

Law School

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(Current as of March 31, 2009)



Law School

Professor Seiji Akashi

■ Area and Subject Taught:

Criminal Procedure Practice, Code of Criminal Procedure

■ Research Theme(s):

Citizen Judge System, Pretrial Procedure

■ Academic Degrees: Doshisha University

■ E-mail: akashi@cc.kyoto-su.ac.jp

[Overview of Areas of Specialization]

I am a public prosecutor at the Osaka High Public Prosecutors Office. I am in charge of giving lectures as a dispatch public prosecutor at the law schools of Kyoto Sangyo University and Osaka University. Appointed as a public prosecutor in 1993, I have been engaged in my duties here for 16 years. I have abundant experience in the entire field criminal law and criminal procedure practice.

Through my work as a law practitioner, including as a public prosecutor, I meet people involved in various problems on a regular basis. It is my duty as a law practitioner to give appropriate legal support and services to such people with consideration what is best for them based on legal knowledge and previous experience.

I have not seen much change in this job, even after I began being dispatched to law schools. A lot of students come to see me, complaining that the Code of Criminal Procedure is hard to understand, or that they are not making satisfactory progress in their studies of criminal law-such complaints are natural. If students could understand everything through their own studies alone, there would no need for me to be dispatched here. Therefore, I prepare for lectures by considering what is best for my students, and I answer their questions with these things in mind. Even though I have entered my seventeenth year of law practice, I still endeavor to continually pursue the best settlement from a legal standpoint.

[Notable Cases and Publications]

検事は組織で活動するので、一つの事件を処理し、判決を得るまでに何人もの検事や検察事務官が関わっています。したがって、「私はこんな事件を手掛けました。」というと、自分ひとりで事件処理したような誤解を与えるため、この欄の記載は差し控えます。著書はありません。



Law School

Professor Toyo Atsumi

■ Area and Subject Taught: Criminal Procedure

■ Research Theme(s):

Legal Systems and Theories Concerning Crimes, with Particular Focus on their General Use; Criminal Systems in English-Speaking Countries, Policies for Prevention and Reduction of Crimes, and Development in Implementation of Related Policies

■ Academic Degrees: L.L.D (Doctor of Laws), Chuo University

■ Keywords for Research Field:

Criminal Law, Criminal Justice, Jurisprudence,
Preventing and Reducing Crimes

[Research Overview]

My research thus far has covered a considerably extensive area. The major themes of my on-going study include procedures dealing with crimes, organizations, official and non-official methods, multiple Agencies partnership and development and indentifying various efficient tools to re-create real social ties, and development and indentifying various tools to create real social solidarity.

I have done research on legal representation and the right to counsel, focusing particularly on common law, which was the first research of its kind in Japan. I also have tried to find out the concept of the right to privacy for the first time in Japan. In addition, I was the first in Japan to look for development of community policing. Finally, I have been undertaking broad research of crime as a social problem.

I continue to follow the development of laws that are in force today.

[Notable Publications and Works]

- 1) 全訂刑事訴訟法第2版 (有斐閣)
- 2) 刑事訴訟における自由と正義 (有斐閣)
- 3) 罪と罰を考える (有斐閣)
- 4) 複雑社会でどう法を活かすか (立花書房)
- 5) レッスン刑事訴訟法 上・中・下 (中央大学出版部)
- 6) 犯罪予防の法理 (成文堂)



Law School

Professor Norifumi Ishii

■ Area and Subject Taught:

Civil Mock Trials, Code of Civil Procedure Practice II,
Enforcement and Preservation Laws

■ Legal Issues I am Interested in:

Changes in Substantive Rights in Individual Enforcement and
Bankruptcy Procedure, Responsibility of Executive Officers in
Corporate Bankruptcy

■ Academic Background:

Faculty of Law, Department of Law, Chuo University

■ Office: Building 13, Room 13257

[Overview of Areas of Specialization]

In my legal practice, I engage primarily in legal consultations and the handling of lawsuits and bankruptcy. Many of the lawsuits I have handled in the past were commercial cases.

[Notable Cases and Publications]

- 携わった主な訴訟等：08年 不動産投資会社の破産事件（破産管財人として関与）
携わった主な訴訟等：07年 歌劇団の民事再生事件（再生管財人として関与）
携わった主な訴訟等：06年 有料老人ホームの会社更生事件（更生管財人として関与）
携わった主な訴訟等：05年 総合建設業の民事再生事件（監督委員として関与）
携わった主な訴訟等：03年 給食サービス会社の民事再生事件（監督委員として関与）
携わった主な訴訟等：02年 物流会社の会社更生事件（更生管財人として関与）
携わった主な訴訟等：96年 旧住専の大口融資先の倒産事件（破産管財人として関与）
携わった主な訴訟等：96年 総合商社の株主総会決議取消請求事件（被告代理人として関与。判例時報1658号180頁）
携わった主な訴訟等：95年 花博ウォーターライド事故損害賠償事件（被告代理人として関与。判例時報1555号65頁）
携わった主な訴訟等：91年 包括根保証に関する履行請求事件（裁判官として関与。判例タイムズ794号136頁，金融・商事判例964号28頁）
携わった主な訴訟等：88年 無認可保育所乳幼児死亡事故損害賠償請求事件（裁判官として関与。判例時報1302号133頁）218頁
携わった主な訴訟等：86年 国道43号線公害訴訟第1審判決（裁判官として関与。判例時報1203号1頁）
主な著作：08年 「労働債権の配当・弁済に伴う破産管財人の源泉所得税の徴収・納付義務」（自由と正義 12月号）
主な著作：07年 「破産管財人の善管注意義務」NBL851号
主な著作：06年 「詳解民事再生法」共著（民事法研究会）
主な著作：06年 「新・注釈民事再生法」共著（金融財政事情研究会）
主な著作：05年 「論点解説新破産法上・下」共著（金融財政事情研究会）
主な著作：04年 「更生計画認可後の計画変更」（判例タイムズ「新会社更生法の理論と実務」所収）
主な著作：04年 「京神倉庫の更生事件について」共著（商事法務研究会「再生・再編事例集」所収）
主な著作：03年 「一問一答改正会社更生法の実務」（共著）
主な著作：00年 「一問一答民事再生の実務」（共著）
主な著作：96年 「取締役に対する倒産責任の追及と会社更生法72条」共著（NBL）



Law School

Professor Kaoru Imai

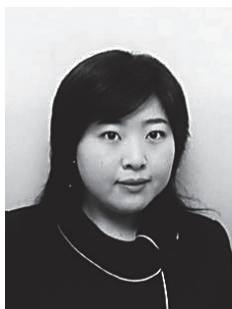
- Area and Subject Taught: Insurance law
- Research Theme(s):
Insurance Contract Law
- Academic Degrees: Doctor of Laws, Kobe University
- Keywords for Research Field:
Principle of Insurance Inalienability, Subrogation of Claim Rights,
Insurance for Other's Account and Insurance for a Third Party
- Office Phone Number: 81-75-705-1823
- E-mail: caochan@cc.kyoto-su.ac.jp

