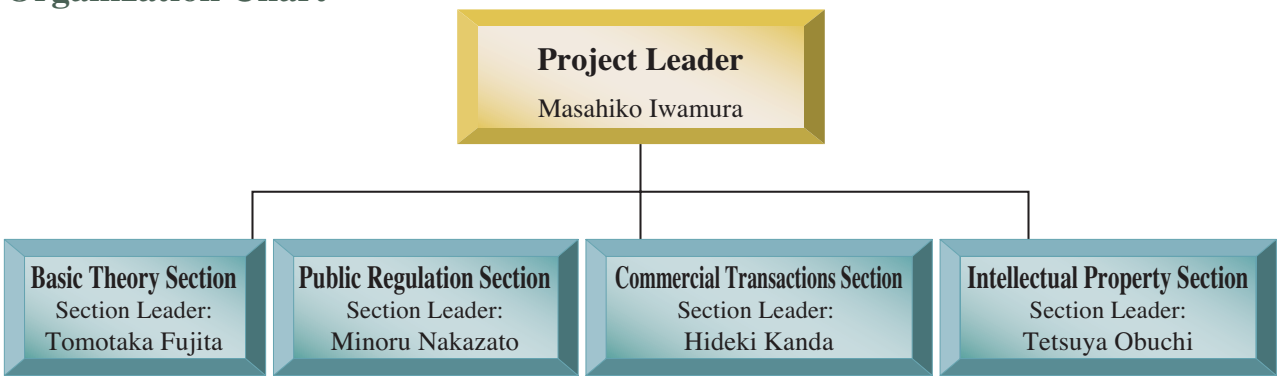
Newsletter

English Edition No.2 Academic Year 2009

Global Centers of Excellence Program *Soft Law and the State-Market Relationship*

1 Organization of Research and Education

Organization Chart



(Dated as of March 31, 2010)

Project Scholastic Member

Tomotaka Fujita (Section Leader): Graduate Schools for Law and Politics ("GSLP")/Commercial Law
Mizuho Hata: GSLP/Civil Procedure
Ryuji Yamamoto: GSLP/Administrative Law
Noriyuki Yanagawa: Graduate School of Economics/ Contract Theory
Toshihiro Matsumura: Institute of Social Science/ Industrial Organization
Wataru Tanaka: Institute of Social Science/Commercial Law, Law and Economics

Minoru Nakazato (Section Leader): GSLP/Tax Law
Shinsaku Iwahara: GSLP/ Commercial Law
Yoshihiro Masui: GSLP/ Tax Law
Tadashi Shiraishi: GSLP/ Economic Law
Keisuke Iida: GSLP/ International Political Economy

Hideki Kanda (Section Leader): GSLP/Commercial Law
Yoshiaki Miyasako:GSLP/International Business Law
Tomonobu Yamashita: GSLP/Commercial Law
Hiroyasu Nakata: GSLP/Civil Law
Shoji Kawakami: GSLP/Civil Law, Consumer Law
Hiroyuki Kansaku: GSLP/Commercial Law

Tetsuya Obuchi (Section Leader): GSLP /Intellectual Property Law
Daniel H. Foote: GSLP/ Sociology of Law
Takashi Araki: GSLP/Labor Law
Hiroki Morita: GSLP/Civil Law
Kichimoto Asaka: GSLP/ Anglo-American Law
Hiroyasu Ishikawa: Institute of Social Science/Civil Law

Project Professor
- Makoto Orihara: Trust Companies Association of Japan
- Yasushi Kodama: Miyakezaka Sogo Law Offices
- Kenji Shimazaki: National Graduate Institute for Policy Studies
- Hiroya Nakakubo: Graduate School of International Corporate Strategy, Hitotsubashi University

Project Researcher
- Kaoru Ando: Graduate Schools for Law and Politics, The University of Tokyo
- Masao Okawa: Bank of Japan
- Shinichiro Ogimura: Graduate Schools for Law and Politics, The University of Tokyo
- Yoshifumi Kawase: Tokyo Stock Exchange
- Guangwen Jiang: Graduate Schools for Law and Politics, The University of Tokyo
- Hiroyuki Kohyama: Okayama University
- Masashi Takeo: Graduate Schools for Law and Politics, The University of Tokyo
- Yuko Tsuchiya: Graduate Schools for Law and Politics, The University of Tokyo
- Hitomi Nagano: Graduate Schools for Law and Politics, The University of Tokyo
- Soon-gang Hong: Graduate Schools for Law and Politics, The University of Tokyo
- Yoko Manzawa: Japan Securities Research Institute
- Hajime Miyake: Graduate Schools for Law and Politics, The University of Tokyo
- Keiko Yamamoto: Institute for Monetary and Economic Studies, Bank of Japan

Research Assistant
- Fang Wang : Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo
- Xiao Tong, Wen: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo
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- Xiao Chun Zong: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo
- Kentaro Nishimoto: Master Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo
- Hyo Sook, Park: Master Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo

