

# Instructional Text for “Introduction to Japanese Law” (LA275)

## < Contents >

### Part 1

<b>Social Development from Prehistoric Period to Feudalism</b> .....	1
Prehistoric Age .....	1
Yamato- and Asuka Era (5. c. - 7. c. AD.): Establishment of Japanese Ancient Sate	
Nara-Era (710 – 794): Introduction of Chinese State System	
Background of “Ritsu-Ryo System” .....	2
“RITSU” and “RYO” .....	4
A Household (726 AD.) .....	5
Heian-Era (794 – 1182) .....	6
Kamakura-Era (1182 – 1333)	
Japanese Buddhism in Kamakura-Era	
Ashikaga-Era (1333 - 1477) and Warring States Period (1477 – 1600) .....	7
Development in the Warring States Period (16.c.)	
Establishment of Tokugawa Shogunate (17.c.) .....	8
Legislation and regulations by the Shogunate	
Introduction of Confucianism .....	9
Financial difficulties of Warrior class and Tokugawa Shogunate (18.c.)	
Splitting of peasant class into landlords and tenant farmers (18.c.)	
Revolt of peasants and political confusion (19.c.) .....	10
Rise of a new consciousness among young warrior leaders (mid 19.c.)	

### Part 2

<b>Modernization process in Japan (1) – Social Restructuring</b> – .....	11
Chronology of the Modernization Process in Japan (1) .....	11
“Nation State” – Final Goal of the Modernization .....	12
Two Aspects of “Public Law”, “Modernization” and “Democratization”	
Social Restructuring by Meiji government .....	13
(1) Family reform	
(2) Confucian education	
(3) National Shintoism	
<b>Modernization process in Japan (2) – Meiji Constitution</b> – .....	14
Chronology of the Modernization Process in Japan (2) .....	14
Modernization (industrialization) – A Heavy Burden charged to Farmers – .....	15
Popular Movement for Freedom and Democracy	
Establishment of Constitutional Monarchy	
Fatal Error in Constitution .....	16

Additional Commentary to “the Constitution of the Empire of Japan” in 1889 .....	17
Theoretical Background of the Constitution – “True Nature of the Japanese Nation”	
Declaration of “Kokutai” and the Supreme Command of the Emperor	
Outstanding Competence of the Emperor (and the Cabinet) .....	18
Limitation on the Other Competence of the Diet .....	19
Restriction upon Judiciary and Jurisdiction	
Tremendous Restrictions upon Human Rights .....	20
<b>Modernization process in Japan (3) – Codification of Civil Code – .....</b>	<b>21</b>
Chronology of the Modernization Process in Japan (3)	
Enactment of Civil Code and Other Main Codes .....	21
Initial Stage of the Codification Project for Civil Law by the Government .....	22
Second Stage: “Old Civil Code of Japan” by <i>Boissonade</i> .....	24
“Codification Controversy” in Japan .....	25
Third Stage: A New Revised Civil Code modeled on “ <i>Pandect System</i> ”	
“ <i>Boissonade’s Heritage</i> ” in the Revised Civil Code .....	26
For Information and Reference 1	
“Abstraction Principle” in German Law and Effect of Registration in Japanese Law .....	28
A. Separation of “Obligation Act” and “Real Fulfillment Act”	
B. Independence of Effects of Both Acts (“Abstraction Principle”)	
C. “Integration Principle” in Japanese Law	
For Information and Reference 2	
Historical Background of “ <i>Pandect System</i> ” .....	29
A. Development of Ancient Roman Law	
B. Establishment of a New Roman Law Science	
C. Reception of Roman law in European countries	
D. Modern codification of civil law in France and Germany .....	30
<b>Real Rights in Japanese Civil Code .....</b>	<b>32</b>
Real Rights and Real Securities in the “Old Civil Code” of 1890	
Real Rights and Real Securities in the “Revised Civil Code” of 1896	
Historical Role of <i>Emphyteusis</i> .....	34
<i>Superficies</i> and Special Legislations for Protection of Rights of Lessees .....	36
Special Legislation on Hypothec over Assets of Company and Movable .....	37
Atypical Real Security Rights and Provisional Registration .....	38
<b>Prologue – Primary Effect of Obligations and Remedy for Non-performance .....</b>	<b>40</b>
A. Common law solution – Damages	
B. French solution – Specific performance or Damages	
C. German solution – Natural Fulfillment only, then Damages in case of Impossibility.....	41
D. “Liability for Damages”: Its Subjective and Objective Aspects .....	42
<b>Historical Development of the System of Law of Obligations .....</b>	<b>43</b>
A. Structure of Law of Obligations in French Civil Code	
A-1. Contents of “Obligations arising from contracts”	

