

COMPARATIVE LAW AND THE CIVIL CODE OF JAPAN (1)

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I. Introduction - The Civil Code of Japan

1. Formation of the Code and the Role of Comparative Law

(a) In Japan at the end of 1867 the ancient régime under the feudal government [Feudal Tokugawa Régime] collapsed and the modern reformation began in 1868 (Meiji Era). The new Japanese government hastily tried to establish a new unified modern country. The principle tenet of the government was the development of measures to enrich and strengthen the country. Because the country was burdened by unequal treaties which were forced on Japan by western powers during the last period of the Tokugawa régime, e.g., in 1858, Japan was compelled to unilaterally offer most-favored-nation treatment to western countries and lost the autonomy to determine customs rates and even ceded extra-territorial jurisdiction. There was also the urgent danger of loss of territorial integrity.¹

Abolishing these unequal treaties was one of the main goals of the new government, although extra-territoriality survived until 1899 and Japan did not recover customs autonomy until 1911, e.g., it survived for nearly half a century (53 years).

(b) (i) The development of modern legal codes was undertaken to open the way to amend

¹ An unequal treaty was concluded first between Japan and the U.S. and thereafter between the Netherlands, Russia, England and France in 1858. Before this commercial treaty, in 1854 Japan concluded a treaty of friendship with the U.S., then England, the Netherlands and Russia. The latter treaties ended the Japanese isolation policy dating from the 17th century. The treaties with western countries were one of the reasons which caused the collapse of the Tokugawa government.

There are some Japanese texts describing the legal history of modern Japan, cf. Comments by *Arashi* on *Takigawa*, *Nihon Houseishi* [Japanese Legal History], 1928 (1985), II p.281; *Ishii*, *Houseishi* [Japanese Legal History], 1964, p.288; Fukushima (ed.), *Nihon kindaihou taisei no keisei* [The Formation of the Modern Japanese Legal System], II, 1982, p.193 (by Matsui).

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the unequal treaties². The first Criminal Code was enacted in 1880 (it was replaced by a new Criminal Code in 1907), the Constitution in 1889 (abolished and replaced by the new Constitution in 1947), the Civil and Criminal Procedure Code in 1890, the first Civil Code in 1890, the Civil Code in 1896 (Book 1-3) and in 1896 (Book 4-5; abolished and replaced in 1947), the first Commercial Code in 1891, the Commercial Code in 1899.

For the first drafting of the Civil Code, the model used was the French Civil Code of 1804, which was at that time the most modern and comprehensive code in western Europe. Early drafts by the Ministry of Justice were made based on the French Civil Code³. Indeed there was also a common law system in anglo-american countries, but it was only a collection of unwritten laws and acts, and was not systematically organized. The latter was not suitable as a model of code, but rather for the colonies of England, which totally accepted English law.

(ii) In 1871 the government invited as a legal adviser French Professor G. Boissonade (1825-1910), Professeur-agrégé à la Faculté de Droit de Paris⁴. Boissonade came to Japan in 1873. He and the [First] Drafting Committee of Japanese members prepared the first Criminal Code and the first (or the former) Civil Code (*Kyu-minpou*)⁵. The latter was materially only an amendment of the French Civil Code, especially in the section on the Law of Obligations and the Law of Real Rights. It adopted also the system of French Civil Code⁶. Many concepts and provisions were very similar to those in the French Civil Code⁷. The first Criminal Code had been enacted and enforced in 1883, while the first Civil Code was enacted (1890) and was to first enforce in 1893.

(iii) At that time (1889) large controversy arose among the public opinion. Conservative

² Then the Japanese customary law was to be abandoned as the basis of new legislation and completely replaced by western law.

For the time being, before the completion of the Codification, the application of the customary laws were admitted. The Dajoukan Proclamation (in the 8th year of Meiji [1875] No.103) provided in article 3 that judges should decide civil cases according to the express provisions of written law, and in case where there was no such written law, according to custom. In the absence of both written and customary laws, they were to decide according to the principles of reason and justice.

³ There are some translations of the French Civil Code at this time. Ex. *Mitsukuri, Furansu Houritsusho* [French Codes], 1871. (there are many editions. -1878, 1880, 1886/87).

ETOH Shinpei (1834-1874), the judiciary minister from 1872 to 1873 stated that it was possible to legislate a new Japanese Civil Code only by translation of French Civil Code.