2 Activities

GCOE Soft Law Seminars

No	Date	Topic	Speaker
7	April 7, 2009	Verschaerfungen beim Jahresabschluss und der Abschlusspruefung (Post-Enron)	Peter Mulbert, Professor, University of Mainz
8	April 14, 2009	Aktuelle Entwicklungen im Uebernahmerecht	Peter Mulbert, Professor, University of Mainz
9	April 28, 2009	The EU Single Market for Capital:Free movement of captial, harmonised financial services and alignment of company law -Introduction / Overview-	Dr. Philipp Paech, The European Commission
10	May 11, 2009	The European Court of Justice and its Critics - The Judge's Role in European Integration -	Professor Juergen Basedow, Managing Director, Max Planck Institute for Comparative and International Private Law
11	May 12, 2009	EU Company Law I: The "European Company" and general modernisation of company law	Dr. Philipp Paech, The European Commission
12	May 19, 2009	EU Company Law II: The enhancement of corporate governance	Dr. Philipp Paech, The European Commission
13	May 26, 2009	EU Financial Services Law :Banking, securities market, investment funds and financial services infrastructure	Dr. Philipp Paech, The European Commission
14	June 9, 2009	Financial Crisis: Origins and Problems	Charles W. Mooney, Professor, University of Pennsylvania Law School
15	June 16, 2009	Financial Crisis: Products	Charles W. Mooney, Professor, University of Pennsylvania Law School
16	June 23, 2009	Overview: UCC Articles 8 and 9 - I	Charles W. Mooney, Professor, University of Pennsylvania Law School
17	June 30, 2009	Overview: UCC Articles 8 and 9 - II	Charles W. Mooney, Professor, University of Pennsylvania Law School
18	July 7, 2009	U.S. Bankruptcy: Chapter 11	Charles W. Mooney, Professor, University of Pennsylvania Law School

GCOE symposia

No	Date	Topic	Speaker
5	August 5, 2009	M&As: Major Issues in Modern Corporate Law	See, page 4 for detail
6	March 9, 2010	Observance of Norms in Business Society: The Limits of Voluntary Norms	See, page 5 for detail

The Fifth Symposium
"M&As: Major Issues in Modern Corporate Law"

Date: August 5, 2009 14:00-17:00

Place: ANA InterContinental Hotel Tokyo, Banquet Room

U.S.-Reinier Kraakman, Professor, Harvard Law School
Hostile takeovers and the future of the board-centered model of corporate governance

UK-Paul Davies, Professor, London School of Economics, Department of Law
Sticking with a shareholder-centred approach

France-Jacques Buhart, Partner, Herbert Smith LLP, Paris
The new role of the board of directors in hostile takeovers in France and other European countries under the European takeover directive

Coment: Edward B. Rock, Professor, University of Pennsylvania Law School
Coment: Hideki Kanda, Professor, the University of Tokyo

Introduction: Hideki Kanda, Professor, the University of Tokyo
Moderator: Yoshiaki Miyasako, Professor, University of Tokyo

Support: Nomura Holdings, Inc. and the Commercial Law Center, Inc.

The Sixth Symposium
"Observance of Norms in Business Society: The Limits of Voluntary Norms"

Date: March 9, 2010 14:00-18:30
Auditorium-Academy Hills

Chair: Professor Masahiko Iwamura, the University of Tokyo / GCOE Program Project leader

Opening Remarks
Professor Masahiko Iwamura

The Development of "Soft Law Project"
Professor Tomotaka Fujita, the University of Tokyo / GCOE Project Scholastic Member

Our Efforts to Ensure Better Compliance
Speaker: Mr. Kiyoshi Ogawa, Sumitomo Corporation
Comment: Professor Hiroyuki Kansaku, the University of Tokyo / GCOE Project Scholastic Member

The Observance of Norms for Non-life Insurance Business
Speaker: Mr. Masahiro Sano, SOMPO JAPAN INSURANCE Inc.
Comment: Professor Tomotaka Fujita

Compliance with Regulations: Examples of Handling the Radical Revision of the Regulations for the Reporting of Business Combinations
Speaker: Mr. Yusuke Kashiwagi, TMI Associates
Comment: Professor Tadashi Shiraishi, the University of Tokyo / GCOE Project Scholastic Member

Conclusion
Professor Hideki Kanda, University of Tokyo / GCOE Project Scholastic Member

Closing Remarks
Professor Masahiko Iwamura

Support: Shoji-Homu Ltd.

International Exchange

<Visitors from Overseas>

Name	Term	Activity
Professor Peter Mulbert, University of Mainz	April 7 & 14, 2009	Lectures: "Verschaerfungen beim Jahresabschluss und der Abschlusspruefung (Post-Enron)" "Aktuelle Entwicklungen im Uebernahmerecht" at the seventh & eighth meeting of the GCOE Soft Law Seminar
Dr. Louise Floyd, James Cook University	April 15, 2009	Lecture: "The New Australian Labour Law system - comparisons with and relevance for Japan. (Two trading partners and their evolving laws.)" at the third meeting of the Study Group on Social Law and Soft Law
Professor Jean Andreau, , EHESS Paris	April 21, 2009	Lecture: "Some "revisionist" views of Roman money and banking" at the fourth meeting of the Study Group on Theories of Soft Law
Professor Van der Heijden, Chancellor, Leiden University	April 22, 2009	Lecture: "Economic crisis and labour market policy" at the fourth meeting of the Study Group on Social Law and Soft Law
Dr. Philipp Paech, The European Commission	April 28 and May 12, 19, 26, 2009	Lectures: "The EU Single Market for Capital:Free movement of captial, harmonised financial services and alignment of company law -Introduction / Overview-" "EU Company Law I:The "European Company" and general modernisation of company law" "EU Company Law II:The enhancement of corporate governance" "EU Financial Services Law :Banking, securities market, investment funds and financial services infrastructure" at the ninth, eleventh, twelfth and thirteenth meeting of the GCOE Sof Law Seminar
Professor Juergen Basedow, Managing Director, Max Planck Institute for Comparative and International Private Law	May 11, 2009	Lecture: "The European Court of Justice and its Critics - The Judge's Role in European Integration -" at the tenth meeting of the GCOE Soft Law Seminar
Ms. Wered Ben-Sade, Haifa University	May 14-27, 2009	Reseach on Labor Law as a Foreign Reseacher See, page 7-10 for detail
Mr. Julien Mouret, Doctorate Program, University Montesquieu, Bordeaux 4	May 22-June 21, 2009	Reseach on Japanese Labor Law as a Foreign Reseacher
Professor Chang Kai, School of Labor and Human Resources, Renmin University of China / Visiting Professor, Institute of Social Science, the University of Tokyo	July 3, 2009	Lecture at the sixth meeting of the Study Group on Social Law and Soft Law
Professor Charles W. Mooney, University of Pennsylvania Law School	June 9, 16, 23, 30 and July 7, 2009	Lectures: "Financial Crisis: Origins and Problems" "Financial Crisis: Products" "Overview: UCC Articles 8 and 9 - I" "Overview: UCC Articles 8 and 9 - II" "U.S. Bankruptcy: Chapter 11" at the fourteenth - eighteenth meeting of the GCOE Soft Law Seminar
Professor Edward B. Rock, University of Pennsylvania Law School	August 5, 2009	Comment at the fifth symposium
Mr. Jacques Buhart, Partner, Herbert Smith LLP, Paris	August 5, 2009	"The new role of the board of directors in hostile takeovers in France and other European countries under the European takeover directive" at the fifth symposium
Professor Paul Davies, London School of Economics, Department of Law	August 5, 2009	"Sticking with a shareholder-centred approach" at the fifth symposium
Professor Reinier Kraakman, Harvard Law School	August 5, 2009	"Hostile takeovers and the future of the board-centered model of corporate governance" at the fifth symposium
Dr. Tsilly Dagan, Senior Lecturer, Bar Ilan University Law School, Israel	September 16, 2009	Lecture: "Just harmonization" at the eighth meeting of the Tax law workshop

