

# Codification Project of Civil Code of Japan

Soon after the establishment of the Meiji Government in 1870s, the codification project of a civil code started. The government intended to develop a family system based on the tradition of the Samurai-warriors class and use it for the political purposes.

## I. Initial Stages of the project (1870s)

Based on the French Civil Code, the project members (former samurai-warriors) tried to develop a conservative concepts for law on Family and Succession. However, they had no idea for other fields of civil law.

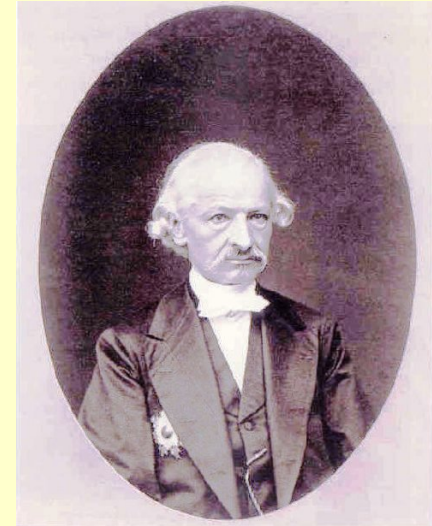
## II. Second Stage of the project (1880s)

The government decided to abort its own project for Civil Code and to commission a French legal advisor, Prof. ***Gustave Emile Boissonade de Fontarabie*** (1825 – 1910) from Paris, to compile a new draft for Law on Properties and Obligations.

## Old Civil Code of Japan (1890)

Based on the French Civil Code (so-called “*Institution System*”), Prof. *Boissonade* developed his own system of civil law;

- Book 1. Law on Persons
- Book 2. Law on Properties
- Book 3. Law on Acquisition of Properties
- Book 4. Law on Securities
- Book 5. Law on Evidence



After the enactment of the “Civil Code of Japan” in 1890, however, certain groups of lawyers hardly criticized it and objected to its implementation. This happening is called “*Codification Controversy in Japan*”.

The tension between supporters and opponents gradually escalated into an quite emotional conflict, and eventually in 1892, the Parliament decided to postpone the implementation of the Civil Code of 1890 and appointed a new “*Research Commission for Codification*” for the Revision of the Civil Code.

## 3rd Stage of Codification of Civil Code (1890s)

For the revision of the “Civil Code of 1890”, three Japanese professors were appointed to the leading drafting members. They have studied in England, France or Germany:



Prof. *Hozumi*

He studied in *England* and *Germany*. He opposed the Civil Code of 1890. He was in charge of head of commission.



Prof. *Ume*

He studied in *France* and *Germany*. He passionately supported the Civil Code of 1890.



Prof. *Tomi-i*

He studied in *France*. However, he was deeply convinced in the superiority of German Civil Code. He opposed the Civil Code of 1890.

## **“Revised Civil Code of Japan” (1896 and 98) and “*Boissonade's Heritage*”**

- ◆ Under the strong leadership of Prof. *Hozumi* who represented the *German Law School* in Japan, the Commission decided to revise the Civil Code of 1890 according to the ***German Civil Law Science***.
- ◆ In this way, the “Revised Civil Code of Japan” (1896 and 98) was compiled in accordance with the so-called “***Pandects System***”.
- ◆ However, it was the Revised Civil Code of 1890. The Commission did not draft another one. *They reworked the Civil Code of 1890*. All the articles were rearranged in accordance with the Pandects System and reviewed from the view point of the comparative study of major leading codes of the world including “***First and Second Draft German Civil Code***”.
- ◆ Nevertheless, many institutions and articles of the “*Old Civil Code*” could “*survive*” through the revision work of the Commission. These parts of the Revised Civil Code of Japan may be called “***Boissonade's Heritage***”.

## Prof. Boissonade's Concept: Liability for Non-performance

### Old Civil Code of Japan (1890)

#### Art. 383 of Law on Properties

- (1) In cases where the debtor **refuses** to effect performance, the creditor may demand compensation for damages *if he fails to claim for enforcement*, or if the performance cannot be enforced due to its nature; the same shall apply if the performance becomes **impossible** for any cause for which the debtor is responsible.
- (2) The creditor may demand compensation for damages also in case of **delay**.

## French Civil Code (1804)

### Art. 1147

A debtor shall be ordered to pay damages, if there is occasion, either by reason of the **non-performance** of the obligation, or by reason of **delay** in performing, whenever he does not prove that the non-performance comes from an external cause which may not be ascribed to him, although there is no bad faith on his part.

### Art. 1148

There is no occasion for any damages where a debtor was prevented from transferring or from doing that to which he was bound, or did what was forbidden to him, by reason of **force majeure** or of a fortuitous event.

## Prof. Hozumi's Concept

### A. First Draft (1894?)

The creditor may demand compensation for damages if the debtor fails to effect performance or falls into default, unless the debtor is not responsible for the cause of non-performance or delay.

### B. Second Draft for Art. 409 (1895)

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

\*) *This phrase was translated by Mr. de Becker into the wording:  
“in accordance with the true intent and purpose of the obligation”*

## Current Civil Code of Japan (1896 –)

### Art. 415 [Liability for Non-performance]

The creditor may demand compensation for damages if the debtor fails to effect performance in the proper way of the obligation; the same shall apply in cases where performance becomes impossible for any cause for which the debtor is responsible. \*\*)

- \*\*) *Due to this unfortunate modification to the 2nd sentence of the article, it becomes quite uncertain whether the principle of the responsibility “No liability without responsibility” should apply to all types of non-performance or only to cases where the performance becomes impossible. This uncertainty has caused the controversy regarding the debtor's responsibility for non-performance.*