The influence of modern Natural Law (e.g., the Theory of social contract by Rousseau, 1712-78) was so strong in the early period of the reformation that some people believed in the universal validity of Natural Law, which was incorporated into the French Civil Code. This situation reminds us of the German dispute between Thibaut (1772-1840) and Savigny (1779-1861) in 19th century.

At the same time, there was a kind of conflict between the English and the French academic groups of lawyers.

⁴ On the person and achievements by Boissonade, cf. *Ohkubo, Boissonade, 1977* (in Japanese).

⁵ There is a stenographic record of the [First] Drafting Committee (*Hoten chosakai, Minpou giji sokkikoku*). Boissonade wrote a commentary for his draft of the Civil Code. cf. *Boissonade, Projet de Code civil pour l'Empire du Japon, 5 vols. 1888* (rep. 1983).

Boissonade was not an official member of the Drafting Committee, but the draft produced by the Committee was not so materially different from the draft by Boissonade. There were many amendments but the amendments were not of fundamental importance.

⁶ The system of the first Civil Code is as follows. The first book is the Law of Property, the second is the Law of the Means of Acquisition of Goods, the third is the Law of Security of Obligations, the fourth is the Law of Evidence and the fifth is the Law of Persons. It is similar to the French Civil Code.

The comparison of the first Civil Code and the French Civil Code is as shown in the table in Appendix II.

⁷ In his draft Boissonade sometimes amended the provisions of the French Civil Code, adding his own opinions or the dominant opinions in French law at that time. Sometimes he also referred to the Italian Civil Code (*Codice civile*, 1865). But most of the amendments were deleted by the Drafting Committee.

professors and politicians attacked provisions of the first Civil Code, in particular, the Law of Family in the Civil Code. They opposed the each provision and the legal basis of the Code and the Code as a whole⁸.

As a result of these controversy (*Hoten-ronso*; Controversy on Civil Code Codification) the enforcement of the first Civil Code was postponed for an indefinite period (1892) in the House of Representatives and it was abolished in 1898 without being enforced⁹.

The new Civil Code was drafted without any direct influence by foreign advisers, Boissonade having left Japan in 1895. Three Japanese drafters (Prof. Ume, Tomii & Hozumi) led the discussion in the new Drafting Committee from 1893¹⁰. The three professors prepared the original draft which was to be submitted to the deliberation of the Committee.

At first sight, it appears that the Draft of the German Civil Code was the model of the new Japanese Code. There was, however, no exclusive model of the Code. The [Second] Drafting Committee consisted of about 30~50 members, including professors, judges, lawyers, officials of the Justice Ministry, and some politicians (Itoh = 1841-1909, then the Prime Minister, was its president). The Committee was concerned to maintain a sense of balance and referred to many foreign codes and laws.

E.g., the next detailed provisions in the draft were entirely cut from the Law of Means of Acquisition of Goods in the Code. *Chap.5 De l'acte judiciaire ou administratif portant expropriation pour cause d'utilité publique, Chap.6 De l'adjudication sur saisie, Chap.7 De la confiscation spéciale, Chap.8 De l'attribution directe par la loi, Chap.9 Du legs à titre particulier*, etc.

As a result, the Code became more similar to the original French Code Civil than the draft by Boissonade.

The first Civil Code sometimes seems too lengthy and looks less like a code and more like a text for students. Boissonade's draft had even more of this characteristic.

⁸ The main theme of the controversy was in the Family law. Then Hozumi, who opposed the first Civil Code, stated in his book on the new Japanese civil Code (infra. at note³¹) : "Comparing the new Japanese Civil Code with Western Codes, we observe great similarity between them in the first three Books relating to General Provision, Real Rights and Obligations respectively, but great difference in the last two, which relate to Family and Succession."

Then his commentary on the new Japanese Civil Code concentrated on the latter. (ib., pp.27-71). E.g. The Legal Position of Woman (p.27), The status of Foreigners (p.35), The House and Kinship (p.39), House-Headship and Parental Power (p.44), Relationships (p.46), The Law of Personal Registration and the Civil Code (p.50), Adoption (p.53), Succession in general (p.59), Property Succession (p.63), Succession inter vivos (p.65).