Wered Ben-Sade（Foreign Researcher）

The Labor Tribunal System: Unique integration of mediation and adjudication

The question of how to combine mediation and adjudication is one of the key questions in any dispute-resolution system. It attains paramount importance when mandatory rights are involved, unbalanced power relations exist, or any of the parties is an organization or a group.[1] Most labor disputes can be characterized by all three features. In my PhD thesis[2] I aim to develop a general theoretical concept of this interplay, and to illustrate it by comparing relevant labor dispute-resolution procedures in Israel and Japan.[3] Recently, I was fortunate to be invited to Japan for ten days as a Project Researcher by the GCOE program to advance my comparative research of the Labor Tribunal System (LTS) and the Labor Commissions. Special thanks are due to Professors Kazuo Sugeno, Takashi Araki and Masahiko Iwamura for having made this research visit possible and fruitful. I also thank them, along with Nobunori Ishizaki, Makoto Jouzuka, Yoshiaki Ukai, Hiroshi Watanabe and Ruichi Yamakawa for their helpful interviews and their indispensible help in enabling me to achieve a better understanding of the LTS and the Labor Commissions.

In view of the size constraints of this paper, I shall focus on the Japanese LTS, a speedy[4] non-contentious tri-partite[5] procedure established within the district courts to mediate and, if mediation proves unsuccessful, to suitably adjudicate individual labor disputes.[6] Here are some of my findings regarding the integration of mediation and adjudication within the LTS:

★ The photograph was kindly prepared for the press by Elisheva Werner-Reiss.

1 Since then mediation is more complicated (e.g. who may represent the group in the mediation). If the other party is an individual then the case also fits the previous category of unbalanced power relations.

2 Supervised by the Professors Guy Mundlak (Faculty of Law and the Department of Labor Studies in the Faculty of Social Sciences, Tel Aviv University) and Eli Salzberger (Dean, the Faculty of Law, The University of Haifa).

3 In continuation to my LL.M on "Coexistence of Adjudicative and Facilitative Functions in the Japanese Labor Commissions: A Case Study on a Basic Issue of ADR" (Master Thesis, the Graduate School of Law and Politics, the University of Tokyo) (in Japanese).

4 Article 15(2) of the Labor Tribunal Act (LTA) requires the tribunal as a rule to dispose of cases within three sessions.

5 The Labor Tribunal Committee (LTC) comprises one career judge and two part-time experts in labor relations (representatives of workers and of management), all of equal authority.

6 T. Araki, "Establishment of the Labor Tribunal System: Lay Judge Participation in Japanese Labor Proceedings", Final Draft from Feb 2009, to be published in the Journal of the Japan-Netherlands Institute, p. 8-9. Judge Jouzuka who was charged with establishing the Labor Tribunal System characterized the new tribunal as providing "triple-S" justice: speedy, specialized, and suitable (interview with author, May 22nd, 2009).
Statistics of the Labor Tribunal System until March 2009, compiled by the Supreme Court (on file with author).

1. **Successful debut:** The LTS has been operating now for three years (since April 2006). Originally, a yearly caseload of 1500 was expected. Whereas in the first year there were fewer cases (1193), by the third year the number of cases annually has roughly doubled.[7] While this partly reflects a general increase in the number of labor disputes due to the economic crisis, it also reflects the changing tendency to bring more cases to the labor court rather than to the general courts or instead of settling the disputes outside of the courts. This increase seems to be a good indicator of the high satisfaction rate of the users (employees, employers and lawyers) with the system[8]. Considering that the average time for completing a case is 74 days[9] and that approx. 70% of the cases end with mediation (and an additional 10% by a non-disputed *Shinpan*),[10] the satisfaction is obvious.[11]

Thus, also the representatives of the Study Group whom I interviewed thought that the debut of the system was rather successful. However some concern was voiced, that the LT also handles complicated cases that were originally considered inadequate for this system, and thus does it in a way that is too mediatory.[12]

2. **The hybrid nature of the mediation:** The authority to mediate is stated twice: in Article 1, regarding the purpose of the law ("If there is a possibility to resolve the case by mediation, then the committee shall try") and in article 22, which deals with mediation. In contrast, although in civil cases the judge often tries to settle the case, there is no article of law that defines this settlement role of judges. Unlike family mediation, mediation in the labor tribunal is conducted within the general proceedings of hearing the evidence, and not on special dates designated for this purpose (accordingly, hearings are closed to the public) .