A-2. Several Types of Obligations arising without Contract .....	44
A-3. Specific Types of Contracts	
B. General Civil Code for Austrian Monarchy (1811)	
C. General State Laws for the Prussian States (1794) .....	45
D. Historical School of Law and the Theory of Impossibility .....	46
E. Civil Code for the Kingdom of Saxony (1863)	
E-1. Contents of “Claims in General”	
E-2. Contents of “Specific Types of Claims”	
E-3. Primary Effects of Claims and Remedies for Non-performance	
F. Civil Code of Germany (1896) .....	47
F-1. Principle of Natural Fulfillment	
F-2. Scope of damages	
F-3. Time for Performance .....	48
F-4. Impossibility of Performance and Responsibility (fault)	
F-5. Default of the Debtor	
F-6. Prerequisite for Valid Contracts	
F-7. Impossibility of Performance in case of Reciprocal Contracts	
F-8. Effect of Contracts – Default in case of Reciprocal Contracts	
G. Inflexibility of the German Scheme .....	49
G-1. Three Dichotomies	
G-2. “Gap in the law” and the Development in the 20th Century	
H. “Civil Code of Japan” (1890)	
H-1. “Putting in default”	
H-2. Primary Effect of Obligations	
H-3. Secondary Effect of Obligations .....	50
H-4. Scope of Damages.....	51
I. Revised Civil Code of Japan (1896)	
I-1. First Proposal (Jan. 1895) .....	52
I-2. Second Proposal (Dec. 1895) and “Delay in Performance”	
I-3. “Impossibility of performance” .....	53
I-4. “Delay in Acceptance” .....	54
I-5. Final Formulation: Selective Scheme of Remedies for Non-performance	
I-6. “Rescission of Contract” .....	55
I-7. “Scope of Damages”	
I-8. Final Formulation of the Provisions on Remedies for Non-performance .....	57
<b>Short Story of the Civil and Commercial Code of Thailand .....</b>	<b>59</b>
A. Codification of the Civil and Commercial Code	
B. Draft Civil and Commercial Code in 1919	

B-1. The Contents of Book on Obligations .....	60
B-2. The Contents of Book on Capacity of Persons .....	61
B-3. Contents of Book on Things	
C. Civil and Commercial Code (1923 and 1925) .....	62
C-1. Prince <i>Raphi's</i> Instructions	
C-2. Promulgation of the Code in 1923 – 25	
C-3. Contents of the Code of 1923 and 1924 .....	63
D. Civil and Commercial Code (1925 and 1928) .....	64
D-1. Contents of Book I (1925), General Principles	
D-2. Contents of Book II (1925), Obligations .....	66
E. Inconsistency Question in Draft 1919 and Remedies for Non-performance .....	66
E-1. Non-performance in Draft 1919	
E-2. Provisions in the Code of 1923 .....	68
F. Siamese Solution: Rearrangement of the German Provisions in Accordance with the Japanese Scheme .....	69
F-1. Strategy for the Rearrangement	
F-2. Procedure of the Rearrangement	
F-3. Final Arrangement and Its Achievement .....	71
F-3. System Inconsistency and Actuality of the Rearrangement .....	72
G. Outlook for the Future	
<b>How to Rearrange the German and Japanese Provisions .....</b>	<b>73</b>
1. Divide 6 Segments of German Provisions	
2. Reorder Segment 1, 2, 3, 4 and 5 according to Japanese Articles .....	74
3. Insert Segment 6 into Segment 4	
4. Insert Japanese Art. 414, 415 and 416 into Segment 4 and 1 .....	75
Final Arrangement	
<b>What was changed in 2001 and 2017? .....</b>	<b>76</b>
<b>Modernization process in Japan (4) – Family in Prewar Period – -----</b>	<b>77</b>
“I-E System”, and Discrepancy between its Idea and Reality .....	77
I. Incompetence of Wife to Perform Juristic Acts	
II. Dominant Status of “Head of Family”	
III. Succession of the Patrimony .....	78
◇ Some Additional Comments to the Articles above .....	79
Development of Legal Protection of “ <i>de facto</i> marriage”	
a) Acknowledgment of Engagement as Contract .....	80
b) Reform in the Field of Social Welfare Law .....	81
c) Acknowledgment of “ <i>de facto</i> marriage” as quasi-marriage .....	82
<b>Road to War -----</b>	<b>83</b>
Root of the Japanese Imperialism and Agrarian Reform	

Statement of Prime Minister Murayama (1985)	
Discrepancy regarding Understanding of the History	
Fundamental Questions .....	84
Postwar Reforms under the Occupation	
Agrarian Reform	
Land Tax Reform 1871 .....	85
Popular Movement for Freedom and Democracy (1870s - )	
Countermeasure against Political Parties	
Limited Competence of Prime Minister .....	86
Initial Stage of the Imperialism	
Second Stage of the Imperialism	
Coincidence of Democracy and Imperialism .....	87
Final Stage of the Imperialism	
Dissolution of the Imperialism	
Estimated Numbers of Victims during the War in Asian Region .....	88