The 4th and 5th Book of the Civil Code (Family and Succession) were abolished in 1947 because of its unconstitutionality. Article 24 of the New Japanese Constitution (1947) provided as follows.: (1) Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

(2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, law shall be enacted from the standpoint of individual dignity and the essential equality of the sexes."

Also the new provision of Article 1-2 was added to the Civil Code (in 1947): "This Code shall be construed from the standpoint of the dignity of individuals and the essential equality of the sexes."

Those who opposed the first Civil Code hated the idea of the dignity of individuals and the equality of the sexes. On the Chinese doctrine of the perpetual obedience of woman to the other sex, in Hozumi's book at page 29, and on the strong house-headship and parental power, pp.39 and pp.44.

⁹ There are many Japanese texts regarding the Controversy on Civil Code Codification, cf. Arashi, op.cit.(at note¹), p.285; Ishii, op. cit. (at note¹), p.290; Fukushima (ed.), op. cit. (at note¹), II, p.313 (by Mukai).

As a result, enforcement of the first Commercial Code was suspended and only partly enforced from 1894. It was abolished in 1899.

¹⁰ There is also a stenographic record of the [Second] Drafting Committee. Ume wrote a commentary on the Civil Code. *Ume, Minpou Yogi* [The Commentary of the Civil Code], 5 vols., infra. Tomii also wrote a commentary (but only) on the General Provisions of the Civil Code etc. *Minpou Genron* [The principles of the Civil Code], 3vols., infra (at note⁴¹).

They collected more than thirty civil codes and drafts and tried to choose the best parts from the many law codes of the world in order to compile the new Code. They paid attention not only to the laws of the great powers at that time but also to the laws of small countries; even to the laws of Swiss cantons and the small principality of Montenegro. They gathered materials from precedents of England or USA.

Then the original structure of the first Civil Code, which had adopted the system of the French Civil Code, was replaced by the system contained in the first Draft of the German Civil Code¹¹, which was first published in 1888 (*Entwurf 1*) and again in 1896 (*Entwurf 2*)¹². Apparently, at the time, there was great interest in German law, although, in fact, relatively few provisions were adopted directly from German law.

(iv) The new Japanese Civil Code was enacted in 1896 (Book I-III) and 1898 (Book IV & V) and enforced in 1898¹³. During a period of about 100 years, there were many amendments to the Civil Code itself. Furthermore, many related laws which substantially amended the Civil Code were enacted during this period¹⁴. However the Japanese Civil Code enacted in 19th century (Book I-III) is in force even today. Books IV and V (The Law of Family & The Law of Succession) were totally amended after World War II (in 1947).

(c) (i) The comparative method of law has been dominant from the beginning in Japan¹⁵. The process of codification furnishes the reason, but there were also remarkable changes in the interpretation of the law. Before ca.1920 the influence of English and French law was relatively strong. For the first time the idea of liberalism was welcomed among the people, following the collapse of the Shogunate government. Among western countries England, the USA and France had the strongest contact with Japan, although the USA dropped out because of her Civil War in 1861-1865¹⁶.

Many Japanese politicians took precautions against the territorial ambitions of the foreign

¹¹ The first Book is the General Provisions, the second Book is the Law of Property (Real Rights), the third Book is the Law of Obligations, the fourth Book is the Law of Family, the fifth is the Law of Succession. (In German Code, Second Book is the Law of Obligations, Third Book is the Law of Property).

The comparison of the Code with the German Civil Code is shown in the table in Appendix III.

¹² The German Civil Code was enforced from the 1900 but some parts of the second Draft were published from 1894 and completed in 1896.

¹³ The Japanese Civil Code was translated by *Tomii et Motono, Code civil de l'Empire du Japon, 1898* (in French); *Loenholt and Terry, The Civil Code of Japan, 1906*; *The Ministry of Justice & The Codes of the Translation Committee, The Civil Code of Japan, 1980* (in English); *Lönholm, Das Bürgerliche Gesetzbuch für Japan, 1896*; *Ishikawa & Leetsch, Das japanische BGB in deutscher Sprach, 1985* (in German).

There are only minor amendments in Books 1-3 but the original Books 4-5 were abolished and replaced by a new Books in 1947. Books 4-5 were outdated because they contained many conservative provisions that conflicted with the new Constitution of 1947.

