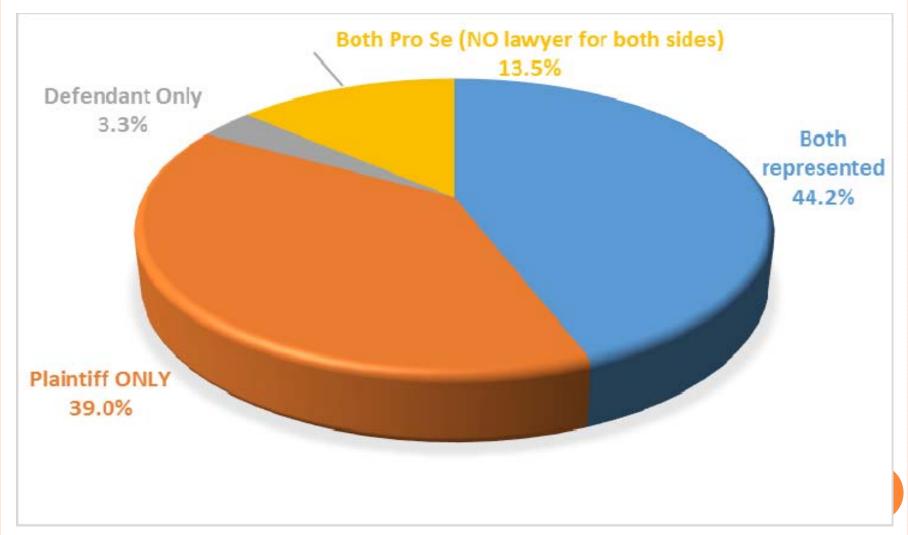
Breakdown of cases based on results in 2015