The mediation by the Labor Tribunal Committee (LTC) is an evaluative one, and yet aims for a flexible solution. The committee is to mediate only after having formed its opinion regarding the

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7 The statistics are now done by Gregorian years. In 2008, 2052 cases were filed. However in the first three month of 2009, already 720 cases were filed (compared with 877 cases in the first 9 month of 2006). Statistics of the Labor Tribunal System until March 2009, compiled by the Supreme Court (on file with author).

8 Apparently the increase in the number of cases includes many repeated players (H. Watanabe, interview with author on May 20th).

9 The Labor Tribunal Committee must decide the case within three sessions (Labor Tribunal Act, Art. 15, Para 2). In practice 97% cases do: approx 24% end within one session, 36.5% within two, and only 37% require the permitted three sessions.

10 The Japanese term *Shinpan* means here the Labor Tribunal's decision, or award (see details below, at "3. The hybrid nature of the Shinpan"). At this initial stage of research I prefer to use the original Japanese term rather than a translation. The reason for this is that each translation-term, whether it is "decision" (see K. Sugeno, Judicial Reform and the Reform of the Labor Dispute Resolution System, 3 Japan Labor Review, p.4-12 (2006); Araki (2009) Ibid fn 5) or "award" (see R. Yamakawa, Labor Dispute Resolution in Japan: Recent Developments, Their Background and Future Prospects. E-labor news, 49 (2006)), has its own set of implications regarding its legal nature and it is this legal nature which is the subject of my research.

11 Though, apparently, to some of the lawyers it seems that the Tribunal forms its legal opinion a bit too quickly.

12 Company lawyer N. Ishizaki-e.g. dismissal cases which involve unpaid overtime. The complexity causes mediation without an evaluation of the rights and obligations of the parties, contrary to the intent of the law (interview with author on May 25th, 2009).

obligations and rights of the parties.[13] Having formed its legal impression, the committee usually discloses it to the parties (while in caucus) and uses it as a tool to convince the parties to mediate. Thus, clarification of the issues and examination of the evidence serve both the mediation and the *Shinpan*, if the mediation fails. This evaluative nature of the labor tribunal mediation sharply contrasts with the nature of civil mediation, which is done by a committee of lay persons and is not based on the rights and obligations of the parties. It is therefore unfortunate that both are termed "mediation" (*choutei*).[14] The labor tribunal mediation is based on the rights and obligations of the parties, but the LTC also takes into account the special circumstances of the parties, as well as labor relations practices. If a mediation agreement is reached, it is written into the records of the court and has the same effect as a court settlement.

3. **The hybrid nature of the *Shinpan*:** If the parties fail to reach a mediation agreement (or reject the mediation proposal by the LTC) within three sessions, then the LTC delivers a *Shinpan*).[15] This *Sinpan* is not binding and either party may object, in writing, within two weeks. Such an objection nullifies the *Shinpan*, and the case is automatically transferred to the ordinary civil procedure.[16] If no such objection is submitted, the *Shinpan* becomes binding and has the same effect as a court settlement.

The *Shinpan* is a unique mix of mediative and adjudicative aspects, making it hard to classify in one of the two categories. In order to analyze it, it seems useful to distinguish between the content and the function of the *Shinpan*. Whereas the former has distinct mediative characteristics, the latter has adjudicative ones. Thus, the *Shinpan's* content is not bound by the obligations and rights of the parties, but should shape an adequate solution, future-oriented, that mirrors the delicate legal situation. For example, if a worker was unjustly dismissed, but is not interested in returning to work, the *Shinpan* can order the employer to pay money in exchange for the unjust dissolution of employment, even though such a remedy is not recognized by the Japanese law and thus cannot be given by the civil court.[17] If a case is not clear-cut, but the worker is only 60%, or 70% right, then the *Shinpan* can mirror this fact, whereas a regular court could have given only an "all or nothing" decision.

Furthermore, whereas the content of the *Shinpan* must comprise a "suitable" solution in which the obligations and rights of the parties play a directing role but not a decisive one, the function of the *Shinpan* is mostly an adjudicative one. It is similar to "non-binding arbitration". Thus, while the *Shinpan*

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[13] Opinions varied regarding the question whether it was ethical to advance mediation before the LTC formed its legal impression.

[14] My understanding is that this confusion of terminology (the Japanese term Assen is the better term for the mediative mediation), which appears also in other languages such as English (conciliation vs. mediation) and Hebrew (gishur vs. pishur), reflects a basic confusion regarding the role of the third party in mediation. W. Ben-Sade, "Mediation vs. conciliation: A cross-country, trilingual, terminology mess", the Israeli Law and Society Association International Conference "Global, Regional and Local: Law, Politics and Society in Comparative Perspectives" Dec 24th-26th, The Hebrew University of Jerusalem.

[15] The law assumes that the Shinpan will be given in writing as a rule, and orally only as an exception (Art 20, LTA), but in practice the rule has been reversed and most Shinpans are given orally.

[16] Sugeno(2006)(ibid fn 9), p. 10.

[17] Araki (2009) (ibid fn 5) p. 10, as well as interviews with author, e.g. M. Jouzuka(May 22nd), N. Ishizaki (May 25th).

[18] 2006 to 2008 in 30-40% of the Shinpans no objection was submitted. The original expectation was that in almost all the cases that a mediation agreement was not reached and thus a Labor Tribunal

often resembles the content of the mediation proposal, which was rejected by at least one of the parties, it is given against the expressed wish of parties. Surprisingly, nevertheless in a significant percent of the cases (30 to 58 percent),[18] the party who rejected the mediation proposal "gives up" and does not object to the same content, handed as the *Shinpan*. The explanation is that whereas in the former case the criterion was "acceptability", in the latter the criterion is "tolerability" and the extra fees which would accompany the law suit.