¹⁴ It is characteristic in Japan that many amendments were often made not directly by an amendment of the Civil Code itself but by the addition of new minor laws.

E.g., the provisions on the restrictions on usury are not contained in the provisions on money-lending in the Civil Code, but in an independent Usury Law. Also the protection of tenants is not provided by provisions on leases in the Civil Code, but in the *Rented House Law* and the *Rented Land Law*. Cf. *Yoshimi, On the Protection of Tenants in Japan, in the Hitotsubashi Journal of Law & Politics, vol.1, 1960, p.54-68*, in English.

¹⁵ Then Hozumi, one of the main members of the Committee pointed out that the Japanese Civil Code was a fruit of comparative jurisprudence. *infra.* (at note³¹), p.11 & pp.14.

¹⁶ It was the USA which first compelled Japan to open relationships with (new) western countries in 1857. cf. *supra.* (at note¹).

In the Tokugawa period the Netherlands was the only western country which had official diplomatic relations with Japan. Before ca. 1850 European ideas came via Netherlands were translated from Dutch texts. After that time the Dutch status were replaced by those of England, the USA and France.

countries and also against the liberalism contained in English and French thoughts and ideas. In 1871 Germany, under Bismarck defeated France, led by Napoléon II. The change of political power in Europe also influenced the reception of science in Japan. In addition, Germany, also a newcomer, had never had the chance to pursue territorial ambitions in Japan.

There were other reasons why German science was readily accepted. At that time Germany was in its golden development stage. In contrast, Germany was a relatively underdeveloped society in western Europe. It could serve as a good model for underdeveloped Japan. Moreover Germany had a conservative tendency in thought, which was preferable for the conservative politicians in Japan. The former Imperial-Constitution was strongly influenced by German law¹⁷.

The Civil Code was also influenced by English and French law. The role of German law in this process seems relatively small during this first period.

(ii) After 1920, however, the influence of German law increased. Even the provisions which had their origins in French or English law were interpreted using German concepts. Academic doctrines especially were strongly influenced by German doctrines. As a result there were more rules which were influenced by German law than appears from the texts of the provisions of the Code. This phenomena is called the reception of foreign law by academic doctrine (not by legislation)¹⁸.

(iii) The author observes same phenomenon in Europe, e.g., in Austrian law. The Civil Code of Austria (*ABGB, Allgemeines Bürgerliches Gesetzbuch*), which was enacted in 1804 under the influence of modern Natural law, was interpreted in accordance with Pandectistic of the German law in the 19th century¹⁹. It is still under the influence of German law, although the Code preserves its original form. The reception of the law by academic doctrine in Japan was done on a large scale as in the case in Austrian law. In this process even provisions which had French or English origins were interpreted using German doctrines.

The Netherlands also compelled unequal treaties on Japan at the end of the Tokugawa period (in 1858; op. cit., at note¹). The first equal treaty between Japan and a western country was concluded with Mexico in 1888 (between China in 1871). cf. Kunimoto, *Encyclopedia* (Heibonsha), Vol.14 (1985), p.767. Japan forced an unequal treaty on Korea in 1876.

¹⁷ Itoh, who was a leader of the government after 1881, chose as the model for the constitution that of Prussia, which allowed the monarchy greater power. He received advice from Gneist (1816-95) in Berlin and Stein (1815-90) in Vienna; both conservative scholars. The process of drafting was not made public and it was prepared in the Privy Council as an advisory organ of the Emperor, with Itoh acting as president. The Imperial-Constitution was published by the Emperor in 1889. Regarding the former Japanese Imperial Constitution, there are comments in every Japanese text on the Constitution. Itoh himself wrote a short commentary on the Imperial Constitution (*Kenpou gikai*), 1889 (1940 ed. by Miyazawa & Comment).

¹⁸ Kitagawa, *Nihon hogaku no rekishi to riron* [The History and the Doctrine in Japanese Jurisprudence], 1968, p.125.

The acception of Roman Law in medieval Europe (*Rezeption*), especially in Germany, was an acception by doctrine (*Professorenrecht*), as in medieval Germany (The Holy Roman Empire, 962-1806. Substantially before 1648, Westpfalia Treaty) there was no central power to introduce new legislation. The acception of foreign law was made by the initiative of doctrine in accordance with the demand of practice. The law of obligations, especially law of transactions, which had been lacking from traditional customary German law, was introduced through Roman Law.