PERIOD OF PROCEEDINGS IN 2015

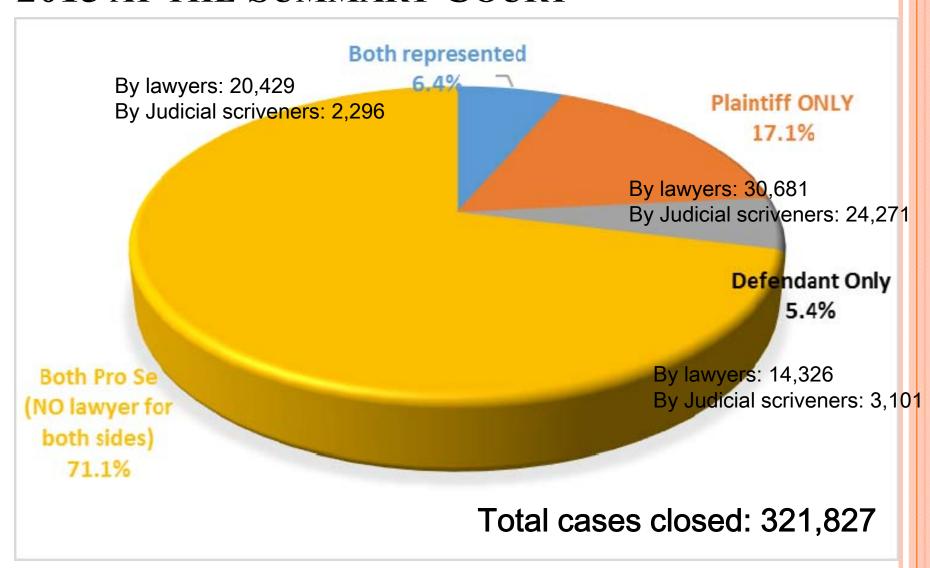


REPRESENTATION BY PROFESSIONAL IN 2015 AT THE DISTRICT COURT

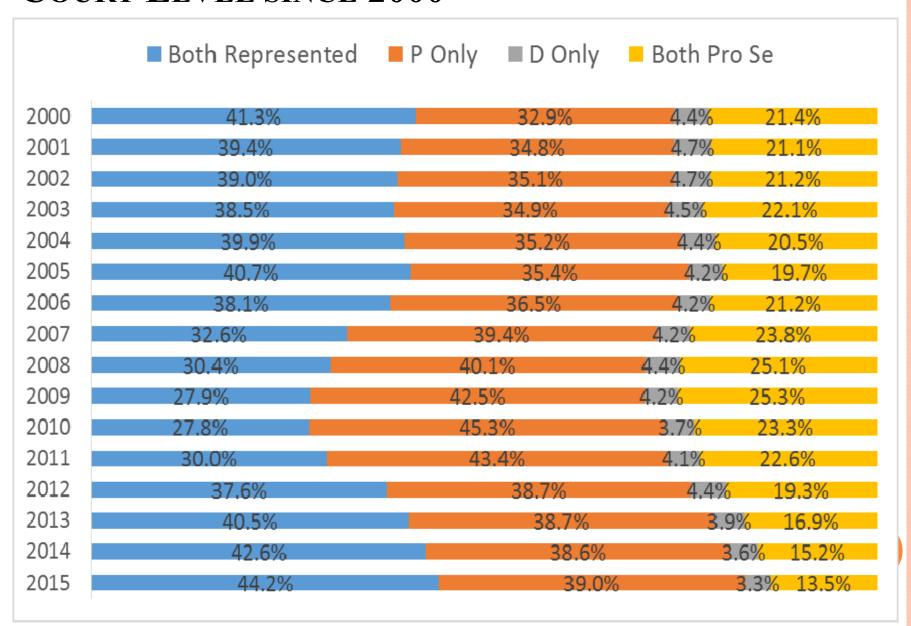


Total cases closed:140,999

REPRESENTATION BY PROFESSIONAL IN 2015 AT THE SUMMARY COURT



HOW MANY PARTIES ARE REPRESENTED IN DISTRICT COURT LEVEL SINCE 2000



DISCUSSION ON ONE NEIGHBOR DISPUTE

ONE NEIGHBOR CASE

(FROM THE JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

- X and Y were neighbors. It was a busy day preparing for *Oshogatsu*, a new year celebration. X's son, A (3 years old) and Y's son, B (4 years old) were very good friends and playing in the yard of Y's house. In the afternoon, X visited Y's house and told A to come with her for shopping. But A refused because A wanted to stay with B. Then Y said, "Don't worry. I will look after A." So X left Y's house alone and went to shopping.
- A few hours passed and B alone came back to home saying "Mom, A hasn't come back since he went to swim in the pond!"
- A was discovered from the bottom of the pond. He was already died.

(FROM JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

After funeral of her beloved son, strong hatred against Y emerged in X's mind. X and her husband, X2, needed to do something to heal their minds.

On the other hand, Y and her husband, Y2 also became feel bad about meeting with X and X2.

Some time had passed, and now the rift between X, X2 and Y, Y2 became incurable by themselves.

What should they do to resolve their problem???

(FROM JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

- X, X2 sued the city, the prefecture, the nation, the construction company, and Y, Y2. X, X2 alleged that there existed quasi-mandate contract between X and Y about taking care of A under the Civil Code Art.656, 644, 415.
- X, X2 alleged that even if there was no contract, Y still owed the duty under the principle of good faith or public policy and thus Y was liable under tort. (CC Art.709, 719)
- X, X2 also alleged that the city, the prefecture, and the nation were liable about the defect of public facility under the National Compensation Act. (Art.2(1)), and the construction company was liable for leaving the big hole (pond) after they collected sand.

http://www.japaneselawtranslation.go.jp/

Civil Code Art.656 Quasi-Mandate

The provisions of this Section shall apply mutatis mutandis to mandates of business that do not constitute juristic acts.

Civil Code Art.644 Duty of care of mandatory

A mandatary shall assume a duty to administer the mandated business with the care of a good manager compliance with the main purport of the mandate.

Civil Code Art. 709 Damages in torts

A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

(FROM JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

- The court dismissed the claims against the city, the prefecture, the nation, and the construction company.
- Yet, although the court denied existence of contractual relationship between X and Y, the court found that Y was comparatively negligent for not performing the duty of care over A (because Y was foreseeable that A would enter into the pond).

The court ordered Ys to pay 5,265,922 Yen. (about 3/10 of the total damages)

• Y, Y2 appealed the case once. HOWEVER, later on, both parties withdrew the case before the decision became final. WHY?

(FROM JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

- After the judgment, newspapers reported the name of the plaintiff with the titles such as "Severe judgment to neighbor's kindness," implying a criticism that the plaintiffs were too thoughtless to sue the kind neighbors.
- Xs received 55 letters criticizing the fact that they had filed the lawsuit against the neighbor and received money for their son's death.
- Ys also received 41 letters criticizing the fact that they appealed the case after the judgment in the district court.
- Xs had to move the house, their kids were bulled, and X2 had to quit the job.