4. **The scope of the issues subjected to the Labor Tribunal Mediation and to the *Shinpan*:** It is generally known that whereas adjudication is limited to the court files, mediation is more flexible, and if both parties wish, can include issues beyond the court files. Thus presumably (1) The LTC would flexibly add issues to the mediation, subject to both parties' consents, whereas (2) the *Shinpan* would be limited to the suit files. However, from a first analysis of the interviews that I conducted, both assumptions are under debate, and there seem to be at least three opinions: (1) Since the Labor Tribunal mediation is an evaluative one based on the merits of the case, both the mediation and the *Shinpan* are limited to the issues mentioned in the LT suit files, (2) If the parties wish, mediation may add issues which are not in the court files but the *Shinpan* is limited by the LT suit files, (3) Neither mediation nor the *Shinpan* are bound by the suit files, and may include new issues that became known during the mediation attempt, in order to compose a suitable solution. The flexibility regarding the scope of the *Shinpan* is possible because also the *Shinpan*, at the end of the day, is not binding as it is nullified if a party objects.

The above debate has theoretical importance and deserves further deliberation. Note that Opinion (3) treats the *Shinpan* as mediatory also in its function. However, in practice this debate has been minor so far[19]. This may partly be attributed to the parties' expectations of identity between the mediation proposal and the Shinpan (objections abound when the two differ) caused assimilation: often the mediation proposal is based on the legal impression of the parties' claims, whereas the *Shinpan* is sensitive to the parties' needs. Thus often the two resemble each other, the Shinpan being merely a "fine-tuning" or a "second thought" of the mediation proposal, taking into account the parties' (negative) responses to it.

In sum, the mediative and adjudicative functions are closely integrated in the Labor Tribunal System in a way that is unique both within and without Japan. This integration was a political compromise between the labor union and the management representatives. The resulting integration is at times ambiguous, but apparently it is this ambiguity that enables each party to keep supporting the system, based on its own interpretation. It seems that it is this ongoing cooperation of all parties involved, labor, management, and the judiciary itself, which enables this unique system to succeed.[20]

Shinpan ————————————————————
was given, at least one of the parties would object. Thus the 30-40% rate of no-objection was considered surprisingly high. However, recently, in Jan-March 2009 the no-objection rate has exceeded 50% (in March making an all high of 57.7%). Adv. Ukai voiced concern regarding this recent tendency of the LTCs to compile the Shinpans in a way that matches the parties' wish and thus avoid objection (interview with author on May 21st).

[19] For a brief discussion of this issue see symposium (K. Sugeno, Chairman) "Rodo Shinpan-kaiketsu jirei kara mietekuru mono" (The Labor Tribunal-as seen from resolved cases", Jurist (Dec 2008), 83 (in Japanese), pp. 98-99.

[20] K. Sugeno (interview with author on May 21st).

<The Project Members' Overseas Research Activities>

Name	Term	Activity
Tomotaka Fujita, Professor, Graduate Schools for Law and Politics	August 23-26, 2009	Frankfurt, Germany: Interviews at Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and Gleiss Lutz Rechtsanwälte to investigate TOB practices in Germany.
Tomotaka Fujita	January 5-10, 2010	Paris, France: Hearing at Herbert Smith LLP and Autorité des marchés financiers (AMF) to investigate TOB practices in France.
Tomotaka Fujita	March 15-23, 2010	Yaoundé, Cameroon: Attending the "SEMINAR ON THE ROTTERDAM RULES : WHAT CONTRIBUTION FOR AFRICA?" (organized by UNCITRAL and The Cameroon National Shippers' Council) as a speaker, a chairman and a lecturer.
Gen Goto Associate Professor, Gakushuin University, Faculty of Law	September 9-13, 2009	Hamburg, Germany: Attended following seminars held at Max Planck Institute for Comparative and International Private Law; "100 Years of Legal Exchange with Japan" and "Comparative Seminar on Insurance Law"

GCOE International Internship Program

This program sends graduate students and other qualified young lawyers to foreign law firms and international organizations (EU Commission, UNCITRAL etc.) as a trainee or an intern. It also gives them opportunities to participate in international conferences or seminars. The followings are the activities in 2009.

Name	Term	Activity
Sho Imanaka	June 1-30, 2009	EU Commission
Yuji Tsutsumi	June 3- July 1, 2009	EU Commission
Nobuhiro Tanaka	June 17- July 12, 2009	Herbert Smith LLP, Paris
Wataru Matsumoto	June 27- July 28, 2009	Davis Polk & Wardwell LLP
Keika Takahata	July 9- August 10, 2009	Deutsche Bank
Shota Watanuki	July 11- August 2, 2009	Supreme Court of Delaware
Mikito Ishida	July 27- August 24, 2009	Clifford Chance London and Tokyo
Kenichiro Tsuda	July 27- August 24, 2009	Clifford Chance London and Tokyo
Motonori Ezaki	September 19-29, 2009	IBFD International Tax Academy
Yurika Yamauchi	January 30- February 26, 2010	Max-Planck-Institut für ausländisches und internationales Privatrecht

Summer Vacation Scheme at Clifford Chance, London

Kenichiro Tsuda

1 Introduction

The Summer Vacation Scheme at Clifford Chance, London ("CC") provided me with a unique insight into a life in one of the biggest city law firms in the world. In this report, I first give an introduction to CC as a city law firm. Secondly, I list some of the tasks that I actually did while I was there. Thirdly, I elaborate on the difference between UK-qualified lawyers in CC and Japanese lawyers.