Vgl. Wieacker, *Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung*, 1967. S.97ff.

¹⁹ In Germany, there existed the hidden Natural Law (e.g., in the interpretation of *ALR, Allgemeines Landrecht für die Preussischen Staaten*, 1794) even in Pandectistic period. Vgl. Koschaker, *Europa und das römische Recht*, 1947 (1966), S.275ff.

There were also separations of doctrine and practice in two ways. First, decisions by the courts, which were established in the early Meiji period, maintained the original French interpretation. Academic doctrines sometimes took an opposite position from the decisions of the courts. They strongly criticized the use of precedents, e.g. transfer of estates (*infra*. IV).

Secondly, positive laws with western origins were not in accordance with customary, or traditional Japanese laws²⁰. In this case there occurred in practice some *de facto* transformations of the positive laws by the latter²¹.

2. Profiles of the Three Drafters of the Japanese Civil Code.

(a) (i) As described above, the Japanese Civil Code was drafted without the direct influence of foreign advisers or codes. Furthermore, it was a product of compromise by the drafters. Three Japanese drafters (Professors Ume, Tomii & Hozumi) played the main roles in the Drafting Committee from 1893. Here the author would like to present the short profiles of the drafters of the Civil Code²².

The drafters of the new code were not necessarily opposed to the first Civil Code. Indeed while Tomii and Hozumi did not support the first Civil Code, Ume leaned toward it, although he did not so estimate the first Civil Code or the project led by Boissonade. He had great sympathy for the original French law.

(ii) Some other members of the Drafting Committee, as well as Ume, maintained strong opinions regarding the first Civil Code. They were mainly from the French school of law. This is especially so in the case of Dr. Mitsukuri, who had been the only translator of some foreign codes in the government and was also the translator of the draft of the Code by Boissonade (*Projets de Code civil*). He was one of the Japanese members of the Drafting Committee of the first Civil Code. He also played some part in the new Drafting Committee.

Some other members of the Drafting Committee opposed the first Civil Code. They were from the English school of law. The German section of law, whose number was small at that time. Many schools of law were represented on the Committee.

Ume was the strongest supporter of the French style of law²³. Three drafters took partial

German law in the 18th century was influenced by natural law, but later it was controlled by the *Historische Rechtsschule* (Historical Law School), which was created by Savigny in 19th century.

²⁰ This is the main theme of legal sociology. There are many Japanese texts on this theme.

²¹ Here again is the same phenomenon as was seen in western law. It is unavoidable that foreign laws are transformed by traditional laws. The author thinks they were sometimes made under the name of natural law, as was done to the Roman law by modern Natural law. Modern Natural law transformed a great deal of Roman law rules under the name of natural law, but the basis of natural law had its beginnings in traditional law or Canon law.

Cf. The author's paper, Roman Law and Canon Law, *Shougaku Ronshu*, Vol.56 no.3 pp.36. (1988), (in Japanese).

²² For the profiles of the drafters there are many Japanese texts. The author referred especially to *Mukai, "UME Kenjiro"*, in *Ushiomi and Toshitani, Nihon no hougakusha* [Japanese Scholars on Law], 1975, p.73-97; *Matsuo, "HOZUMI Nobushige"*, in the same book, p.55-73. There are also articles on Boissonade by Ohkubo, *op. cit.* (at note⁴), p.27-55 and others.

Generally, *Iwata, Nihon minpoushi* [The History of the Japanese Civil Law], 1928, p.131; Ishii, *op. cit.* (at note¹), p.291; *Hoshino, Nihon minpougakushi* [The History of the Japanese Legal Doctrines on Civil Law], *Hougaku kyoshitu*, no.8 (1981), p.42.

²³ Dr. Hijikata was also a member of the Drafting Committee and he sometimes insisted on the interpretation of and support for the first Civil Code.

charge of the drafting work, but many drafts which were prepared by Ume stemmed substantially from the concept of French law. In contrast, some drafts by Hozumi were derived clearly from the concept of English law, while Tomii's drafts were derived from French or German law.

