

## Some Recent Topics in the Field Civil law

- Reform project of Law on Obligations in Germany  
*“Modernization of Law on Obligations”* (1984 – )
- Reform project of Law on Obligations in Japan  
(2006 – )
- Japanese Legal Assistance Project for Countries in  
Transitional Economy

## “Modernization of Law on Obligations” in Germany

- ♦ **Motive 1:** Harmonization of civil law among EU-member countries
- ♦ **Motive 2:** Integration of Judge-made-laws into the Code
- ♦ Commission for the Revision of law on obligations in 1984
- ♦ Final Report of the Commission published in 1992.
- ♦ Draft Law for Modernization of Law on Obligations in May 2001
- ♦ The modernized Law on Obligations was put into effect in January 2002

## Main Subjects of the “Modernization of Law on Obligations” in Germany

- ◆ Prescription
- ◆ Integration of Standard Business Terms Law
- ◆ Integration of Consumer Protection Law
- ◆ *New concepts of the Remedies for Non-performance of obligations*
- ◆ Defect liability in “Sale Contract” and “Contract for Work”


## Reform Project of Law on Obligations in Japan

- ▶ Ministry of Justice in Japan announced the reform project of the law on obligations in 2006.
- ▶ Under the support of the Ministry, a non-governmental group of legal scholars and lawyers — “*Investigating Committee for the Reform of Law on Obligations*” — was organized in October 2006.
- ▶ The Committee published the “*Basic Plans for the Reform of Law on Obligations with the Main Proposals*” in March 31, 2009.

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# 債権法改正の基本方針

民法(債権法)改正検討委員会 編

 株式会社 商事法務

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## Main Intention of the “Basic Plans for the Reform of Law on Obligations”

- ★ The main intention of the Committee consists rather in *Re-codification of the whole Civil Code*.
- 1. Reconsideration of the adequacy of “Pandects System” and Rehabilitation of “Old Civil Code of 1890”
  - a. Reduction of the scope of Book I “General Principles”
  - b. Contract-oriented reworking of Book III “Obligations”
- 2. Adoption of certain basic concepts from Common Law
- 3. Integration of “Consumer Protection” into Civil Code
- 4. Reconsideration of the adequacy of Division of Civil and Commercial Codes

## Wide Range of Subjects in the “Basic Plans for the Reform of Law on Obligations”

1. *Modernization of articles on “Juristic acts”*
  1. Modernization of meaning of “Good moral”
  2. Regulation of misrepresentation etc.
2. *Formation of contract*
  1. Regal relationship between parties prior to agreement
  2. Validity of contract for an initially impossible subject
  3. Regulation of “Standard Business Terms” etc.
3. *“Formation, Subjects, and Effects of Contract” instead of “General Provisions for Obligations”*
4. *Integration of consumer protection*
5. *Remedies for Non-performance of obligations*
6. *Improvement of securities for obligations*
7. *Simplification of prescription of obligations*
8. *Introduction of general provisions for bills*

**9. *New regulation and new types of contract***

1. Abolishment of defect liability in Sale contract as statutory liability
2. Right of defense in Loan for Consumption combined with Sale contract
3. Finance lease transaction (Hire purchase)
4. Provision of services etc.



## Proposal for Basic Rule of Liability for Damages by “Investigating Committee”

★ The basic intention of the Committee in this issue consists in declaration of *liability for damages as “Contractual liability”*.

### [3.1.1.62] (Compensation for non-performance)

When the debtor does not perform his obligation, the creditor may demand compensation for damages resulting from the non-performance.

### [3.1.1.63] (Exemption of liability)

1. The debtor is not liable for damages arisen from his non-performance due to matters for which *he has beard no risk in the contract*.
2. The debtor is not liable for damages when he has a statutory right of defense.

## Criticism against the Proposal presented by “Investigating Committee” and Counter-proposal

- ▶ Independently from the reform project supported by Ministry of Justice, another non-governmental group was founded in 2005, namely “***Society for Civil Code Reform***”. Its members are mainly legal academics of “*Japan Association of Private Law*”, practicing lawyers, and representatives from business sectors and labor unions.
- ▶ This counter-project aims to modernize and clarify the basic concepts of the current Civil Code with minimal modification. In October 2009, it worked out a counter-proposal “***A Trial Proposal for Civil Code Reform presented by Voluntary Contributors from Citizens, Lawyers, and Academics***”.
- ▶ It insists on maintaining the current “***Pandects System***”.