(FROM JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

• After both parties' withdrawal of the case and heated media reports, the Ministry of Justice announced an opinion; "In this case, both parties were forced to withdraw the case owing to inrushing threats and insults against both parties regardless that the plaintiff had partially won the case and the plaintiff filed an appeal to the high court. Accordingly, the right to the court of both parties were infringed. ... The Ministry of Justice strongly urge that each individual reaffirms the importance of the right to the court under the nation ruled by law and carefully behaves not to repeat the case like this."

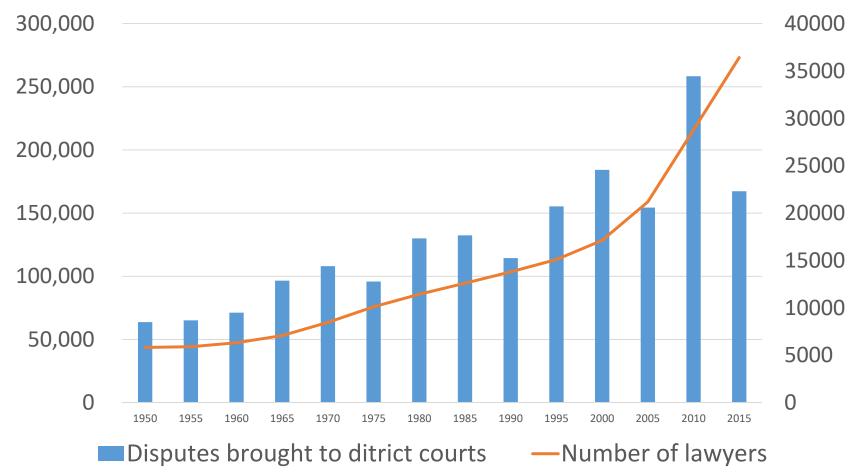
(FROM JUDGMENT OF TSU DIST. CT ON FEB.25, 1983)

Although it may not be unique to Japan, the court was not effective for the parties in this dispute to achieve satisfactory results.

It took more than five years for the parties to have the judgment in the district court.

THEORETICAL DEBATE ON JAPAN'S SMALL NUMBER OF LITIGATION

Changes of cases brought to District Courts/number of lawyer population



Cf. General jurisdiction courts in NY received 409,533 in 2009 and closed 390,225.

(Population of NY state is about 200,000, similar to Tokyo.)

THEORETICAL FRAMEWORK

- FIVE THEORIES to "explain" Japan's comparatively low civil litigation rate (& few arbitrations, but many conciliations)
- 1. Culturalist: tend to avoid the litigation
- 2. Barriers: cannot access to the judicial system
- 3. Management: made not to access to the judicial system
- 4. Rationalist: employ predictable shadow of the litigation
- 5. Hybrid: sometimes like law, sometimes don't

1. CULTURALIST [KAWASHIMA]

- Historically, comparatively few litigation
 - 1920s: conciliation intro'd for legal disputes
 - Late 20s depression: no large increases
 - Traffic accidents hardly litigated
- Why?
 - "socio-cultural ... tradition" prefer "harmony"
 - "litigation" is somewhat "foreign" system

2. STRUCTURAL BARRIERS [(EARLY) HALEY]

- o "reluctance" to litigate?
 - Structured not to litigate
 - *Critical issue*: Japanese people "tend to reach negotiated or mediated settlements that do not reflect the litigated outcomes, and one of the parties accepts a less favorable result because of an aversion to litigation in general"

- Relative (institutional) barriers to suits:
 - Legal info is available but
 - Access to court restricted
 - Lack jurisdiction
 - Lack capacity: few lawyers (gov't policy)
 - oLimited remedies: no contempt power
 - Third parties available to help mediate

3. MANAGEMENT [UPHAM]

- o "Iron triangle" (LDP polis, bureaucrats, big biz) seeks to limit (potentially) destabilising litigation, to maintain social control
- o Through "bureaucratic informalism", eg
 - Pollution cases: mediation scheme
 - Sex discrimination in employment: Legislation (later)
- o Big biz can then "sort things out" among themselves
- Perhaps democratic choice by (majority of) citizens