(b) UME Kenjiro (1860–1910)²⁴

UME Kenjiro began to study law in 1880 at the Law School of the Ministry of Justice. He went to Lyons at the end of 1885, entered the University of Lyons in 1886 and took a doctorate, *docteur en droit* in 1889. His dissertation was "*La Transaction*", by which he won official commendation from the city of Lyons. He went to Berlin and studied until 1890, returning to Japan in 1891. He was a professor at Tokyo University, which was newly established and the only national university in Japan at that time. He wrote many commentaries on Commercial Law, Law of Sale (1891) and treatises on other areas (Transactions in Japanese Law, 1892)²⁵.

Among the Controversy on Civil Code Codification (Postponement Campaign) he supported the first Civil Code. But after the postponement of the operation of the first Civil Code (1892) he became one of the members of the Drafting Committee from 1893 to 1898. He played primary role in the Committee as one of the three drafting members. His speeches and proposals amounted to 3852 in the approximately 120 sessions of the Committee²⁶. The Civil Code was published in 1896 and 1898. His influence on the Code was felt not only during the legislative process but also after codification was completed. He wrote a detailed series of commentary on the Civil Code (*Minpou Yogi* [Commentary on Civil Code], 5 vols. 1896–1900), which totalled more than 3000 pages. This was the only completed series of commentary on the Civil Code by the hand of the drafters²⁷.

At the same time he played a part as a high-ranking official of the government (The Director of the Legislative Bureau of the Cabinet and the Director-general in the Ministry of Education), as well as head of a private university (*Wafutsu Horitsu Gakko*, present day *Hosei University*). He was also a legal adviser for the Japanese Governor General in Korea from 1906 to 1910. In this period he worked on Korean legislation, reformation of the judicial system and conducted research on Korean customary law. He died in Seoul in 1910²⁸.

(c) HOZUMI Nobushige (1856–1926)

(i) HOZUMI Nobushige began the study of law in 1874 in a course of study of English Law in what later become Tokyo University. He went to London in 1876, entered King's College in London University and graduated in 1879. He became a barrister at law. He then went to Berlin to study German Law and returned to Japan in 1881. He worked as a professor in the newly (in 1877) founded Tokyo University since 1882²⁹. This was also a time of

²⁴ Cf. Oka, *Meiji-minpou to Ume Kenjiro* [The Civil Code and Ume Kenjiro], *Hogaku shirin*, vol.88,4, p.3–47 (1991).

²⁵ Mukai, op. cit. (at note²²), pp.74–78. He was also a part-time lecturer at Hitotsubashi University (Yoshimi, *The Educational History of Hitotsubashi University (on Civil Law)*, 1986, p.605) (in Japanese).

²⁶ Hozumi, *Housou Yawa* [Short Stories on Law], 1926 (1980), p.321.

²⁷ *Minpou Yogi* went through more than 40 editions during his lifetime (Mukai, op. cit., p.86). There is also a newly reprinted edition in 1984. It is useful to know the intention of the drafters of each article. He also wrote in 1903–04 small book on Civil Law, *Minpou Genri Sousoku* [The Principles of Civil Law].

²⁸ Details are in Oka, op. cit., pp.21–26.

²⁹ Matsuo, op. cit., pp.55–57. Also on Hozumi, *Shiraha*, in *Hougaku-shinpou* vol.100 No.1, 1994, pp.1–47; Koyanagi, *Hozumi and the first Civil Code, Houseishi kenkyu* 31, pp.105 (1981); Katada, *Historische Rechtsschule von Hozumi, Dokkyo hougaku* No.35, pp.23. (in Japanese).

reformation of the educational system after the political reformation³⁰.

As his career shows, the doctrine of evolution which was dominant in England in the 19th century, strongly influenced him, his opinions on law were based on evolutionism. He classified five great families of law in his book on codification, namely, ① the Family of Chinese Law, ② the Family of Hindu Law, ③ the Family of Mohamedan Law, ④ the Family of English Law and ⑤ the Family of Roman Law. Later he added two others, ⑥ the Family of Germanic Law and ⑦ the Family of Slavonic Law. He classified the traditional Japanese system of law into the Chinese family³¹, and feared that this family (also the Indian and African) was in a crisis situation³². This feeling became one of the driving forces in his desire to reform Japanese law.

He agreed with the abolition of the first Civil Code in the Controversy on Civil Code Codification (Postponement Party). He made a speech for the abolition of the code in 1890 in the first Imperial Diet as a member of the upper House (the House of Peers, abolished in 1947).