[Research Overview]

I have been investigating the nature of insurance contracts. Contracts are generally governed by the principle of private autonomy between the parties involved, so on principle there is no outside intervention. However, it is doubtful whether or not the same principle is applicable to insurance contracts where risk is accepted by the insurer. This is because it is clearly impossible to get sufficient protection from insurance without risk funds, which are created from insurance premiums paid by many others who have similar insurance contracts. Actually, insurance practice is often based on group-oriented systems of insurance contracts (for examples, no-claim rebates). Some insurance contracts provide for special systems indicating the group-oriented relations, including subrogation of claim rights and notice obligations. Under the circumstances, I am considering restoring a traditional theory known as "Enterprise Theory," but the theory is still at the foreign law level and it will take much work to adopt it as domestic law (see my work, "Enterprise Theory in Insurance Contracts-A Study of Insurance Theories in Italy"). My next research topic will be a review of whether or not the theory can be transplanted into domestic law from the universal legal theory of contracts, and whether or not the theory can be joined with practice and the theory of insurance contract law in Japan.

[Notable Publications and Works]

- 1) Lecture on Insurance Law, 2nd.ed., 2005 Houritsu Bunka Sya (coauthored with Prof. T. Okada and A. Umetsu). (in Japanese)
- 2) A Study of "Teoria del'Impresa (Enterprise Theory)" — Research on Italian Theories of Insurance Contracts —, 2005 Chikura Shobo. (in Japanese)
- 3) Code des Assurances I (Translation of French Insurance Code), 1998 Research Institute for Life Insurance and Culture, (coeditor with Prof. Y. Takechi). (in Japanese)



Law School

Associate Professor Akiko Okamoto

■ Area and Subject Taught: Criminal Law

■ Research Theme(s):

Theory of Justifications, Japanese Criminal Law,
Anglo-American Criminal Law

■ Academic Degrees: Doctor of Law, Doshisha University

■ Keywords for Research Field:

Criminal Law, Justifications, Self-Defence, Canadian Criminal Law

■ Office Phone Number: 81-75-705-1730

[Research Overview]

My field of study is Japanese criminal law theory, especially Justifications. Though there are many issues to be solved in this field, I have been studying "self-defence", one of the most important and fundamental issues in Justifications. My doctor thesis is as to the extent to which force is justified in repelling a provoked assault. This issue has been recognized as one of the most difficult and important issues so that many scholars tried to solve this by studying German criminal law. The peculiarity of my thesis is that it is not only based on the study of German criminal law but also Canadian criminal law which has not been studied in Japan.

There are many issues to be solved in this field, so I am planning to expend to other issues, such as necessity. And I am also interested in the difference between Canadian criminal law theory and its legal sauce, British criminal law theory. I am willing to settle problems in Japanese criminal law theory by this unprecedented study in Japan.

[Notable Publications and Works]

- 1) 『法学講義刑法総論』(2007年、悠々社)
- 2) 『刑法ゼミナール〔各論〕』(2006年、成文堂)
- 3) 『はじめての刑法』(2004年、成文堂)
- 4) 『ロースクール生のための刑事法総合演習』(2004年、現代人文社)
- 5) 「落書きと建造物損壊罪」刑法判例百選Ⅱ各論〔第6版〕(2008年)
- 6) 「正当防衛と侵害回避義務」同志社法学第57巻第6号(2006年)
- 7) 「判例研究」現代刑事法第6巻第1号(2004年)
- 8) 「赤色信号殊更無視と『危険運転致死傷罪』」判例評論538号(2003年)
- 9) 「カナダ刑法における正当防衛と自招侵害に関する一考察」同志社法学第51巻第6号(2000年)
- 10) 「自招侵害について」同志社法学50巻3号(1999年)



Law School

Professor Shin-ichi Kanami

■ Area and Subject Taught: Code of Civil Procedure

■ Research Theme(s):

Legal Structure of Retrials in Civil Procedure

■ Academic Degrees: Master of Laws, Kyoto University

■ Keywords for Research Field: Justice, Civil Procedure Law

■ Office Phone Number: 81-75-705-2962

■ E-mail: kanami@cc.kyoto-su.ac.jp

[Research Overview]

Judges are only human, and they sometimes make errors in judgment. It would not be strange, not only for judges but also for the parties involved in case, to make mistakes, because the court of judgment is not an everyday affair. Therefore, it is important for procedural law science to pursue measures in order to prevent such mistakes. Under the assumption that people inevitably make mistakes, we face challenges including how to minimize the damage when mistakes are made, and what should have or should be done to rectify the situation. It is necessary to consider these questions to the fullest extent as an important aspect in civil procedure law, from the standpoint of engineering fail-safe system, I seek to clarify the requirements for retrials or rejudgments in civil procedure, which has different requirements than criminal procedure.

[Notable Publications and Works]

ただし、過去5年内のものに限り、判例解説等は省略。

- 1) 「最高裁判所における再審事由の取扱い」 民事手続法研究2号 (2006年・信山社)
- 2) 「上告理由としての再審事由に関する判例の動向」 摂南法学35号 (2006年)
- 3) 「再審訴訟の訴訟物論と再審事由の機能」 摂南法学34号 (2005年)
- 4) 「再審訴訟における訴えの利益・当事者適格」 福永有利先生古稀記念『企業紛争と民事手続法理論』(2005年・商事法務)
- 5) 「訴訟承継論覚書」 摂南法学30号 (2003年)
- 6) 「絶対的上告理由についての一考察」 民事訴訟雑誌49号 (2003年・法律文化社)
- 7) 「再審制度と既判力の制約(判決無効)論」 鈴木正裕先生古稀祝賀記念論集『民事訴訟法の史的展開』(2002年・有斐閣)



Law School

Professor Yoshitaka Kamada

- Area and Subject Taught: Bankruptcy Law, Intellectual Property Law
- Legal Issues I am Interested in:
Issues in Bankruptcy Law and Intellectual Property Law
- Academic Background:
Division of Law, Department of Law, Kyoto Sangyo University
- E-mail: kamada@namihayadaiwa.jp

[Overview of Areas of Specialization]

Bankruptcy law and intellectual property law

[Notable Cases and Publications]

〔主な事件〕

- ・破産者大福商事株式会社破産管財人
- ・再生会社丸松興産株式会社（アートレイクゴルフ倶楽部）監督委員
- ・清算会社株式会社土井添工務店検査役
- ・更生会社末野興産株式会社更生管財人代理
- ・大阪地下鉄コマーシャル事件上告代理人（最高裁昭和63年12月20日第3小法廷判決 商業宣伝放送差止等請求事件／判例時報1302号94頁）（地下鉄内の商業宣伝放送と表現の自由）

