

JAPANESE LEGAL SYSTEM

Second Edition

Meryll Dean, JP, BA, LLM (Cantab), Barrister
Senior Lecturer in Law
Sussex University



Cavendish
Publishing
Limited

London • Sydney

TABLE OF MATERIALS

1 INTRODUCTION

Benedict, R, <i>The Chrysanthemum and the Sword</i>	9
Noda, Y, <i>Introduction to Japanese Law</i>	17
Upham, FK, <i>Law and Social Change in Postwar Japan</i>	21
Kawashima, T, 'Dispute Resolution in Contemporary Japan'	27
Kawashima, T, 'Japanese Way of Legal Thinking'	29
, Haley, JO 'The Myth of the Reluctant Litigant'	32
Haley, JO, 'Sheathing the Sword of Justice in Japan: An Essay on Law without Sanctions'	36
Miyazawa, S, 'Taking Kawashima Seriously: A Review of Japanese Research on Japanese Legal Consciousness and Disputing Behaviour'	41
Wagatsuma, H and Rosett, A, 'The Implications of Apology: Law and Culture in Japan and the United States'	45
Tanaka, H and Takeuchi, A, 'The Role of Private Persons in the Enforcement of Law'	52

2 HISTORICAL DEVELOPMENT

Noda, Y, <i>Introduction to Japanese Law</i>	71
Lehmann, JP, <i>77K Roots of Modern Japan</i>	79
Ishii, R, <i>A History of Political Institutions in Japan</i>	87
Takayanagi, K 'A Century of Innovation: The Development of Japanese Law 1868-1961'	91
Akita, G, <i>Foundations of Constitutional Government in Modern Japan 1868-1900</i>	104
Kaino, M, 'Some Introductory Comments on the Historical Background of Japanese Civil Law'	109
George, B, 'The Impact of the Past upon the Rights of the Accused in Japan'	112
Oppler, AC, <i>Legal Reform in Occupied Japan: A Participant Looks Back</i>	116

3 SOURCES OF LAW

Angelo, A, 'Thinking of Japanese Law - A Linguistic Primer'	141
Noda, Y, <i>Introduction to Japanese Law</i>	144

Japanese Legal System

Ishii, G, 'Laws and Regulations in Japan'	150
Beer, LW and Tomatsu, H, 'A Guide to the Study of Japanese Law'	152
Ishida, T, 'Case Law in Japan'	157
Matsushita, M, <i>International Trade and Competition Law in Japan</i>	163
Matsushita, M, <i>International Trade and Competition Law in Japan</i>	168
Yamanouchi, K, 'Administrative Guidance and the Rule of Law'	176
Dean, M, 'Administrative Guidance in Japanese Law: A Threat to the Rule of Law'	178
Shindo, M, 'Administrative Guidance: Securities Scandals Resulting from Administrative Guidelines'	180
Young, M, 'Judicial Review of Administrative Guidance: Governmentally Encouraged Consensual Dispute Resolution in Japan'	184

4 GOVERNMENT AND THE LAW

Hall, J, 'A Monarch for Modern Japan' "	212
Higuchi, Y, 'The Constitution and the Emperor System: Is Revisionism Alive?'	218
Abe, H, Shindo, M and Kawato, S, <i>The Government and Politics of Japan</i>	222
Seki, M, 'The Drafting Process for Cabinet Bills'	226
Stockwin, JAA, 'Political Parties and Political Opposition'	231
Ramseyer, J and Rosenbluth, F, <i>Japan's Political Marketplace</i>	235
Krauss, ES, 'Politics and the Policymaking Process'	238
Tadokoro, M, 'The End of Japan's "Non-Decision" Politics'	239
Abe, H, Shindo, M and Kawato, S, <i>The Government and Politics of Japan</i>	241
Lehmann, JP, <i>The Roots of Modern Japan</i>	244
van Wolferen, K, <i>The Enigma of Japanese Power</i>	246
Ramseyer, J and Rosenbluth, F, <i>Japan's Political Marketplace</i>	250
Usui, C and Colignon, R, 'Government Elites and <i>Amakudari</i> in Japan 1963-1992'	252