2 CC as a city law firm

CC is a world-wide law firm. According to CC website, it has 29 offices in 20 different countries, with total staff of over 6500 (the number of partners is about 600). CC focuses on the core areas of commercial activity: capital markets; corporate and M&A; finance and banking; real estate; tax, pensions and employment; litigation and dispute resolution. Total revenue amounts to 1262 million pounds (2008/09, provisional figure). CC London office where I was trained is situated in one of the major business centers of London, Canary Wharf.

3 Life as a vacation student in CC

(1) On the Vacation Scheme

CC runs vacation scheme mainly for undergraduate students who aspire to become trainees in CC. The group I joined was made up of 14 members (including myself), 8 from Germany, 2 from France, 2 from Spain, and 2 from Japan. We got together for lunch and public lectures designed for vacation students, but each student was seated separately in lawyer's office so that during office hour, each student worked individually. The type and the amount of workload varied according to the enthusiasm of the supervisor (usually a qualified lawyer), assigned to each student.

During 3-week training, I was placed in 50A finance group for the first week and 50 H finance group for the second and third week.

(2) 50A Finance group (1st week)

50A Finance group("50A"), which occupies 29th floor of CC building, focuses on the areas of asset finance and project finance. During the training, I had a chance to do the following tasks;

(a) Review the wording of an agreement concerning the lease of an aircraft
(b) Attend the closing ceremony
(c) Attend the study session held by project-finance lawyers
(d) Engage in the negotiation as to the wording of the agreement
(e) Attend the telephone conference (with a law firm in Japan)

Among the tasks listed above, the most rewarding for me was the negotiation (d). The agreement was to lease an asset from a Japanese company to another Japanese company, and it had to be drafted both in English and in Japanese. My task was to translate relevant Japanese documents into English (and vice versa), then to propose appropriate wording for the agreement. This was a difficult task indeed, as the underlying problem was subtle language difference. More specifically, a Japanese wording may not always have an appropriate English translation (direct translation does not really help).

(3) 50H Finance group (2nd-3rd week)

50H Finance group("50H"), which occupies 28th floor, specializes in financial regulations and derivatives. My supervisor's specialty was financial regulations and accordingly, my task was mainly to do with regulations imposed by FSA (Financial Services Authority, equivalent to Financial Services Agency (Kinyu-cho) in Japan). The tasks given to me were the following;

(a) Renew the terms and conditions of a multinational bank, to comply with new EU directives

(b) Draft a letter in response to client's inquiry

(c) Do research on FSA rules (more specifically, on appointed representatives)

(d) Do research on the notion of "agency" in UK law

If I were to compare the tasks of 50H to that of 50A, the former involves much more paper research. Since the rules that govern financial activities in UK are mostly written on paper, the role of a lawyer is to search for relevant rules in FSA Handbook and to interpret them. This nature of workload in 50H explains why there is a library on 28th floor (but not in 29th floor where 50A is situated).

4 On unique backgrounds of CC lawyers

I shall finally make a remark on the uniqueness of lawyers in CC, as compared to lawyers in Japan.

For good or bad, Japanese lawyers have very similar educational backgrounds. They mostly specialize in law as undergraduates and go on to study at law schools to take the bar exam. In contrast to this, many of UK qualified lawyers I met at CC had degrees other than law, such as psychology, sociology, math, physics etc. The reason to this seems to be simple. That is because in UK, one may take the bar exam after 1 year of conversion course (unlike in Japan where one has to study at least 2-3 years at law schools to take the bar exam). This makes it easier for non-law students in UK to convert to pursue a career as a lawyer, if they wish. The diversity of backgrounds of lawyers seemed to have a positive influence on the atmosphere of CC as a law firm.

In addition, the lawyers in CC were truly international-minded. During my training, I had a chance to see lawyers from Canada, Germany, Holland, France, India, Australia, Hong Kong, and South Africa, and they were qualified not only in their own countries but in UK (this is so much to do with the easiness of being qualified in UK). Rich and varied human resource enables CC to deal with international legal matters.

It has been 5 years since Japanese law schools started to attract people from various backgrounds, but it is turning out to be a pie in the sky. There seems to be a room for Japanese system to absorb the lesson from UK system.

My training report

Yuji Tsutsumi

1 I belonged to one of the EU commission's department that DG Internal Market and Services from 3rd June to 1st July.So,my unit is B4(External aspects of the Internal Market).My mentor is in charge of Japan.

2 My main task which is took part in conferences(Unit meeting,work shop about FTA and so on),interviewed many kinds of EU commissions members and presentation about relationship between Japan and ASEAN in front of my mentor and my unit vice head.

3 Through the training in EU commissions stick out three things in my mind.

The first is work life balance.Many Japanese doesn't care of private time due to work much time.On the other hand, the EU commission's members took good care of not only business but also private time.In fact,they enjoyed weekend and long vacation.

I got suspicious why such difference occur between Japan and EU commission.I thought that one of the answer is difference decision process.In Japan,many documents are needed for decision compared with EU commission's decision.

I thought that Japan needs to emulate EU commission's working system and decision process.Japan has to emphasis private time more than ever.In the result,we can prevent death by overwork.And,we can live a good life.

4 The scond is many country's people worked at EU commissions.Total 27 countries 22 launguages.So common language is English.And second common language is French because of Brussels used French.But important documents translation to 22 languages.That's why interpretation of the documents depends on each countries.But if one country applies the law and one country doesn't apply the law in same situation,which is injustice.For avoiding such situation,if interpretational problem occur,every EU countries uses Court of Justice of the European Communities.EU law priority to national law.

And many EU commission's members said that they difficult to work with different country's people due to they has different customs and cultures sometimes.On the other hand,they enjoyed working with different countries members.They respected different customs and cultures each other.

5 However,EU commissions has not only good point but problem.The third is problem of how far does EU expand.Now,EU consists of 27 countries.But several countries wishes to become a member of the EU.Unpredictable the answer of that problem by themselves.