4. RATIONALIST [RAMSEYER]

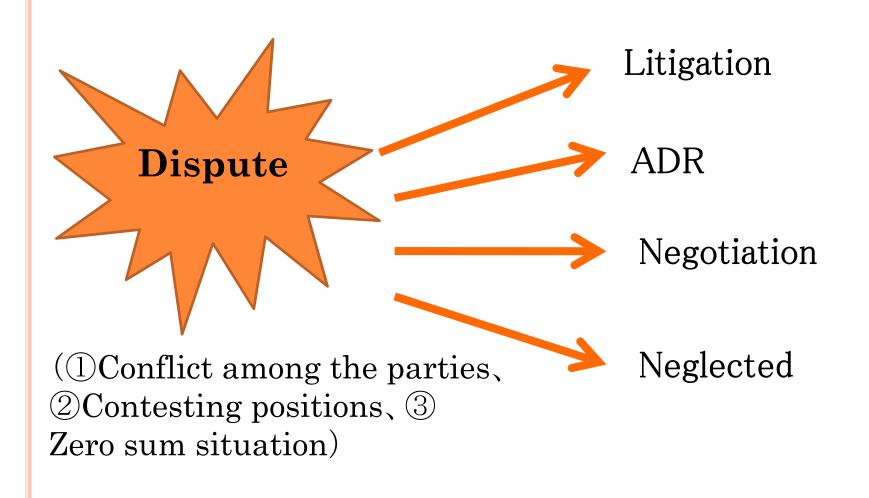
- Predictability of substantive outcome much more important than litigation costs, in prompting disputes: [equation]
- Culturalist and [barriers] theories predict:
 - "plaintiffs do not even make (profitable) claims"
 - "claim, but settle for less"
- Cf. traffic accidents: do claim, good settlements "in the shadow of the law"

5. Hybrid models [eg. Tanase]

- Also: current judicial reforms vs Japan's comparatively low (but rising) litigation
- Yet emphasizes negative correlation to business cycle, ie mainly <u>debt</u> cases rising
- Only small rise eg in contentious <u>tort</u> cases (cf Kawashima's expected "modernisation")
 - Managed system reacting, AND cultural norms ...
- YET reconciling law with culture/society is a universal problem

KINDS OF ADR IN JAPAN

What is Dispute?



ALTERNATIVES TO CIVIL PROCEEDINGS

- Negotiation (kosho)
- Mediation (chotei)
- Conciliation (minji/kaji chotei in court)
- Arbitration

Negotiation	Mediation	Conciliation	Arbitration
$\mathbf{A} \longleftrightarrow \mathbf{B}$	$A \longleftrightarrow B$ C	A B C	A B C
Voluntary	Voluntary	Voluntary	Binding

MEDIATION

- US Style mediation technique was introduced relatively recently.
- Some private associations including local bar associations provide mediation services.

CONCILIATION

- Japan has a long history of court conciliation.
- For family court cases, parties must first try conciliation before litigation.
- A panel of conciliators (two lay conciliators and a judge) facilitate parties to settle the case.
- An agreement through conciliation has the same effect as final judgment.

http://www.choutei.jp/index.html

ARBITRATION

- New Arbitration Act was enacted after the Justice System Reform. (Before that, the law enacted in 1890 governed arbitration)
- The new act models after the UNCITRAL Model Act, and adopts many measures which make the court involved. (Japan has become the 45th country to adopt the model law.)
- Arbitration award is binding, and has the same effect as judgment.

CHARACTERISTIC PROCEEDINGS UNDER THE ARBITRATION ACT

- Adopted both international and domestic arbitration.
- Respect parties' self agreements. (e.g., Art.16, Art.17, and Art.19)
- Support and supervision by the court (e.g., Art.4, Art.12, Art.17(5), and Art.35 (court assistance in taking evidence))
- Interruption of limitation (Art.26)
- Provision to promote settlement (Art.38)

BASIC FRAMEWORK OF ADR ACT OF 2004

ADR ACT OF 2004 (ACT ON PROMOTION OF USE OF ALTERNATIVE DISPUTE RESOLUTION)

• Report of the Justice System Reform Council in 2001 "In addition to making special efforts to improve the function of adjudication, which constitutes the core of the justice system, efforts to reinforce and vitalize ADR should be made so that it will become an equally attractive option to adjudication for the people."

"In order to promote and improve various types of ADR by making use of their characteristics, cooperation among organizations concerned should be strengthened and a common institutional base should be established."