### **Part 3**

<b>Postwar Policy and Constitution of 1947</b> .....	89
Postwar Policy by the Allied Forces in Japan	
Supreme Goals of the Occupation Policy	
Main Reform Measures for the Total Reorganization of the Japanese Society	
Rapid Proceeding of Democratization towards a New Constitution .....	90
Current Constitution of Japan (1947) .....	91
Main Principles of the new Constitution of 1947	
Reference 1	
What does the Principle "Rule of Law" really mean in its modern sense?	
Reference 2	
Two Models of Judicial and Constitutional Review	
Pacifism in the New Constitution of 1947 (Art. 9) and Judicial Constitutional Review	
Crucial Issue 1 .....	92
Crucial Issue 2	
Crucial Issue 3	
<b>Art. 9 of the Constitution and Self-Defense-Forces</b> .....	93
Judgment of the Supreme Court, October 8, 1950	
Judgment of the District Court in Tokyo, March 30, 1959	
Judgment of the Supreme Court, December 16, 1959	
Judgment of the District Court in Sapporo, March 29, 1967 .....	94
Judgment of the District Court in Sapporo, September 7, 1973	
Judgment of the Appellate Court in Hokkaido, August 5, 1976	
Judgment of the Supreme Court, September 9, 1982	
<b>Judicial Constitutional Review</b> .....	95
(I) Origin of Judicial Constitutional Review, European model and American model	

(II) What is a main concern in Judicial Constitutional Review?	
(III) Value-conflict between Human Rights and Public Welfare .....	96
Basic consideration in the “Dual Standard Doctrine”	
Criteria of Constitutionality/Unconstitutionality of restrictions of Human Rights (Dual Standard Doctrine) .....	97
Dual Standard Doctrine and the Constitution of Japan	
Topic-(A) Equal treatment under the law (Article 14 of Constitution) .....	98
Related Cases on Equal Treatment under the Law .....	99
a. Nissan Automobile Case	
b. Mitsubishi Resin Case	
Topic-(B) Separation of Politics and Religion (Article 20 of Constitution) .....	100
a. Christian in Shinto-Shrine Case	
Related Cases on Separation of Politics and Religion	
Topic-(C) Restriction of intellectual freedom by Legislative or Executive Powers .....	102
a) Restriction of Workers' Rights (Judgment of the Supreme Court on October 26, 1966)	
b) Restriction of Political Activities (Judgment of the Supreme Court on November 6, 1974)	
c) Censorship (Textbooks Screening Case) .....	103

## Appendix

### Appendix A

<b>The Constitution of the Empire of Japan (1889) .....</b>	<b>A1</b>
Imperial Oath Sworn in the Sanctuary in the Imperial Palace (Tsuge-bumi)	
Imperial Oath at the Sanctuary of the Imperial Palace	
Imperial Speech on the Promulgation of the Constitution .....	A2
Chapter 1. The Emperor .....	A3
Chapter 2. Rights and Duties of Subjects .....	A4
Chapter 3. The Imperial Diet .....	A5
Chapter 4. The Ministers of State and the Privy Council .....	A7
Chapter 5. The Judicature	
Chapter 6. Finance	
Chapter 7. Supplementary Rules .....	A8
<b>The Constitution of Japan (1947) .....</b>	<b>A10</b>
[Preamble] .....	A11
Chapter 1. The Emperor .....	A12
Chapter 2. Renunciation of War .....	A13
Chapter 3. Rights and Duties of the People	
Chapter 4. The Diet .....	A15
Chapter 5. The Cabinet .....	A18
Chapter 6. Judiciary .....	A19
Chapter 7. Finance .....	A20
Chapter 8. Local Self-Government .....	A21
Chapter 9. Amendments	

Chapter 10. Supreme Law	
Chapter 11. Supplementary Provisions .....	A22

<b>Treaty of Mutual Cooperation and Security between Japan and the United States of America (1960) .....</b>	<b>A23</b>
--	------------

## **Appendix B**

Contents of the “French Civil Code” (1804) .....	B1
Contents of the “Old Civil Code of Japan” (1890) .....	B3
Contents of the “Civil Code for the Kingdom of Saxony” (1863) .....	B5
Contents of the “Civil Code of Germany” (Original version in 1900) .....	B7
Contents of the “Revised Civil Code of Japan” (1896, 1898, 1947) .....	B9
Contents of the Codes of Swiss (1907 ~ ) .....	B11
Contents of Civil and Commercial Code of Thailand (1925 ~ ) .....	B12