The reason is that resolution is not simple.They can not simply decide by geography.

Related that problem,the biggest problem is Turkey can join to EU or not.That is questionable in view of geography,religion,political power balance.

I hope that EU expand more and more,and showing many country cooperate well.

6 The first reason why I would like to study about European commission is that I think,in the future Asia also needs make union like EU.It's because we have to solve the many probrems of global warming,poor,and so on.One country can't solve such problems.For solving such problems,we have to cooperate many countries.

When Asia makes union, I want to help that.However,now I don't know about how to make union,management the union.So, I want to know that how to cooperate each countries,how to management framework for multilateral cooperation,how to decide the agenda and so on.Every country has different back ground.But EU countries uses the common currency(not all country),set up a court of justice,fine for illegal competition.

After training in EU commissions,I thought Asia can make community like as EU.It's because, at first I thought success of EU is due to they don't have big difference.But,through the training I felt that EU countries has many different point, nevertheless success of EU is due to each country respect different point and agree to different point.In addition to that,if we can have a sense of common purpose,we can make community.

Of course Asian countries needs to overcome problem of history,different religion,different customs and so on.However we have common problem to solve that global warming,war,poor and so on.For solve such problems,we need to making multinational cooperation system as quickly as possible.We have to think about problems of the world seriously.

Report of the GCOE internship program in Davis Polk & Wardwell LLP (New York office)

Wataru Matsumoto

I Overview

I worked as an internship trainee in the New York office of Davis Polk & Wardwell (DPW) , from June 29th to July 24th in 2009. DPW is an Amecian big law firm with more than eight hundred lawyers and has offices in all over the world, including Tokyo. I learned American legal practice and management of one of the most competitive American law firms there.

II What I did

1, Summer Associate Event

During my internship term, more than a hundred American law students were working as summer associates, and DPW held many events for them. Some of them were educational and others were recreational. I participated in as many of them as I could.

It was introduction of the internal groups that was helpful for me among the events. I could take an overview of each group, including basic knowledge of the law mainly delt with in the group. Explanation was clear and courteous enough to understand although I had not studied such laws. It was also impressive that every group stressed cooperation with other groups.

As recreational events, I joined in some parties. Sometimes people were so excited that I could not hear even the voice of the person next to me, but they were great fun as a whole. I also saw a Broadway musical free. Later one of my Japanese friends blamed me for that.

2, Internal Meeting

Since DPW has many groups devided according to the working fields, its internal meetings were held anytime and anywhere in the office. I tried my best to attend as various meetings as I can.

In most cases I was able to join without permission, but I felt so embarrassed when I went into the meeting for the partners by mistake and attracted attention of almost all partners in the office.

Anyway, the contents of these meetings were more developed and up-to-date than those of summer associate events. They usually spotted legal problems in the recent and famous cases. Active disucussion between young associate and senior partner was very attractive for me.

3, Assignment

When I had no meetings or events, I did assignments concerned in ongoing cases. It was tough work, but I managed to finish them thanks to the kind help of DPW members.

In DPW, I enrolled in Financial Institution Group (FIG), since I was interested in how the recent financial crisis effected Amerian legal situation. As a member of FIG, I was given some financial related assignments. For example, I wrote a draft of the book DPW was going to publish related to the financial crisis. I did not know about the topic so much before, nor did about the financial terms, but the associate in charge of the book told me to write one chapter of the book. Although I had much difficulty in doing the assignment, after finishing it I was really glad that he said to me that my work was really helpful.

I was also given some assignments from other groups. For example, I examined a memorandum which interpreted a

warrant contract forming a part of the complicated securitization scheme. I had never seen such a huge contract before.

4, Visit

I visited New York bankruptcy court and saw the hearing of the case in which DPW acted as a receiver. I was surprised to find the judge, sitting on the high position in the traditional courtroom, made active discussion with the parties about latest business matters.

I also visited the Supreme Court and Congress in Wachington DC. There were many visitors there, and I thought Japanese ones should be as open as them.

III What I found

1, Management of the firm

In spite of having over 800 lawyers and many internal groups, DPW puts an emphasis on integration as a firm. I found many efforts DPW made to unite its members.

First, there are many events and meetings arranged for various purpose. Each group has regulatory meetings. Some lawyers in other groups are also invited there. In addition, there are various events. For example, Diversity event is a party for the members with various ethnicity. LGBT event is for lesbian and gay people.

In the facility aspect, DPW's developed intranet supports sharing information and ideas. It contains massive and various information, from the details of ongoing cases to the weekly menu of its cafeteria. I was able to search basic information of all lawyers and staffs in the intranet. Many formats of legal documents and video webcasts of the meetings can be seen in it. They were very helpful for me.

2, Legal Practice

As Japanese big law firms, M&A and Capital markets have large shares in DPW's legal practice. Litigation group is also big. However, there are many other groups I had never heard of. FIG is one of them. In the group, providing legislative information seemed to be as important source of business as interpretation of laws and contracts. I found laywers' business was much broader than I had expected before.

It was surprising for me that many DPW lawers were interested in glabal legal market including Asia. Although I had thought that lawyers were originally domestic professions, talking with them made me realize the legal market was global. However, the reason why they have much interest toward other countries is partly that American laws are strong enough to be applied in all over the world.

DPW lawyers stress the importance of speedy services. Communication is not done directly but mainly by telephone and email. I was also required quick responses so that sometimes I felt scared to check my answering phone and inbox.

Speedy services also mean hard work. When I visited the house of Randy Guynn, my mentor, and stayed with his familly on Independence Day, I found it amazing that sometimes he went into his room and made some documents during the barbecue party in the garden.

IV Impression

It is often said that Japanese legal situation is behind compared with that of the United States. Therefore, it is very valuable for me to have an opportunity to know in the earliest stage as a legal profession what American lawyers are like and what American law firms are like. Now I feel I have to make much more effort to work with American lawyers equally.