BASIC SCHEME UNDER ADR ACT

- The Ministry of Justice certificates organizations that provide ADR services such as mediations. Without such certificates, service providers may be penalized under the Attorney Act as "unauthorized practice of law" (Art.5-13).
- The Act also allows the person who uses an authorized ADR to invoke suspension of prescription under the statute of limitations (Art.25).
- The court can suspend the proceedings upon the request of both parties when the case is brought to the proceedings of a certified ADR for up to 4 months (Art.26).



Collaboration of the Court and Certified ADR Services in order to achieve Rule of Law in Japanese Society

SOME CRITICISM ABOUT THE ADR ACT

- Is "Certification" necessary?
- Is "Resolution by law" required for ADR?
- Possible downside of control by the Ministry of Justice (may be opposite to "deregulation" policy)
- Mandating "an attorney advisor"

http://www.moj.go.jp/ADR/index.html

CURRENT STATISTICS ON ADR

- As of November 8, 2016, there are 146 organizations that have obtained certification by the Ministry of Justice.
- Their annual report shows, however, that Japanese people do not actively use ADR services.

General Disputes brought to the Courts in 2015

ADR Centers at Bar Associations annually receive

Many certified ADR services providers annually receive

320,000 cases to Summary
Courts
140,000 cases to District Courts
1,000 cases to local BA, and
1,100 cases to JFBA Traffic
Accident Consultation Center

LESS THAN 10 CASES

WHY ADR services are not actively used in Japan???

Statistical data of all certified ADR service providers is available at

http://www.moj.go.jp/KANBOU/ADR/jigyous ya/ninsyou-index.html

FINDINGS FROM EMPIRICAL SURVEY

SURVEY BY ADR STUDY GROUP

- o ADR Study Group: OTA Shozo (UTokyo Law), KAWAKAMI Shoji (UTokyo Law), FOOTE H. Daniel (UTokyo Law), IRIE Hideaki (Kyushu U, Law), IMAZAI Keiichiro (Hokkaido U of Education), MAEDA Tomohiko (Meijo U, Law), KAKIUCHI Shusuke (UTokyo Law), HISHIDA Yukyo (UTokyo Law), ISHIDA Kyoko (Waseda U, Law), and IMAZAI Keiko (Nagoya U, Social Psychology) (10 reserachers)
- TWO Surveys: User Survey with 792 samples (2014/10-2016/08)

Internet Survey with 2,000 samples

(2016/02)



The first survey with this scale about ADR in Japan.

MAJOR FINDINGS

- Actual users of ADR:
 - ▶ 55% did not know about ADR before they used. 60% learned about ADR through the lawyer they consulted.
 ★ Lawyers are the important hub connecting ADR institutions and users.
 - More than 60% satisfy with the result of ADR and more than 70% satisfy with the whole ADR proceedings regardless that about 25% responded that the result was "disadvantageous" and about 35% responded "not sure (whether the result was advantageous or not)."
 - More than 65% wishes to use ADR if they happen to face a similar problem.

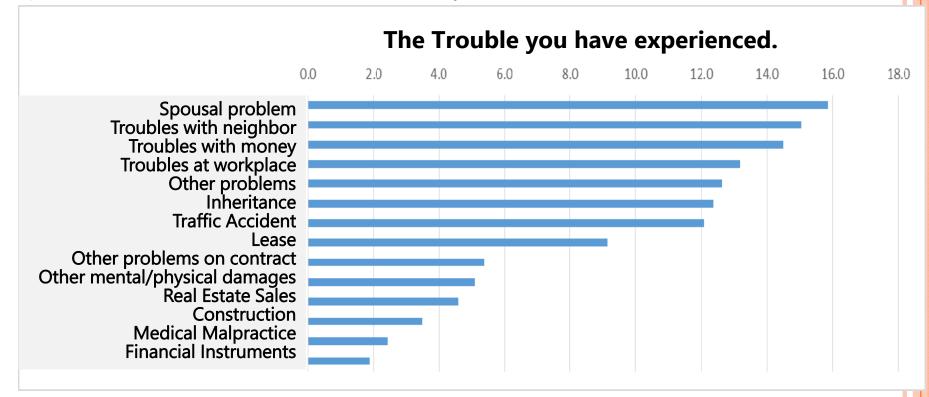
MAJOR FINDINGS FROM USER SURVEY

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FINDINGS FROM INTERNET SURVEY (1) HOW MANY HAVE EXPERIENCED A TROUBLE???

