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SUMMARY OF CONTENTS

“Involvement of Employee Representatives in Corporate Bankruptcy”

Hisashi IKEDA*

1. Issues regarding Involvement of Employee Representatives in Corporate Bankruptcy
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5. Effect of Involvement
6. Consideration

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Community Organizing in America: The Thought and Practice of Saul Alinsky

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Abstract

This paper clarifies the political possibility of the community organizing in America by considering the thought and practice of Saul Alinsky from 1930s to 1960s. Alinsky has been considered as the founder of modern community organizing in America. However, Alinsky's organizing method has been controversial because he created strong conflict between poor neighborhood and the existing power structure using "radical" rhetoric that denied liberal principle, and thus almost all of his organizations were short-lived and his approach has become marginalized. However, why did he build "community organization" under the "hayday" of American liberalism? What is his radicalism? In this paper, historically analyzing Alinsky's organizing process, I found that the essence of his organizing method is not only to empower the marginalized people but also to create public discourse. He followed Alexis de Tocqueville's "enlightened self-interest" pursuing the "public" from the community, which approached the political theory of John Dewey.

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On Nationality: The Meaning, Function and Range from Comparative Perspective Between Japan and United States of America

Yusuke BANDO*

This article discuss a citizenship theory from comparative perspective between Japan and United States of America. Part 1 shows what process the Plenary Power doctrine —Immigration and citizenship law is free from constitutional control, and a court excessively differs a congressional decision — have been made up. U.S. immigration and citizenship law, especially naturalization request, was, to a great extent, influenced on xenophobia. Sometimes they excluded aliens unreasonably with support of plenary power. But since *Zadvydas v Davis* (2001), plenary power begins to decline. Part 2 shows that plenary power doctrine have extended to Indian, colony (insular cases) and African-American. If U.S. was consider as an Anglo-Saxon Nation, they were thought as the status of “aliens”.

Part 3 shows U.S. citizenship is “right to rights”. That is, Bill of Rights is based on citizenship. This theory works to improve the status of a second-class citizen (for example, African-American), but brings result that aliens is excluded from Bill of Rights.

Part 4 contrasted Japanese citizenship theory to U.S. First, in Japanese immigration cases, the similar doctrine to the plenary power doctrine was adopted, for example, *Maclean case*. But, 2008 court decision, which the article 3 of nationality act was judged as unconstitutional, suggested that Japanese citizenship theory was changed. Second, the Japanese Constitution protects Bill of Rights to not only nationals but also aliens. In a similar way to U.S., Japanese Constitution considers citizenship as the base of Rights and protects rights of citizens at the beginning, because of Nation-State principles.

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This logic works to improve the status of a second-class citizen, but brings result that aliens is excluded from Bill of Rights. In discussion about citizenship, we have to recognize and take notices of the merits and demerits of citizenship.

Symposium Franco-Japonais: Les mouvements récents du droit privé et de la justice en France

Yasutaka MACHIMURA

Préface

En invitant M. le Professeur Joël Monnet, le Doyen honoraire de la Faculté de droit et des sciences sociales de l'Université de Poitiers, nous avons organisé une suite de conférences sur le droit français, avec la subvention de "Japan Society For The Promotion Of Science".

Du 15 octobre 2014 au 9 novembre, Professeur Monnet a fait 5 conférences à Sapporo, à Yokohama et à Kyoto sur les trois sujet: le droit des successions, la formation des avocats, et les tribunaux de commerce. A la première conférence, j'ai fait une coordination avec deux étudiants de doctorat, M. Teruyoshi Uemukai et M^{lle} Zixian Zhang, qui avaient traduit le texte de Professeur Monnet. Après son intervention, Professeur M. Fujiwara et Professeur D. Shinomori ont fait des commentaires sur ce sujet. A la

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deuxième conférence, Professeur Y. Shiratori a été coordinateur et traducteur. A la conférence dernière, j'ai été coordinateur et traducteur.

En outre, Professeur Monnet a participé des cours et séminaires universitaires à Sapporo et à Kyoto. Grâce à cette occasion, nous avons pu apprendre les actualités des droits français.

Les articles ci-dessous sont les résumés des interventions de Professeur Monnet.

1. Le droit français des successions et la transmission de l'entreprise familiale.

Le droit français des successions a connu deux lois importantes qui ont profondément modifié le droit positif. La première loi du 3 décembre 2001 a permis deux évolutions majeures, la suppression d'une inégalité successorale tenant à la qualité d'enfant adultérin et le renforcement très important des droits du conjoint survivant. La seconde loi du 23 juin 2006 contient de nombreuses solutions qui modifient le droit de la liquidation des successions et introduisent en droit français des évolutions majeures dans le sens d'une meilleure anticipation du décès.

Dans cette conférence, on présente principalement la loi 2006 comme suivant.

I – La protection de l'entreprise familiale en cas de décès du chef d'entreprise

A – La modification du droit de l'option successorale

B – Le maintien de l'entreprise dans l'indivision

C – La gestion facilitée de l'indivision

D – Entreprise et attribution préférentielle

II – Les nouvelles possibilités du droit de l'anticipation successorale

A – L'élargissement du domaine des libéralités

B – Le recul de l'ordre public de la réserve

C – Le recours au mandat posthume

III – Les solutions fiscales

2. La formation des avocats—Comment devenir avocat en France ?

En France, pour devenir avocat, il faut d'abord réussir l'examen d'entrée à l'Ecole des Avocats, suivre les enseignements de l'Ecole et effectuer des stages et réussir l'examen de sortie de l'Ecole. C'est la voie normale, mais il y

a aussi des voies spécifiques.