〔著書〕

- ・「知的財産契約の理論と実務」（共著）（大阪弁護士会知的財産法実務研究会）（2007. 6）〔知的財産に関する契約の実務用説明書〕
- ・「新版 1問1答 改正特別清算の実務」（共著）（安木健外編／経済法令研究会）（2006. 1）〔改正特別清算の実務用説明書〕
- ・「新版 1問1答 破産法大改正の実務」（共著）（安木健外編／経済法令研究会）（2005. 1）〔改正破産法の実務用説明書〕
- ・「1問1答 改正会社更生法」（共著）（四宮章夫外編／経済法令研究会）（2003. 4）〔改正会社更生法の実務用説明書〕
- ・「ロースクール見聞記」（産大法学35巻第3／4号）（2003. 2）（米国ロースクールの調査報告）
- ・「注釈民事再生法（新版）」（共著）（伊藤眞外編著／金融財政事情研究会）（2002. 6）（改正された民事再生法の注釈書）
- ・「Q & A 民事再生の実務」（共著）（民事再生実務研究会編／新日本法規）（2001. 6）（民事再生法の実務的説明書）
- ・「1問1答 個人債務者再生の実務」（共著）（安木健外著／経済法令研究会）（2001. 2）（個人再生手続の実務的説明書）
- ・「注釈民事再生法」（共著）（伊藤眞外編著／経済法令研究会）（2000. 11）（民事再生法の注釈書）
- ・「1問1答 民事再生の実務」（共著）（安木健外著／金融財政事情研究会）（2000. 3）（民事再生法の実務的説明書）
- ・「倒産法実務辞典」（共著）（編集代表高木新二郎外／経済法令研究会）（1999. 4）（倒産手続の実務用辞典）
- ・「倒産処理と継続的給付契約」（今中利昭還暦記念論文集／民事法研究会）（1995. 9）（継続的給付契約の倒産処理における影響についての研究）
- ・「解説実務書式体系」（30巻）「倒産編／倒産 清算 再建」（共著）（北川善太郎外監修／三省堂）（1995. 1）（倒産手続における実務書式の紹介と説明）
- ・「破産宣告と担保権」（シリーズ・倒産処理手続／債権管理』61／社団法人民事法情報センター）（1992. 4）（担保権の破産手続上の処遇についての説明）
- ・「広告活動における商標権トラブルについて」（「民事特別法の諸問題」（第3巻）関西法律特許事務所開設25周年記念論文集）（1990. 6）（広告活動におけるノベルティに用いられた標章の商標権侵害についての考察）



Law School

Professor Tetsuro Kawamoto

■ Area and Subject Taught:

Criminal Law, Criminology, Mental Health Law, Medical Law

■ Research Theme(s):

Mental Disorder and Crimes, Traffic Offences, Corporate Crimes,
Infectious Diseases and Human Rights

■ Academic Degrees: Master of Laws, Doshisha University

■ Keywords for Research Field:

Mentally Disordered Offenders, Traffic Offences,
Financial Penalties, Victimology

■ Office Phone Number: 81-75-705-1886

■ E-mail: tyfckw@cc.kyoto-su.ac.jp

[Research Overview]

In the mental disorder and crime field, I have been inquiring into what sorts of legal treatments are appropriate for mentally disordered offenders. In 2003, there was substantial progress in this area through the enactment of Medial Treatment and Supervision Act. I will continue to follow future developments in this field.

In my research on traffic offences, I have been focusing on the legal treatment of criminals. A partial revision of the Penal Code in 2001 led to the creation of provisions for Causing death or grievous bodily harm by dangerous driving. There is ongoing improvement in this area, and I will continue to follow overall criminal policy concerning traffic offences.

In France, criminal law was revised in 1992, whereby a provision was set out to punish companies that commit crimes. While referring to this, I have been considering how punishment of companies should be handled in Japan. In this field, I want to continue my research while focusing primarily on criminal sanctions against companies and organized crime.

In the field of medical law, I plan to do research on infectious diseases and human rights, with a focus on the protection of human rights particularly in the case of new-type influenza pandemics.

[Notable Publications and Works]

- 1) 「死刑存廃論を巡る最近の動向」産大法学42巻3号(2008年)
- 2) 「交通刑事政策」前野育三先生古稀祝賀論文集『刑事政策学の体系』(2008年)
- 3) 「イギリスの新しい精神保健法」産大法学41巻4号(2008年)
- 4) 「新型インフルエンザ対策と人権」産大法学41巻4号(2008年)
- 5) 「我が国における刑事政策の動向」産大法学41巻3号(2007年)
- 6) 翻訳「ヘレン・リーブス『ヨーロッパにおける犯罪被害者支援の現状と課題』」産大法学41巻3号(2007年)
- 7) 座談会「触法精神障害者のアセスメントと治療」臨床精神医学36巻9号(2007年)
- 8) 共著・分担執筆 大谷實編「法学講義刑法1総論」(悠々社・2007年)
- 9) 「精神障害と死刑」産大法学40巻3・4号(2007年)
- 10) 「薬物犯罪者の処遇」同志社法学57巻6号(2006年)
- 11) 「性犯罪者処遇の動向」警察政策8巻(2006年)
- 12) 「罰金刑の執行について」犯罪と非行143号(2005年)
- 13) 「交通犯罪の被害者」被害者学研究15号(2005年)
- 14) 「交通犯罪者の処遇」刑法雑誌44巻3号(2005年)
- 15) 「性犯罪者の処遇」法学新報112巻1・2号(2005年)
- 16) 「強制システムのこれから」ジュリスト増刊「精神医療と心神喪失者等医療観察法」(2004年)
- 17) 「精神医療と犯罪者処遇」(成文堂、2002年)
- 18) 「法人に対する制裁」刑法雑誌41巻1号(2001年)



Law School

Associate Professor Makoto Sato

- Area and Subject Taught: Commercial Code, Corporation Law
- Research Theme(s):
Governance at Corporate Groups
- Academic Degrees: Doctor of Laws, Kyushu University
- Keywords for Research Field:
Commercial Code, Companies Act, Governance, Compliance,
Corporate Groups
- E-mail: makotos@cc.kyoto-su.ac.jp

[Research Overview]

Stock corporations play an extremely important role in economic society. Among them, independent corporations are legally regulated as the ideal type by most of the provisions of the Corporation Law. However, most stock corporations that are relatively large in size are combined with one another through holding of stocks, forming larger corporate groups. As a result, different legal regulations are needed that apply separate corporate governance for independent corporations and for corporate groups. Conventional theory of Companies Act, however, does not properly address the meaning of corporate control, so that unified legal regulations on corporate groups have been inadequate.

My research theme is the systematic design of corporate governance for corporate groups by establishing a theory that includes adequate legal measures for governance that centers capital majority decisions in stock corporations. I seek to balance both improvements in efficiency of management and legal appropriateness of corporate governance in corporate groups by trying to gain a firm legal understanding of the combined statuses of corporations.