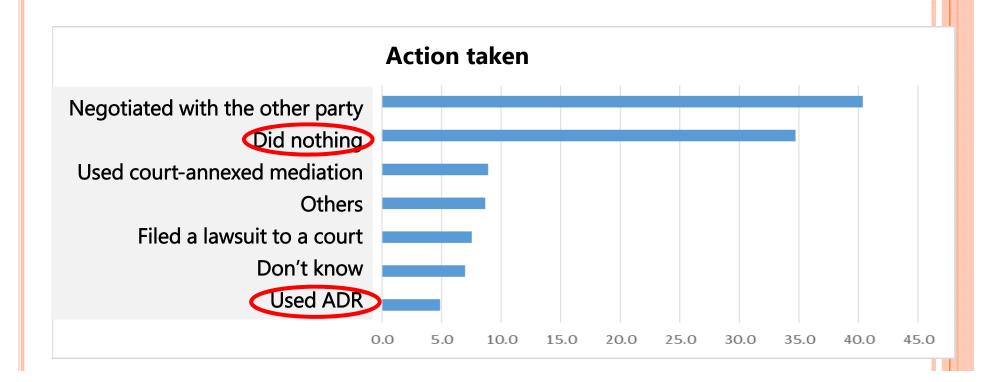
• 18.6% responded "Yes," 77.8% "No," and 3.7% "Don't know."

(Cf. In a similar online survey conducted in 2013, 20.6%



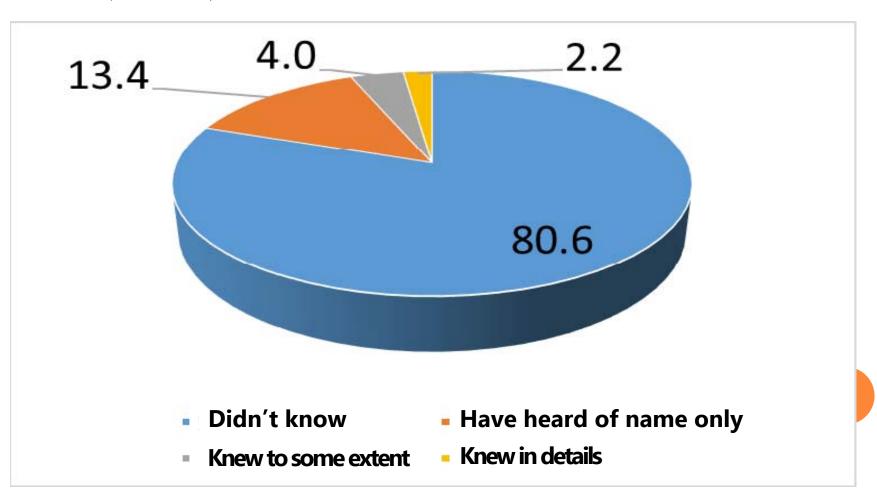
FINDINGS FROM INTERNET SURVEY (2) ACTION TAKEN FOR THE TROUBLE

- Almost 35% did NOTHING even they faced a trouble.
- o 16.4% (n=61/372) filed either litigation or mediation in court. ∙
- 4.8% (n=18/372) used ADR. Among the 18 people, 9 retained a lawyer, 3 retained a judicial scrivener, 1 retained another professional, and 5 did not retain any professional.



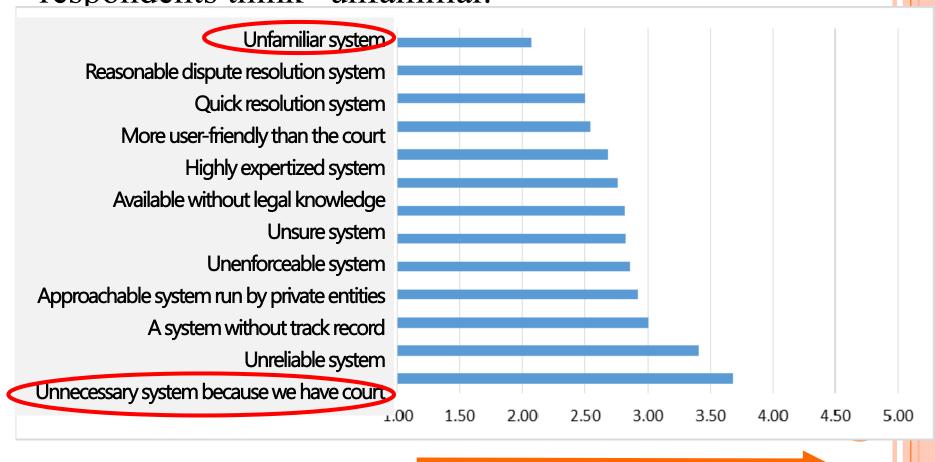
FINDINGS FROM INTERNET SURVEY (3) HAVE YOU EVER HEARD "ADR"?

o 1611 (80.6%) answered that "Don't know about ADR"



FINDINGS FROM INTERNET SURVEY (4) IMAGE OF ADR

The image of ADR is not so bad, but most of the respondents think "unfamiliar."