Dans ce domaine, il y a proposition de réforme qui concerne à plusieurs points: de réserver l'accès à l'examen pour l'entrée dans un centre de formation aux étudiants titulaires d'un master professionnel; diminution des heures d'enseignement au cours de la formation; choix entre deux formules, soit PPI (projet pédagogique individuel) plus stage de 4 mois chacun, soit un stage de 8 mois; collaborateurs salariés ou libéraux, pendant un ou deux ans, sous la responsabilité d'un avocat.

3. Les tribunaux de commerce en droit français

Les juges de tribunal de commerce sont commerçants élus, pas de magistrat professionnel. Sa compétence n'est pas limitée sur les litiges entre commerçants. Il est compétent surtout sur la procédure collective.

On discutait la réforme de ce tribunal spécial ou même son abolition. Le débat a repris de la vigueur ces toutes dernières années. Le Conseil constitutionnel a admis que l'institution des tribunaux de commerce étaient conformes à la constitution dans sa décision du 4 mai 2012. Mais il y a bien une volonté de modifier le droit des tribunaux de commerce dans le Gouvernement.

Considering Remedies for Recovery of Money Paid by Mistake in the English Restitution Law

Shin HASHIMOTO*

The focal issue is whether or not a person who paid money by mistake is given priority in the case of the recipient's insolvency.

It was not clear in England until the Chase Manhattan Bank NA v. Israel-British Bank (London) Ltd., [1981] Ch. 105 case. This case provided the mistaken payer priority in the event of the recipient's insolvency. But this conclusion is controversial. Legal scholarship is divided on whether and how it is justified. This article will introduce this debate on the issue in English Restitution Law.

Under the case law and traditional legal scholarship, the issue is solved under the doctrine of "attribution of title". But this solution is not enough to answer the question- : why do other general creditors of a recipient suffer loss when a mistaken payer is given priority?

Recent legal scholarship aims at finding justification from a realistic perspective. It is that (1) other general creditors of a recipient are unjustly enriched unless the payer is given priority; (2) the payer should not be subjected to the risk of insolvency of the recipient; or (3) from an efficiency perspective, general creditors are better off if the money is returned to the payer.

Finally, this article will critically reconsider understandings of traditional Japanese case law and legal scholarship regarding (1) treatment of money; (2)

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identification of money and (3) strict distinction between right in rem and right in personam.

**Can International Law Contribute to Managing Transboundary
Environmental Problems in North-East Asia?:
Limits and possibilities of a Legal Approach in a
North-East Asian Context¹**

Mari KOYANO²

For the last fifty years, international law has remarkably developed for the environmental protection. There exist a huge number of environmental treaties, either multilateral or bilateral, and certain rules of customary international law in the field. Relevant provisions are included by many treaties on the law of the sea, fisheries, nuclear energy, Antarctica, outer space, etc. Moreover, environmental consideration tends to be incorporated into other fields of international law, such as international economic law, human rights law, laws of armed conflicts.

However, due to the various factors there are some tremendous gaps in the state of development of international law for managing transboundary environmental problems between the European or North American region and the others. In North-East Asia few regional or bilateral treaties have been concluded for imposing legal obligation of concrete nature on States. There are some customary rules and global treaties applicable to the problems, but they are too general in substance to regulate them effectively. Faced with increasing concern about transboundary environmental problems in the region, such as air pollution, degradation of the marine environment or transboundary watercourses, risk of nuclear accident, roles of international

¹ The paper is based on the presentation given by the author in the 10th conference of the Japan-China Society of Public Law (Nicchu-Koho-Gakkai), 4-5th August 2014, Hokkaido University: Sapporo.

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law should be explored from various points of view.

There may be three approaches that can simultaneously develop for dealing with the problems from the legal point of view. First, we may utilize existing "soft-law" frameworks in the region, such as the East-Asian Monitoring Network (EANET), Long-Range Transboundary Air Pollution Project (LTP), North-East Asian Subregional Programme for Environmental Cooperation (NEASPEC), etc. States are to fulfill their obligations under customary international law by undertaking measures under the frameworks. Second, it may be a good precedent in establishing specific legal rules in North-East Asia to conclude a regional or bilateral treaty to implement obligations of taking procedures, such as environmentally emergency notification, concluded by existing global treaties like the Convention on early Notification on Nuclear Accident, UNCLOS, etc. Most of the North-East Asian States are contracting parties to the conventions. Third, States are encouraged to develop their practice for procedural co-operation between each other mainly in three ways, including taking initiatives for undertaking prior procedure of transboundary EIA, notification and consultation, prompting joint monitoring and exchange information with neighboring States under existing bilateral treaties, for example, concerning the use of transboundary watercourses, and sharing common knowledge of scientific findings on relevant environmental problems by utilizing afore-mentioned existing soft-law frameworks. Finally, and the most fundamentally, we need to find ways to promote the priority of the environmental protection in the regional diplomacy. In this context, environmental co-operation may well contribute to promoting the regional security in North-East Asia as a stabilizer. Thus, flexible approaches are to be adopted to develop various kinds of legal practice in North-East Asia for managing transboundary environmental problems. It reflects limits and possibilities of a legal approach in North-East Asia which has no long experiences of European type of legal tradition.