[Notable Publications and Works]

〈主要論文〉

- 1) 「支配株式譲渡と株式売却機会の均等ルール—その会社法への内在化の試み」
「法政研究」第61巻第1号 pp.107 ~ 149
- 2) 結合企業のガバナンス—経営の効率と支配の公正の両立の観点から—
「産大法学」第34巻第1・2号 pp.111 ~ 171 第34巻第4号 pp.212 ~ 303

〈著書等〉

- 1) 『プライマリー商法総則・商行為法（第2版）』2006年4月、法律文化社
第2編第3章「商号」を担当執筆
- 2) 『プライマリー新・会社法』2006年5月、法律文化社
第3編第8章「定款の変更・事業の譲渡等」、第6編「組織再編行為」を担当執筆
- 3) 「法学セミナー」2006年9月号の特集「学修力錬成法」における思考法編（商法問題）を担当



Law School

Professor Akio Shinomiya

■ Area and Subject Taught:

Bankruptcy Law, Code of Civil Procedure, Legal Ethics

■ Legal Issues I am Interested in:

Bankruptcy, Competition for Control, Business Restructuring, Labor, Medical Malpractice

■ Academic Background: Faculty of Law, Kyoto University

■ Office Phone Number: 81-75-705-1964

■ E-mail: a-shinomiya@yglpc.com

[Overview of Areas of Specialization]

Bankruptcy has been the main theme in my legal profession, and I have been interested in both the practice and the legal theory of bankruptcy, regardless of whether it concerns legal bankruptcy proceedings or consensual restructuring proceedings. I served as an organizer in the bankruptcy law division of the Legislative Council of the Ministry of Justice, and on the Advisory Committee on Supreme Court Rules.

In other areas, prompted by successful counterattacks against corporate acquisitions by greenmailers and others, I have actively participated in disputes including competitions for control and business restructuring. In recent years, I have become widely involved with corporate acquisition businesses who utilize procedures for handling bankruptcies.

Because bankruptcy and restructuring share common ground with labor disputes, I have built up experience in both collective labor disputes and individual-labor-related disputes. At present, I am a member of a committee at the Osaka Labor Bureau that focuses on the Act on Promoting the Resolution of Individual Labor-Related Disputes.

In addition to the above, after considering my experience working as a judge, I accepted the job of proctor on the government's side in state liability suits, and gradually became involved in medical malpractice suits against national hospitals. At present, I engage in consulting, guidance, out-of-court settlement negotiations, litigation, and other activities as a bond lawyer at the Kinki block of the National Hospital Organization. I am also a member of the ethics committee and the clinical trial committee of the National Hospital Organization's Osaka-Minami Medical Center.

[Notable Cases and Publications]

- 1) 主な会社更生事件：フェニックス電機(株)、末野興産(株)、(株)アサヒコーポレーション、中山鋼業(株)、(株)シャロン、マイカル(株)、マイカル九州(株)、世界長(株)その他
- 2) 主な民事再生事件：大興リース(株)、(株)酒井鉄工所、協同組合松江ショッピングプラザ、(株)万松楼その他
- 3) その他主な倒産事件：和歌山県土地開発公社特定調停申立代理人、不動信用金庫清算人
- 4) 支配争奪事件：(株)タクマとコスモポリタン(株)との増資差止仮処分事件、増資無効訴訟
- 5) 編著書：1問1答シリーズ・新版民事再生の実務、個人債務者再生の実務、会社更生の実務、新版破産法大改正の実務（経済法令研究会）、書式シリーズ・商事非訟の実務、新会社更生の理論・実務と書式、新破産法の理論・実務と書式、最新事業再編の理論・実務と論点（民事法研究会）、企業再生のための法的整理の実務（金融財政事情研究会）、詳細民事再生法（民事法研究会）



Law School

Professor Hidehiro Takashima

■ Area and Subject Taught:

Civil Code, Legal Information Science, Medical Law,
Bioethics and Law

■ Research Theme(s):

Liability structure in Contract Law,
Effects of Advance Medical Care on Law

■ Academic Degrees: Master of Laws, Doshisha University

■ Keywords for Research Field:

Civil Code, Contracts, Torts, Medical Law, Bioethics

■ Office Phone Number: 81-75-705-1821

■ E-mail: takasima@cc.kyoto-su.ac.jp

[Research Overview]

I specialize in what would be called civil law by the university, particularly in contract law and tort law, which constitute the core of the claims-related part of the civil law. I also focus on "medical law," which addresses legal problems such as doctors' obligations and legal regulations on advanced medical care. My main theme in the area of civil law is the theory of consequential obligations in contract-related issues.

[Notable Publications and Works]

- 1) 「ステップ方式」による不動産取引勧誘行為」消費者取引判例百選（1995年）
- 2) 「非配偶者間の体外受精における配偶子提供契約の問題点」法律のひろば51巻9号（1998年）
- 3) 「“Berufshaftung in Japan”（日本における専門家責任）」フライブルク大学法学部紀要“Recht in Japan” 11号（1998年）
- 4) 「民事上の詐欺の違法性に関する一考察」『石田古稀記念論文集』所収（成文堂、2000年）
- 5) 「レクチャー消費者法（第2版）」〔共著〕（2001年、法律文化社）
- 6) 「日本における生殖補助医療の現状と法的対応」『遺伝子工学時代における生命倫理と法』所収（日本評論社、2003年）
- 7) 『医事法判例百選』〔共著〕（2006年、有斐閣）
- 8) 新・キーワード民法〔共著〕（2007年、法律文化社）



Law School

Professor Masatoshi Takahashi

■ Area and Subject Taught: Constitution

■ Legal Issues I am Interested in:

Security of Property Rights, Revision of the Constitution

■ Academic Background:

Master of Laws, Tohoku University Graduate School of Law,

Public Law and Policy

■ Keywords for Research Field:

Constitution, Property Rights, Formation of Lawful Property Rights Contents, Revision of the Constitution

■ Office Phone Number: Ext. 3441

■ E-mail: k4354@cc.kyoto-su.ac.jp

[Overview of Areas of Specialization]

The relationship between a nation and the people is my field of specialization (or rather, the area of research I am interested in). Although it is somewhat abstract, governance structure theory (what sort of governing structure should be made and how it should reflect the ideas of the people it governs) and basic human rights theory (what sorts of rights and liberties should be secured for the people) in the Constitution are running on an "operating system," or "OS", based on the relationship between the state and the people. Basic human rights are not the rights and liberties derived from God (even though it is so stated in France's Declaration of the Rights of Man and of the Citizen). They are not natural rights that precede or transcend the nation, even they are still thought to be so by some people today. They are the rights that are addressed by and written in the constitution, that provide people with appropriate statuses and roles. I am interested in the creation and revision process of constitutions, which are human products.

Why are basic human rights, which are no more than products of a constitution, important for people? Why are people made to obey these rights by telling other people things that are sometimes hard to believe, such as claiming that such human rights were created by God or that they existed prior to the establishment of the nation? In pursuit of such topics, I have been engaged in research on property rights, which are often thought to be the least valuable basic human rights.