Agree

Can't Say

Disagree

FINDINGS FROM INTERNET SURVEY (5) "How would you like to resolve your dispute if you happen to face one?"



DISCUSSION

- Given the data, you can see ADR services in Japan are not so actively used since the Justice System Reform.
 WHY are ADR services in Japan not so popular?
- Do you think it is problematic that ADR services are not so popular as expected?

ACCESS TO JUSTICE PROBLEM

QUESTION:

- WHY "Access to Justice (the judiciary, the legal professional, and resolution by law)" matters?
- O Do you think "Access to Justice" is guaranteed by law in Japan?
- Do you think "Access to Justice" is PRACTICALLY assured for ALL people in Japan? If not, why?

ATTORNEY/CITIZEN RATIO BASED ON PREFECTURE

Rank	Prefecture	No. of Attorneys	Ratio
1	Akita	78	13,113
2	Iwate	100	12,798
3	Yamagata	95	11,090
45	Kyoto	731	3,571
46	Osaka	4,333	2,040
47	Tokyo	17,565	769
ТОТА	L	37,680	3,373

Number of civil cases per attorney (General civil litigation at the District Court Level only)

Rank	Bar Assoc.	New cases	Cases/Attorney
1	Mie	1,548	8.5
2	Tochigi	1,993	7.4
3	Shiga/Kagoshima	1,993/ 1,469	7.4
45	Niigata	1,082	4.1
46	Osaka	15,389	3.6
47	Tokyo	40,496	2.3
National average		143,816	3.8

WHY ATTORNEYS DISTRIBUTED UNEVENLY?

- No regulation at all. (They are private practitioners, not public servants)
- Look for money, cases? (but many cases in rural areas, too)

ATTORNEY FEES

- o In April 2004, fee schedule was abolished.
 - → Can you tell why?
- Kinds of fee: Advance fee (mobilization fee),
 Contingent fee (professional fee), Commission, Time charge etc.
- In 2008, the JFBA conducted a survey on attorney fees. "References for attorney fees for citizens based on the result of survey" was published.

COST FOR ACCESS TO JUSTICE 1: LEGAL COUNSELING

Q. How much fee do you claim for one-hour legal counseling at your law firm to general citizens?

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^{1}. 10,000 YEN (55.7%)
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- ²· 5,000 YEN (36. 1%)
- 3. 20,000 YEN (2.8%)
- 4.
- 5. 30,000 YEN (0.5%)

Other

COST FOR ACCESS TO JUSTICE 2: PREPARATION OF CONTENT-CERTIFIED MAIL

Q. How much do you claim for preparation of contentcertified mail to send the other party to confirm loaned money?

```
^{1}. 30,000 YEN (41.7\%)
```

- 2. 20,000 YEN (17.4%)
- 50,000 YEN (17.2%)
- $4. \quad 30,000 \text{ LEN} \quad (17.270)$
- 5. 10,000 YEN (15.9%)

Other (7.8%)

COST FOR ACCESS TO JUSTICE 3: DIVORCE CONCILIATION

Q. How much do you claim to represent a client in divorce conciliation? Your client wants to divorce because husband's DV is intolerable. She has a three-year-old daughter and she wants to have her custody. The conciliation was successful and she received 2,000,000 YEN compensation and obtained custody of her child. Her ex-husband would pay 30,000 YEN for child support monthly.

[Mobilization fee] [Professional fee]

- 1. Ψ 200,000 (45.1%)1. Ψ 300,000 (39.6%)
- 2. \$300.000(41.5%) 2. \$200.000(30.3%)
- 3. \$400,000(6.6%) 3. \$400,000(14.2%)
- 4 . $$$500,000(2.2\%)^{4}$. \$\$500,000(10.3%)
- $^{5.}$ Other (4.5%) $^{5.}$ Other (5.5%)

DO YOU THINK ATTORNEY FEES ARE EXPENSIVE???