5 THE LEGAL PROFESSION

Hattori, T, 'The Legal Profession in Japan: Its Historical Development and Present State'	278
Rabinowitz, R, 'The Historical Development of the Bar'	282
Oppler, AC, <i>Legal Reforms in Occupied Japan: A Participant Looks Back</i>	289
Abe, H, 'Education of the Legal Profession in Japan'	291
Chen, E, 'The National Law Examination of Japan'	294
Feldman, E, 'Mirroring Minds: Recruitment and Promotion in Japan's Law Faculties'	301
Supreme Court of Japan	
Table 1 The Legal Profession in Japan 2001	305
Table 2 Pass rate for the National Law Exam in Japan	306
Table 2(a) Pass rate for the National Law Exam in Japan, including women and age comparators	307
Table 3 Number of Adopters and Graduates of the Legal Training and Research Institute	307
Table 4 Career Destination of the Legal Training and Research Institute Graduates	308
Table 5 Ratio of Lawyers to Population in Six Countries in 1994	309
Table 6 Quasi-Lawyers in Japan	309
Ramseyer, J, 'Lawyers, Foreign Lawyers and Lawyer Substitutes: The Market for Regulation in Japan'	309
Yonemoto, K, 'The Simane Bar Association: All Twenty-One Members Strong'	311
Haley, JO, 'Judicial Independence in Japan Revisited'	314
Itoh, H, <i>The Japanese Supreme Court: Constitutional Policies</i>	321
Ramseyer, J and Rosenbluth, F, <i>Japan's Political Marketplace</i>	326
Kigawa, S, 'Foreign Lawyers in Japan: The Dynamics Behind the Law No 66'	334
Finn, A, 'Foreign Lawyers: Regulation of Foreign Lawyers in Japan'	339
Judicial Reform Council: Recommendations on The Legal Profession	341

f

i THE COURT SYSTEM AND ALTERNATIVE DISPUTE RESOLUTION

Supreme Court of Japan

Table 1	Court Structure and Jurisdiction	362
Table 1a	Court Structure Before 1947	363
Table 2	Court Organisation and Staff	364
Table 3	Illustration of Appeal System	365
Table 4	Flow of Family Affairs Determination Cases	366
Table 5	Flow of Juvenile Delinquency Cases	367
Table 6	Statistical Tables	368
Table 7	Proceedings of Civil Case	369
Table 8	Proceedings of Criminal Case	370
Supreme Court of Japan, <i>Outline of Civil Trial in Japan</i>		371
Supreme Court of Japan, <i>Outline of Criminal Justice in Japan</i>		372
Supreme Court of Japan, <i>Guide to the Family Court of Japan</i>		373
Miyazaki, A, 'The Judicial System'		378
Itoh, H, <i>The Japanese Supreme Court: Constitutional Policies</i>		386
Henderson, DF, <i>Conciliation and Japanese Law: Tokugawa and Modern</i>		397
Kawashima, T, 'Dispute Resolution in Contemporary Japan'		400
Iwasaki, K, 'ADR: Japanese Experience with Conciliation'		406
Tanase, T, 'The Management of Disputes: *Automobile Accident Compensation in Japan'		409
Rosch, J, 'Institutionalizing Mediation: The Evolution of the Civil Liberties Bureau in Japan'		415
Ohta, T and Hozumi, T, 'Compromise in the Course of Litigation'		422
Muto, S, 'Concerning Trial Leadership in Civil Litigation: Focusing of the Judge's Inquiry and Compromise'		423
Kusano, Y, 'A Discussion of Conciliation Techniques'		427
Judicial Reform Council: Recommendations on Civil and Criminal Justice Systems and ADR		440

7 THE CONSTITUTIONAL FRAMEWORK

Ito, M, 'The Modern Development of Law and Constitution in Japan'	462
Buckley, R, 'The British Model: Institutional Reform and Occupied Japan'	469
Beer, LW, 'The Present Constitutional System of Japan'	473
Kades, C, 'The American Role in Revising Japan's Imperial Constitution'	477
Maki, JM, <i>Japan's Commission on the Constitution: The Final Report</i>	484
Sato, L, 'Revisionism During the Forty Years of the Constitution of Japan'	493
Danelski, DJ, 'The Supreme Court of Japan: An Exploratory Study'	497
Tanaka, H, 'The Appointment of Supreme Court Justices and the Popular Review of Appointments'	499
Itoh, H, <i>The Japanese Supreme Court: Constitutional Policies</i>	502
Danelski, D, 'The Political Impact of the Japanese Supreme Court'	506
Urabe, N, 'Rule of Law and Due Process: A Comparative View of the United States and Japan'	513
Okudaira, Y, 'Forty Years of the Constitution and its Various Influences'	518
Ashibe, N, 'Human Rights and Judicial Power'	524
Itoh, H, <i>The Japanese Supreme Court: Constitutional Policies</i>	530
Tanaka, H, 'Legal Equality Among Family Members in Japan - the Impact of the Japanese Constitution of 1946 on the Traditional Family System'	536
Beer, LW, 'Law and Liberty'	539