[Notable Publications and Works]

著書

- 1) 初宿正典・大沢秀介・高橋正俊・常本照樹・高井裕之著『目で見る憲法』(3版 平成11年・有斐閣) ビジュアル憲法教科書の決定版。
- 2) 初宿正典・高橋正俊・米沢広一・棟居快行著『いちばんやさしい憲法入門』(3版 平成19年・有斐閣) 教養の憲法ゼミ定番入門書。
- 3) 佐藤幸治・初宿正典・大石眞編『憲法五十年の展望 I』(平成10年・有斐閣) 担当は「第二章 憲法の制定とその運用」憲法制定50周年の記念出版物。
- 4) 佐藤幸治編著・中山勲・釜田泰介・阪本昌成・高橋正俊・山口和秀著『憲法Ⅱ 基本的人権』(成文堂・昭和63年) 担当は第二編第二章経済活動の自由と、第二編第三章人身の自由。大学講義双書。

主要論文

- 1) 「国民の精神的統合」公法研究70号(平成20年)
- 2) 「日本国憲法改正規定の背景」香川法学第21巻第3・4号(平成14年)
- 3) 「憲法改正のための 国民投票について」比較憲法学研究第13号(平成12年)
- 4) 「法実証主義的自然権説について」香川法学第21巻第3・4号(平成14年)



Law School

Professor Akitoshi Tanaka

■ Area and Subject Taught:

Legal Ethics, General Civil Affairs Practice I, Code of Civil Procedure Practice II, Externships

■ Legal Issues I am Interested in:

Finance, Disputes over Development and Construction, Company Management Issues, the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors, Administration-related Cases

■ Academic Background:

Division of Legal Affairs, Kanazawa University Law School

■ Office Phone Number: 81-75-705-1965

■ E-mail: sakin@pop01.odn.ne.jp

[Overview of Areas of Specialization]

My specializations include finance (areas such as banking), public organization, construction disputes, delays in payments to subcontractors, bankruptcy processes, and land disputes.

[Notable Cases and Publications]

1. 損害賠償請求事件 大阪高等裁判所判決（昭和52年（ネ）第1837号）外国人と日本人が関与した平家物語の英訳作業において、原典を理解する能力のない右外国人が右物語の英訳文の約半分について校訂、ごちなさの除去等の作業をした場合につき、右外国人は「英訳平家物語」の共同著作権を有するとした事例
無体財産権関係民事・行政裁判例集12巻1号266頁
2. 法人税更正処分取消請求事件 最高裁判所第3小法廷（昭和57年（行ツ）第62号）青色申告書による法人税の申告についてした更正処分の取消訴訟において課税庁が更正の理由と異なる事実を主張することができるとされた事例
最高裁判所民事判例集35巻5号901頁
3. 否認権行使請求事件 京都地方裁判所判決（昭和55年（ワ）第1057号）会社更正手続開始の申立ての11日前に取引銀行にした割引手形の買戻しおよび買戻債務の弁済が管財人よる否認権行使の対象になるとされた事例
判例時報1059号143頁、金融法務事情1047号47頁
4. 会社更生法管財人事件（京都地方裁判所昭和60年（ミ）第1号）（更正会社サンワールド）
5. 名誉毀損、損害賠償請求事件
京都地方裁判所判決（平成13年（ワ）第1269号）自民党の元幹事長で衆議院議員が、雑誌に市営地下鉄の建設工事に関し利得を得た旨の記事を掲載され名誉を毀損されたとして、編集兼発行人及び発刊会社に対して求めた損害賠償請求が認容された事例
判例時報1799号135頁
6. 執行停止申立事件
大阪地方裁判所決定（平成14年（行ク）第37号）近畿整備局長（国土交通省）のなした建築確認会社に対する業務停止処分の執行停止決定がなされた事例
7. これからの弁護士の進む道 訴訟から非訟へ、裁判所から裁判所外へ、門前市から市民のなかへ（産大法学）



Law School

Associate Professor **Shigeki Nakayama**

- Area and Subject Taught: Constitutional Law
- Research Theme(s):
Law and Bioethics
- Academic Degrees: LL.M., Kyoto University
- Keywords for Research Field: Constitutional Law, Bioethics, Rights

[Research Overview]

- ・ Ethical, legal and social issues (ELSI) on medical research and technology
- ・ Constitutional limits of governmental regulations on medical care and research
- ・ Constitutional process of social decision-making about science and technology

[Notable Publications and Works]

- 1) 『憲法Cases and Materials 人権・基礎編』『展開編』『憲法訴訟』(2005・2007年、有斐閣)(初宿正典らとの共著)
- 2) 「科学技術と民主主義—憲法学から見た『市民参加』論」初宿正典ほか編『佐藤幸治先生古稀記念論文集 国民主権と法の支配 上』(2008年、成文堂) 79頁
- 3) 「生体移植と『患者の自己決定権』」法律時報79巻10号20頁(2007年)
- 4) 「人体の一部を採取する要件としての本人の自己決定—憲法上の生命・身体に対する権利の視点から」産大法学40巻3・4号71頁(2007年)
- 5) 「法における『尊厳死』の捉え方」思想976号62頁(2005年)
- 6) 「子どもからの脳死臓器移植とドナーの保護」年報医事法学20号79頁(2005年)
- 7) 「共に生きるということ--生命倫理政策と立憲主義」山崎喜代子編『生命の倫理--その規範を動かすもの』(2004年、九州大学出版会) 第六章



Law School

Professor Hiroshi Nonoyama

■ Area and Subject Taught:

Code of Civil Procedure, Civil Code, Consumer Law, Lawyering Clinic

■ Legal Issues I am Interested in:

Issues in Civil Procedure Practice, New Settlement Methods and Systems in Civil Disputes (Especially Class Action Systems), Consumer-Related Issues and Consumer Law

■ Academic Background: Faculty of Law, Kyoto University

■ Office Phone Number: 81-75-705-1967

[Overview of Areas of Specialization]

- (1) I was registered as a lawyer in April 1982, and have been engaging in dispute settlements and civil and criminal cases ever since. Due to my experience as a lawyer, I am interested in comprehensive operation of civil substantive law and civil proceedings law in dispute settlement practice, and in actual conditions of criminal law and criminal proceedings law in criminal procedure practice.
- (2) From the time I first registered as a lawyer, I have been involved in large-scale, consumer-related damages cases, such as the Toyota Shoji case and reikan shoho cases (damages caused by emotionally manipulative sales techniques). I have taken part in lawsuits related to consumer cases, revisions of consumer laws, and enactments of new laws from the consumer side. Using these experiences, I am making it my lifework to research consumer-related issues and legal systems, as well as advise on improvement of legal systems, laws and regulations.
In recent years, I have been engaged in the study of, and advising on the operation and revision of, the Consumer Contract Act, as well as the operation and expansion of applications of consumer class action systems.