The report of The Supreme Court of Delaware

Shota Watanuki

1. Preface

I went to The Supreme Court of Delaware in Wilmington, from the middle of July to the beginning of August, 2009. During this short stay, I gained a general view of the American legal system, and formed relationships with many foreign lawyers.

There are a variety of courses in the GCOE program, which allows students to choose a course that he or she finds interesting. In my case, I wanted to learn about a foreign legal system by studying real cases. So, I decided to go to a court in the United States.

Actually, it is common for judges in the U.S. to have student interns in the summer. These interns are typically students who have just finished their first year of law school. While I was at The Delaware Supreme Court U.S. law students were also working there as interns. I worked with one intern as a foreign student intern under the guidance of Justice Jack B Jacobs.

2. Details

(1) Main Program

The basic contents of this program are bellow;

a) **Reading the briefs of matters currently before the Supreme Court.**

b) **Viewing oral argument before the Supreme Court.**

Most cases in Supreme Court are disposed of without oral argument. (those cases are decided only on the briefs). But, some cases that are complicated or difficult are granted oral argument. All the cases I studied were scheduled for oral argument.

I traveled to "Dover" for listening to oral argument. The Justices on The Supreme Court of Delaware currently have their chambers in three different cities.

c) **Discussing cases with other intern student.**

This was my case research. Another intern student was my partner. I would give the other student my opinion based on Japanese law. Then the other student and I discussed the cases in the view of American law and Japanese law, comparing the two legal systems.

d) **Reporting the impression I got of each case to Justice Jacobs.**

I also had the opportunity to view cases before the superior court and chancery court. Sometimes, Justice Jacobs would suggest that I observe a specific case. Among other things, I viewed a matter before a jury and a bankruptcy matter.

I saw a variety of cases. I viewed a case about: (1) a medical accident; (2) a corporate reorganization; (3) improper arrest; and (4) statutory rape.

Through these cases, I learned about many U.S. legal topics. I learned about discovery in civil cases, class actions, and the parole evidence rule. Moreover, it is impossible to understand the issues in a given case without understanding certain background rules. For example, U.S. common law, equity, and the federal system of government in the U.S. So I studied these things in the court with friends.

(2) Other Activity

While in Delaware I was also able to talk with American lawyers. In addition to the other interns at the Supreme

Court, I also talked with an attorney at a Delaware law firm about corporate governance, and Justice Jacob's law clerk.

I learned about many topics some of which are listed below.

a) Education in U.S. law schools as compared to Japanese law schools.

b) Comparison of U.S. and Japanese bar exams.

c) Recruitment of a Judge's law clerks and how their careers progress.

d) The recruitment practices of U.S. law firms as compared to Japanese law firms.

3. Achievements

a) My attitude and way of thinking about legal matters changed because of this program.

Actually being in a court is different than just studying from a text book. I studied a foreign legal system and its culture from the inside. Overall, my experience broadened my legal outlook.

b) It was very interesting to learn about the U.S. legal system and culture in practical terms.

For example, one practice I found interesting was the behavior of judges and parties in court. As someone explained "in the United States the judge tends to be silent in court while the parties talk. Moreover, in the United States many lawsuits are initiated, but many cases are resolved by the parties' independent negotiation."

It seems that the legal culture in the United States respects citizen's voluntary action. U.S. law students and attorneys explained that the process of "Discovery" exists to supply parties with a chance to negotiate and settle a disagreement on their own terms. Moreover, these impressions made me interested in comparing Japan and the U.S.

Of course, it is difficult to say that the U.S. legal system is completely different from Japan. But sometimes, I did feel there were big differences between two legal systems. And one of the biggest things I learned through my internship was "awareness" about different legal policy.

c) This program also gave me the opportunity to have many conversations with a variety of U.S. lawyers.

Discussion of each case with a U.S. law student was very useful. I especially enjoyed comparing the legal systems of the U.S. and Japan in the context of real cases. It was not easy to understand the policy of each law. But I did "case study" in Japanese Law School, and the way U.S. students discuss cases is not so different from the way Japanese law students discuss them. I simply enjoyed research and discussion with my friends.

And, in addition to case research, it was also interesting to talk about several topics —law school, the bar exam, being a law clerk, and recruitment by law firms. I could ask my friends frank questions.

Especially, the topic of Law School was interesting. The other interns and I were interested in each other's experiences in law school. I found many similarities and differences between our experiences. For example, it was interesting that some U.S. law schools require students to take "conflict of laws."

4. Close

The three weeks I spent in Delaware were very valuable.

I learned that American people generally value freedom and independence. And I befriended many U.S. lawyers, the other student interns and Justice Jacobs' law clerk. When I couldn't understand arguments in a brief, or what was said or argued in the court, they always helped me.

Finally, I would like to again thank Justice Jack B. Jacobs, the professors of GCOE, and all the friends I met in Wilmington.

3 Outcome

Soft Law Journal

"Soft Law Journal" has been issued by the 21st Century COE Program "Soft Law and the State-Market Relationship: Forming a Base for Strategic Research and Education in Business Law" since January 2005. It was took over by Global COE (Centers of Excellence) Program "Soft Law and the State-Market Relationship: Forming a Base for Education and Research of Private Ordering" from vol. 12.

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UT Soft Law Review

Global COE Program began to publish "UT Soft Law Review" disseminate its research results and contribute to a development of international research exchanges.

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GCOE Soft Law Discussion Paper Series

This center distributes each research paper as a “Discussion Paper,” written either by each project member or each researcher outside our university. The “Discussion Paper” is available in hardcopy form and for download from our web site （http://www.j.u-tokyo.ac.jp/gcoe/outcome/paper.html).

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