- Attorneys have to maintain their firms
- Most of attorneys find the result of survey is reasonable.
- How about citizens?
- o "Like 'at market price' of Sushi restaurant at Tsukiji!"

ESTABLISHMENT OF JAPAN LEGAL **SUPPORT CENTER**

CHAPTER II. JUSTICE SYSTEM RESPONDING TO PUBLIC EXPECTATIONS

PART 1. REFORM OF THE CIVIL JUSTICE SYSTEM

- 7. EXPANSION OF ACCESS TO THE COURTS
- (3) ENHANCING THE CONVENIENCE OF THE COURTS
- A. CONSULTATION WINDOWS REGARDING UTILIZATION OF THE JUSTICE SYSTEM

By establishing consultation windows (access points) regarding utilization of the justice system in the courts, bar associations, local public bodies, etc., and by promoting the establishment of networks by using Internet home pages, the furnishing of comprehensive information concerning the justice system, including various alternative dispute resolution (ADR) mechanisms, should be strengthened.

"At present, consultation windows (access points) at which a person can obtain one-stop comprehensive information concerning dispute resolution procedures such as adjudication and extra-judicial alternative dispute resolution (ADR) mechanisms are not adequately provided.

Therefore, the courts, bar associations, local public bodies, ADR organizations, etc., that have already established access points should strive to further improve them, and those that have yet to establish such points should establish them immediately. Efforts also should be made to connect each access point by a network and to share information by using the Internet, etc."

LEGISLATION OF THE COMPREHENSIVE LEGAL SUPPORT ACT OF 2004

 Taken the recommendation of the JSR Council, the government enacted the Comprehensive Legal Support Act in 2004.

Article 1 Owing to the changes in the social and economic situation at home and abroad, the settlement of disputes based on laws has become increasingly more important. Bearing such in mind, the purpose of this Act shall be to contribute to the formation of a freer and fairer society by providing not only the basic principles, the responsibilities of the national and local government and other basic matters, but also the organization and operation of the Japan Legal Support Center which is the core body of comprehensive support (hereinafter referred to as "comprehensive legal support"), with respect to the implementation and the establishment of systems of comprehensive legal support to further facilitate the use of judicial decisions and other systems for the settlement of disputes based on laws, and to make it easier to receive support from attorneys at law and legal professional corporations, as well as judicial scriveners and other related legal experts and specialists (parties or persons who are not attorneys at law or legal professional corporations but who are authorized to engage in the practice of handling other persons' legal affairs based on laws; the same shall apply hereinafter).

LEGAL SUPPORT AID ACT 総合法律支援法 (2004)

(Basic Principles)

第二条 総合法律支援の実施及び体制の整備は、次 条から第七条までの規定に定めるところにより、民事、 刑事を問わず、あまねく全国において、法による紛争 の解決に必要な情報やサービスの提供が受けられる 社会を実現することを目指して行われるものとする。

Article 2 The implementation of comprehensive legal support and the establishment of systems shall aim at creating a society in which the provision of information and support necessary to settle disputes based on laws concerning criminal as well as civil cases can be received nationwide pursuant to the provisions of Articles 3 to 7.

ACTIVITIES OF JLSC (HO TERASU)

- Provide information on legal services
- 2 Provision of civil legal aid and lawyer referral services for the poor
- 3 Provide court-appointed lawyer for the poor criminal defendant
- 4 Provide legal services by staff attorneys in the areas where there is no or few lawyers
- 5 Support criminal victims.
- 6 Conduct business commissioned by the government such as criminal suspects' support

FEATURES OF THE COMPREHENSIVE LEGAL SUPPORT ACT

- Civil Legal Aid became one of "national responsibility and business" for the first time.
- The scheme of "independent administrative corporation" was adopted. (more independent from the government)
- o "Staff-Attorney system" was introduced
- Comprehensive scheme was adopted: Not only legal aid but also provision of information, measures for rural areas, support of victims, etc. included.
- The Center takes an important role in the area of criminal cases.

ACTIVITIES OF STAFF ATTORNEYS (IN GENERAL)

- 24 lawyers were hired at the beginning of its operation,
 33 in 2007, and 94 in 2008 (151 in total as of April '09)
- They can practice "independently" from the organization (Art.12)
- Same as general lawyers, staff attorneys have wide discretion on their practice.
- As of September 2016, there are more than 200 staff attorneys all over Japan.