[Notable Cases and Publications]

1) 原状回復条項無効事件

京都地裁平成16年3月16日 大阪高裁平成16年12月17日
建物賃貸借契約における過度な原状回復条項が消費者契約法10条により無効とされたリーディングケース判決

2) 日興証券損失補填株主代表訴訟差戻事件

最高裁平成12年10月10日 東京高裁平成11年2月23日
取締役が行った損失補填行為が法令違反となり会社に対する損害賠償の対象となるかが争われた事件



Law School

Professor Toshiya Bando

- Area and Subject Taught: Consumer Law, Civil Code
- Research Theme(s):
Contract Law from the Consumer's Viewpoint,
Ideal Consumer Policy for the 21st Century
- Academic Degrees: Master of Laws, Ryukoku University
- Keywords for Research Field:
Civil Code, Consumer Law, Consumer Policy
- Office Phone Number: 81-75-705-1883
- E-mail: tbando@cc.kyoto-su.ac.jp

[Research Overview]

Two kinds of persons are included in the Civil Code of Japan: a "natural" person and a legal person. These two persons are considered to be entities with equal legal rights. Even though this basic idea exists, I question if are people really equal in a real-life trading society. The provisions setting forth these purposes in the Consumer Contract Act, enacted in April 2001, admit that there are differences in the quality and quantity of information as well as negotiation power between business bodies and individual consumers. At present, the laws and policies concerning consumers in Japan are in the process of rapid change. The report "Ideal Consumer Policy for the 21st Century," issued by the Social Policy Council in May 2003, advocates changing the interpretation of "consumers" from entities receiving protection to entities with legal rights. However, even if they are granted these rights, such rights may not be of practical use without adequate consideration of differences in quality and quantity of information. As central players in the market, it is imperative for us to improve the laws and systems in place for consumers so they can exercise their rights, and so our society can meet the requirements of the 21st century. My job, simply put, involves organizing the issues based on the Civil Code, explaining them using easy-to-understand expressions, and examining them with consumers.

[Notable Publications and Works]

- 1) 「実践消費者法第1講、第2講、第9講、第10講、第11講、第12講、第13講、第15講、第18講、第23講」法学教室（有斐閣）307号・308号・315号・316号・317号・318号・319号・321号・324号・329号（2007～2008年）。消費者法の現場の視点から解説した連載原稿。
- 2) 共著『レクチャー消費者法第4版』法律文化社（2008年2月）。消費者法の基本的教科書。
- 3) 共著『消費者から見たコンプライアンス経営』商事法務（2007年1月）。企業のコンプライアンス経営に消費者を位置づける必要性を多角的に検討。
- 4) 「21世紀型消費者政策が考える企業と消費者の関係－消費者の信頼確保のために企業が果たすべき責務」季刊家計経済研究65号（2005年1月）。消費者基本法を中心とする法制度の意義を論じたもの。
- 5) 共著『〈新版〉資料で学ぶ財産法』（2003年5月）。財産法を資料に基づいて解説する学部学生向け教科書。



Law School

Professor Setsuo Hiyama

■ Area and Subject Taught: Administrative Law

■ Research Theme(s):

1. Collaborative Administrative Law, Environmental Law and the Local Autonomy Act
2. Legal Theory and Strategies for Conservation and Revitalization for Villages

■ Academic Degrees: Master of Laws, Kobe University

■ Keywords for Research Field:

Good Governance, Sustainable Society, Participation in the Collaborative Principle and Villages

■ Office Phone Number: 81-75-705-2960

■ E-mail: setu@cc.kyoto-su.ac.jp

[Research Overview]

Since the Earth Summit held in Rio de Janeiro in 1992, recognition of the necessity to create a sustainable society has been gradually growing around the world. However, there is an increasing amount of data indicating the worsening of global warming, and many countries are facing problems of widening social disparities and declining birthrates. There are a variety of factors hindering the establishment of a sustainable society, including political thought, concrete legal systems and their interpretations. Through my research, which encompasses collaborative principle in administrative law and the development of the collaborative principle in environmental law and Local Autonomy Act, I intend to clarify legal policy and interpretation theory leading to the building of sustainable society in these legal areas. Research topics covered include administrative organizations, administrative operations, administrative remedies, environment-related law and policy, and law and policy relating to local government.

[Notable Publications and Works]

1. 「わが国における協働主義行政法の成立可能性と射程」『法解釈学と政策法学』所収（2005、勁草書房）
2. 「米国における民営化と政府固有機能」『民営化と公共性の確保』原野翹先生還暦記念所収（2003、法律文化社）
3. 「政府再生手法としての電子政府」情報通信学会誌・58（1998年）
4. 「アメリカ合衆国規則制定協議法逐条論点解説—共生の時代における合意形成の試み—」大阪経済法科大学法学論集34号（1995）
5. 「アメリカ合衆国規則制定協議法制定の経緯とその意義」大阪経済法科大学法学論集35号（1995）



Law School

Professor Ichiro Fujioka

■ Area and Subject Taught: Criminal Law, Criminology, Juvenile Law

■ Research Theme(s):

Interdisciplinary Issues on Theory of Responsibility under Criminal Law and Criminology

Avoidance of Becoming an Assailant/Victim and Creation of Standards of Behavior

■ Academic Background: Master of Laws, Doshisha University

■ Keywords for Research Field:

Prevention of Crimes, Crime Victims, Creation of Standards of Behavior, Cooperation of Different Organizations

■ Office Phone Number: 81-75-705-1885

■ E-mail: ichifuji@cc.kyoto-su.ac.jp

[Research Overview]

There are many issues related to the theory of responsibility in criminal law, but my focus of interest is currently shifting from retrospective responsibility to prospective responsibility. It has been pointed out by some that the 1990s was an age of crime prevention in Japan as in other countries; however, there were many areas related to the effectiveness of the crime prevention function of criminal sanctions that remained unclarified in the academic reports of the mid-1980s. In particular, debate over the appropriateness of the death penalty continues. In this case as well, the necessity for proactive prevention so that crimes do not occur, based on a viewpoint that measures are not limited to reactive sanctions, has been discussed in the context of the general crime prevention theory. In contrast to the theory of active general prevention in Germany, which shows a tendency toward idealism on the whole, the discussion of this issue in Britain and the United States has placed the emphasis on effectiveness and proceeded along conventional empirical lines. For prevention to be effective, solidly grounded preventative measures and stricter empirical measure of effectiveness are required. I am conducting research, including fieldwork, to verify the effectiveness of prevention in concrete terms.

[Notable Publications and Works]

- 1) A Case of the Proactive Crime Prevention in the Community; in "The 70th Memorial Articles of Prof. T. ATSUMI" (2006) Yuhikaku: in Japanese
- 2) The Meanings on Juvenile Law, s.25-2; 56 Doshisha L.R.6 (2005): in Japanese
- 3) Community and Crime Prevention; 34 Sandai L.R.3 (2000): in Japanese



Law School

Professor Shunji Miyama

■ Area and Subject Taught:

Intellectual Property Law (Lectures and Practice), Code of Civil Procedure (Practice)

■ Legal Issues I am Interested in:

Legal Issues in Correlations of Various Laws Related to Information as Key Words. Especially Research and Practical Handling of Unfair Competitive Cases that Have Not Been Developed in Terms of Information

■ Academic Degrees: Graduate School of Law, Chuo University

[Overview of Areas of Specialization]

I mainly deal with cases concerning violations of intellectual property rights, including patents, utility models, designs, and trademarks, as well as copyrights or the Unfair Competition Prevention Act. I also handle contracts and legal consultations related to above. In addition, I sometimes handle cases relating to broadcasting and the Antimonopoly Act.