# 民法改正 国民・法曹・学界有志案

●仮案の提示

民法改正研究会(代表・加藤雅信)編

## I 民法改正を考える

- 「国民の、国民による、国民のための民法改正」を目指して
- 「市民のための民法改正研究会」の発足にあたって
- 「企業法務に役立つ民法改正研究会」の発足にあたって
- 「民法改正研究会」の活動

## II 民法改正フォーラム・学界編 1

- 星野英一先生を囲んで
- 奥田昌道先生を囲んで

## III 民法改正フォーラム・学界編 2——全国、民法研究者の集い

権 寿夫・近江幸治・中倉寛樹・石田 剛・川地宏行・山本 豊・中田邦博・長坂 純  
工藤祐巖・堀 龍兒・北居 功・坂本武憲・平野裕之・円谷 敏・本田純一・橋本佳幸

## IV 民法改正一問一答

- 学界との対話

## V 民法改正フォーラム・実務家編

- 弁護士会との対話
- 司法書士会との対話
- 企業法務との対話

## VI 民法改正案

『日本民法典財産法改正 国民・法曹・学界有志案』(仮案)

日本評論社

## Counter-proposal for Basic Rule of Liability for Damages by “Society for Civil Code Reform”

- ★ Its basic intention consists in declaration of *liability for damages as “Statutory liability”*.
- ★ The composition of the proposed article is adopted from the original proposal which Prof. Hozumi presented in 1895.

### — Main Proposal —

#### **Art. 342 (Compensation for non-performance)**

The creditor may demand compensation for damages if the debtor fails to effect performance in the proper way of the obligation, *unless the debtor is not responsible for the cause of the non-performance.*

— Alternative Proposal —

**Art. 342 (Compensation for non-performance)**

1. The creditor may demand compensation for damages if the debtor fails to effect performance in the proper way of the obligation or if the performance becomes impossible, *unless the debtor is not responsible for the cause of the non-performance.*
2. A prior agreement to exempt the debtor from liability for intentional non-performance is void.

## Provisional Proposal for the Reform of Law on Obligations by “Investigating Committee”

- ★ Due to hard criticism against “Basic Plans”, the Committee modified its proposals. Ministry of Justice published “Provisional Proposals for the Reform of Law on Obligations” in March 2013.
- ★ In regard to the liability for non-performance, the Committee accepts the responsibility of the debtor as a requirement for liability and the distinction between contractual and non-contractual obligations.

### [No. 10] (Compensation for non-performance)

1. When the debtor does not perform his obligation, the creditor may demand compensation for damages resulting from the non-performance.

2. The debtor is not liable for damages arisen from the non-performance of his contractual obligation when the non-performance is caused due to *matters for which he is not responsible* in consideration of the true intent and purpose of the contract.
3. The debtor is not liable for damages arisen from the non-performance of his non-contractual obligation when the non-performance is caused due to *matters for which he is not responsible* in consideration of the reason of the obligation and other related circumstances.

*The controversy continues ...*

## Japanese Legal Assistance Project for Countries in Transitional Economy

- In 1992, the Japanese government decided to officially support transitional countries in Asia especially to establish an efficient and functional civil law system.
- According to this policy, the Japan International Cooperation Agency (JICA) started to support the civil law reform in *Vietnam* on its request.
- In May 1997, the Japanese government started also another project for the legal assistance in *Cambodia* at request from the Cambodian Ministry of Justice.



- These Vietnamese and Cambodian cases show the typical forms of the international cooperation offered the Japanese government:
  - In Vietnam, the cooperative support by the Japanese staffs consisted mainly in ***practical advice and legal training***. Any direct intervention into the drafting work was refrained.
  - The situation in Cambodia was quite different. This country suffers from tremendous loss and damages caused in the civil war. The Cambodian government can not meet the requirements for the self-reliant codification. For this reason, ***the cooperative support by the Japanese government included also drafting work itself***.

## Achievement in Vietnam

- Civil Code ( BỘ LUẬT DÂN SỰ ) in 2005
- Civil Procedure Code in 2008

## Achievement in Cambodia

- Civil Procedure Code in 2006)
- Civil Code ( ក្រមវេជ្ជប្បវេណី ) in 2007

In this Civil Code of Cambodia, certain elements are adopted from the basic ideas of the “*Investigating Committee for Reform of the Law on Obligations*”;

- Modified Pandects System.
- The Book I (General Principles) has only 5 articles.
- Contract-oriented construction of Law on Obligations.