In the process of our legal practice, we sometimes encounter cases that are undeveloped, and we cannot help groping our way to settlement. However, I am interested in those cases, and naturally requests have been increasing. Now my main work is cases related to abovementioned areas.

These days, disputes are increasing in the area of digital and networking technology. Revisions are being made to laws in these areas almost every year, litigation is being processed quickly, and case decisions worthy of attention are increasing in number. Many interesting issues are sure to appear in this field in the coming years, and it is a worthwhile area of legal practice to engage in.

[Notable Cases and Publications]

携わった事件で新聞や判例集あるいは評釈の対象となった訴訟事件は、多く、逐一あげることは差し控えさせていただきます。

最近の著書としては「著作権法要説 実務と理論」(松村信夫弁護士と共著・2009年4月世界思想社より発刊)、「ロースクール演習 知的財産法」(共著・2009年4月法学書院より発刊)があります。ここ1, 2年に限った論文には次のものがあります。「インクカートリッジ事件最高裁判決の意義と実務に与える影響」(L & T 7月号(2008年)井上周一弁護士との共同執筆)／「知的財産権侵害訴訟において秘密保持命令が発令された初めての事例—パルナパリンナトリウム原薬事件—」(知財管理 Vol.58 No.6(2008年))／「特許権の侵害警告が不正競争行為及び不法行為に該当するか否かが争われた事例」(小松陽一郎先生還暦記念論文集「最新判例知財法」〈青林書院〉)／「権利行使者が複数関与する場合の権利侵害問題」(日本弁理士会 中央知的財産研究所 研究報告第22号「複数人が関与する知的財産権侵害について」寄稿)／「部分意匠の類似〔コンパクト事件〕」(商標・意匠・不正競争判例百選 別冊ジュリスト No.188)／「商標権行使が権利濫用ではないとされ差止め請求と商標法38条1項に基づく損害額の請求が認められた事例—ジェロヴィタル事件—」(知財管理 VOL.57 No.3)／「パブリック・ドメインに帰した著作物」に関連する知的財産権法上の諸問題—公有著作物の利用をめぐる—」(コピーライト No.551) など。



Law School

Professor Hiroshi Murata

■ Area and Subject Taught: Civil Law

■ Research Theme(s):

Legal Issues Concerning the Use of Real Estate

■ Academic Degrees: Master of Laws, Doshisha University

■ Office Phone Number: 81-75-705-1878

■ E-mail: muratah@cc.kyoto-su.ac.jp

[Research Overview]

Real estate (land and buildings) is an important asset in our lives. We can obtain this kind of property by ceding it from others, and we can use it by renting it from others. In addition, it can be utilized as collateral by its owner. These uses of real estate often involve legal issues including contracts or inheritance; such legal issues are closely related to measures for effectively utilizing real estate as limited property. Holders of real estate have to consider the best way to use their property in order to obtain the maximum benefit (value) from it, and considering this, the point to keep in mind is that real estate can produce value only when it is used by people. Therefore, it is impossible to assess the value of real estate without thinking about how to utilize it. I am developing my research by considering legal issues concerning the use of real estate.

[Notable Publications and Works]

- 1) 平成21年「定期借家権の意味を再考する」法律時報81巻2号 日本評論社 定期借家制度が借地借家法の中に取り込まれて10年が経過した今、その制度がもつ法律上の意味を批判的な立場から考察を加えた。
- 2) 平成21年「「区分所有建物の敷地について」『マンション学の構築と都市法の新展開』丸山英氣先生古希記念論文集 プロGRESS 区分所有建物の敷地は、原則として区分所有者が所有する区分と一体的な取引が行われることになっているが例外的な扱いが可能であるため、その実態はさまざまな法律問題を発生させる可能性を秘めていることを指摘した。
- 3) 平成20年「賃借権の目的である土地と他の土地とにまたがって建築されている建物について、借地権設定者が、借地借家法20条2項、19条3項に基づき、自ら当該建物及び賃借権の譲渡を受ける旨の申立てをすることの許否」民商法雑誌139巻1号 有斐閣 表記の事案に対して最高裁は、法律に定めがないことを理由に申立てを認めなかったが、その判断が問題の解決に至らないことを指摘した。
- 4) 平成20年「滅失の事実がないのにされた建物滅失の登記」不動産取引判例百選（第3版）有斐閣 所有者が異なる建物にそれぞれ抵当権が設定されていたが、この建物の間の隔壁を取り壊して1個の建物としそれぞれの建物部分を区分所有の目的として登記がされたために、当初の建物は滅失したとされ抵当権は消滅させられた。そこで抵当権者がこの建物は、それぞれ独立性があることを主張して争った事件に対する平成6年の際高裁判決を解説したものである。



Law School

Professor Hiromi Yamada

■ Area and Subject Taught:

Corporation Law, Securities and Exchange Act

■ Research Theme(s):

Companies Law, Regulations on Securities and Futures Trading

■ Academic Degrees: Master of Laws, Kanazawa University

■ Keywords for Research Field:

Companies Act, Commercial Code, Securities Exchange,
Commodities Exchange

■ Office Phone Number: 81-75-705-1691

[Research Overview]

I have been analyzing and doing research in legal problems relating to enterprises, especially stock corporations, by studying Commercial Code, Companies Act, Securities and Exchange Act, and Tax Acts. I attempt to clarify legal problems arising from the analysis of organizations and activities of stock corporations, trading of stocks and debentures, and the effects of corporation tax systems on corporate organizations and activities.

[Notable Publications and Works]

1) 「判例評釈」 表見支配人と営業所の実質（最判昭37・5・1）

『商法（総則・商行為）判例百選』別冊ジュリストNo.194（有斐閣）（平成20年12月）

2) 「判例評釈」ジャスダック証券取引所の上場株式の上場廃止処分の適否（東京地決平18・7・7）

『私法判例リマックス』（日評）No.36（平成20年2月）

3) 「判例評釈」証券取引における適合性原則違反と不法行為の成否（最一小判平17・7・14）

『私法判例リマックス』（日評）No.33（平成18年8月）

4) 「判例評釈」取締役会決議を経ない取引の効力 最高裁昭和40年9月22日第3小法廷判決

『会社判例百選』71（有斐閣）（平成18年4月）

5) 「現代の商法・会社法」

『現代の法学入門4版』（中央経済社）169～208頁（平成18年4月）

6) 「商品先物取引の勧誘－最近の判例－」

『商品取引所論体系12』（全商連）36頁（平成16年3月）

7) 「英国の裁判所と社会福祉－司法と社会福祉のための覚え書き－」

『21世紀の法・福祉・医療』（中央経済社）331頁（平成14年6月）

8) 「判例評釈」説明義務違反と証取法15条違反の責任 東京地裁平成12年4月26日判決

『私法判例リマックス』No.23（平成13年7月）

9) 「内部者取引と取締役の責任」

『企業の健全性と取締役の責任』438頁（有斐閣）所収（平成9年4月）

10) 「米国商品取引所法における詐欺禁止規制」産大法学30巻3・4号（平成9年2月）



Law School

Professor Nobuyuki Yamamoto

- Area and Subject Taught: Civil Code
- Research Theme(s):
Civil Code, Comparative Law
- Academic Degrees: Master of Laws, Doshisha University
- Keywords for Research Field:
Civil Code, Contracts, Torts, Damages, Guaranties
- Office Phone Number: 81-75-705-1837
- E-mail: nefyuga@cc.kyoto-su.ac.jp

[Research Overview]

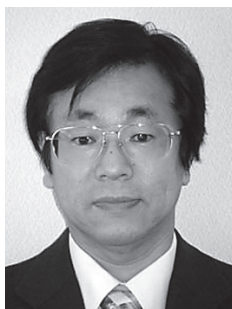
I am interested in problems arising when three or more parties are involved in debtor-creditor relationships and systems, as exemplified by indemnification and subrogation, which enable the obligations of someone to be shifted to another person. In other words, I am concerned about who will bear the final debts and what standards are referred to in determining the final debtor.

At present, as part of my research on these topics, I am analyzing from different angles the legal relationships between creditors, debtors, and guarantors (or debtors of damages security) in guaranties and guaranty insurance. In considering the legal relationship among these three parties, it is not appropriate to simply unify their legal relationships after analyzing each two-party relationship separately; the interests of all three need to be considered when analyzing two-party relationships. This research is both difficult and fascinating.

Concerning the area of compensation law, including contractual and tortious liabilities, I am researching detailed problems that have not been properly addressed. In addition, I am working with researchers of other universities in a comprehensive study of newly emerging damages problems corresponding with the development of information networks.

[Notable Publications and Works]

- 1) 「インターネット・オークション運営者の不法行為責任」民商法雑誌133巻4＝5号（2006年、有斐閣）権利侵害の不正な出品についての運営者の責任の比較法的研究
- 2) 『注釈国際統一売買法Ⅰ、Ⅱ』（共著）（2000年、2003年、法律文化社）国際取引に関する著名な条約「国連動産売買条約（ウィーン売買条約）」の詳細な研究
- 3) 「外国人の人身損害における逸失利益」信州大学法学論集創刊号（2002年）外国人の逸失利益の算定についての判例と学説の網羅的な検討にもとづく研究
- 4) 「契約の第三者保護効についての最近の議論と展望」『石田喜久夫先生古稀記念論文集』（2000年、成文堂）契約責任が当事者でない第三者に生じた損害にも及ぶかの研究



Law School

Professor Jiro Yukawa

■ Area and Subject Taught:

Public Law Practice, Local Autonomy Act

■ Research Theme(s):

Administrative Litigation, State Compensation Cases

■ Academic Degrees: Faculty of Law, Tokyo University

■ Keywords for Research Field:

Administrative Litigation, Discretion Control

■ E-mail: yukawa@nsknet.or.jp

[Research Overview]

In a modern nation, a variety of administrative entities, including national and local public authorities as well as others, are connected in some way to civic society. People are inevitably interested in activities by such entities and the results of their actions, and disputes can sometimes occur between the administration and civic society. Methods to settle such disputes include negotiations, filing of complaints, administrative appeals and litigation, civil action, claiming of state compensation, and others. Legal practitioners are required to hear facts from the parties in disputes, determine the most appropriate dispute settlement action, and implement the settlement process to bring the case to final resolution. It is important to pay attention to similarities and differences in interpretations between administrative law, and civil and criminal law. It is also important to try to settle the disputes according to the principles of administration under a rule of law that centers on human rights protection.

[Notable Cases and Publications]

- 1) 任期付大学教官再任拒否訴訟 任期付大学教官が任期満了で再任されなかった事案についての再任拒否処分取消請求、地位確認請求訴訟
- 2) 福井県カラ出張情報公開訴訟 裏金管理の帳簿・ノート類の情報公開請求につき文書不存在・決裁未了を理由としてなされた非公開決定につき最高裁で逆転勝訴した
- 3) 同住民訴訟 カラ出張による損害につき元県知事に対して損害賠償代位請求をしたところ監査請求対象が特定されていないとして1・2審で却下判決を受けたが、最高裁で特定に欠けるところはないとして地裁に差し戻され、その後差し戻審で勝訴したが、控訴審で専決権者に対する指揮監督義務違反がないとして逆転敗訴。現在上告受理申立中。
- 4) その他、情報公開訴訟、住民訴訟、土地区画整理法に基づく仮換地指定処分取消訴訟、自動車運転免許取消処分取消訴訟、廃掃法に基づく産業廃棄物処理業許可取消処分取消訴訟・一般廃棄物処理業許可取消訴訟、分限免職処分取消訴訟、ガス事業法に基づく簡易ガス事業不許可処分取消訴訟等多数



Law School

Associate Professor Yasuhiko Watanabe

- Area and Subject Taught: Civil Law
- Research Theme(s):
Legal Positioning of Marriage
- Academic Degrees: Doctor of Law
- Keywords for Research Field:
Civil Law, Family Law, Succession Law
- Office Phone Number: 81-75-705-1811
- E-mail: ywata@cc.kyoto-su.ac.jp

[Research Overview]

My research concerns the legal positioning of marriage in Europe, in reference to registration partnership systems for same-sex couples and the enactment of same-sex marriage laws. Registered partnership systems, introduced as being distinct from conventional marriage, vary from country to country. The system can be utilized by a male and female couple in some countries, it is distinguished from ordinary marriage in some cases and given the same legal status as marriage in others, and in some places same-sex marriage is legally permitted. On the other hand, adoption of these new systems is affecting conventional systems. These registered partnership systems suggest new perspectives on the legal positioning of marriage, and they are often contrasted with common-law or de facto marriage.

Further, same-sex partnership has been discussed in Europe in terms of its positioning in constitutions as well as in civil law. I intend to consider its positioning in constitutions from the viewpoint of civil law and substantive law.

I feel that even common, everyday matters are quite difficult to understand when examined more closely.

[Notable Publications and Works]

「憲法と婚姻保護－性同一性障害者の性別変更要件をもとに－」同志社法学332号

既婚者である性同一性障害者の性別変更が認められるべきかをもとにドイツ憲法裁判所決定を参考にし、憲法における婚姻保護について考察する。

「ドイツ生活パートナーシップ法の概観 (1) (2・完)」東北学院法学65号、66号

『婚外関係の多様化と法的保護のあり方 - 自己決定と法の論理』北海道大学法学研究科「魅力ある大学教育」イニシアティブ研究推進ボード (共著)。

「同性カップルの法的保護」水野紀子編『ジェンダー法・政策研究叢書 第6巻 家族 - ジェンダーと自由と法』東北大学出版会

「ヨーロッパにおける同性カップルの法的保護」東北学院大学論集・法律学63号

「同性カップルと親子関係」東北学院大学論集・法律学63号

これらは、ヨーロッパでの同性パートナーシップ制度の立法状況とその内容をドイツ、オランダなどを中心に紹介する。