(ii) The controversy began with an attack by some scholars of Tokyo University (who were in the English section or school of law of Japanese lawyers and opposed to the French section or school of law of Japanese lawyers) in 1889. His brother *Hozumi Yatsuka* (1860–1912)³³ was one of the strongest opponents of the first Civil Code. Hozumi Nobushige was also one of the members who raised the issue of national pride in calling for the new code. However, his opinion did not suggest a total exclusion of study of the foreign laws but rather

³⁰ English law had been taught in the Tokyo University since 1874. On the other hand, there was a law school attached to the Ministry of Justice, in which French Law was taught by Boissonade and other French and native teachers. In 1887, the law school of the Ministry of Justice was transferred to the University and at the same time a German Law Section was newly established, so that there came to be three sections in the College of Law (Hozumi, *infra*. (at note³¹), p.8).

Hozumi was also devoted to introduce the superiority of German Section to other Sections in the University (cf. *Nagao, Meiji hougakushino hikigeki* [The Tragedy or the Comedy in the Legal History of Meiji], Report of the Association of the Comparative Legal History, No.4, 1995, pp.1).

³¹ Hozumi, *The New Japanese Civil Code, as material for the Study of Comparative Jurisprudence*, 1904 (in English), pp.16; 2nd. & Revised ed. (*Lectures on the New Japanese Civil Code*), 1912, pp.35; Hozumi, *Ibunshu* [Collected Papers], Vol.1 (1932), pp.292. [original title, *Houritsu godaizokuno setu, Five Families of Law*, 1884]. (in Japanese).

Hozumi says, "the new Japanese Civil Code stands in a filial relation to the European systems, and with the introduction of Western civilization, the Japanese civil law passed from the Chinese Family to the Roman Family of law." (*The New Japanese Civil Code*, p.19). Or. "Within the past thirty years, Japanese law has passed from the Chinese Family of Law to the European Family". (ib. p.71).

He also says, in his book on Codification, *Hozumi, Hotenron* [*The Theory of the Codification*], 1890, pp.43–104, that the objects sought to be obtained by codification fall under one of the following four heads; namely, Pacification, Innovation, Unification and Simplification.

"Laws are often codified either to bring about a social reform, or to adjust the law to the requirements of the new state of things, which has been brought about by social reform. To this class belong most of the codes, which have been promulgated in Japan since the Restoration of 1868." (cf. *The New Japanese Civil Code*, op. cit., pp. 12).

³² Because there is a very fierce struggle for existence in the international world. He thought of this struggle as the law of the jungle or "Survival for fittest by natural selection" (Hozumi, *Ibunshu* (op. cit.), Vol.1, p.332 [original title, *Eifutsudoku hougaku hikakuron, Comparative Study on the English, French and German Law*, 1884], & pp.359 [*Banhou kiitsuron, Unification of Laws*, 1885]). (in Japanese).

³³ HOZUMI Yatsuka was a scholar on the Imperial Constitution and professor of Tokyo University. His opinion stood on the basis of the theocracy theory of the Emperor and he insisted that sovereignty rests with the Emperor. During his study abroad he was a student of Laband (1838–1918) at Strassburg. Details in *Nagao, "HOZUMI Yatsuka"*, in *Japanese Scholars on Law* (at note²²), pp.97–115.

the importance of autonomy in the legislative processes. He also proposed that it was important to publish the drafts in the process of codification and to allow many persons, not only scholars and politicians, but lawyers, economists and business men, to participate in the process, e.g., in the Drafting Committee³⁴.

After the postponement of the operation of the first Civil Code he became one of the members of the new Drafting Committee in 1893. Hozumi was not only a scholar of the English section or school but was also one of the members of the foundation-committee of the private school, Egirisu Law School (now *Chuo* University, which offered an education in English law). His influence on the Civil Code and law in general from the viewpoint of English law, is not apparent (Art.416 is the rare case).

(iii) His patron, *ITO Hirobumi* (Prime Minister 1885–88, 1892–96, 1898, 1900–1901), who oversaw the development of the former Constitution (1889–1946) influenced by the Prussian Constitution, loved the German style in every area (army, cabinet system, laws, educational system etc.). Itoh was formally a chairman of the Drafting Committee of the Civil Code. Also, Hozumi's attitude after his stay in Berlin inclined more and more toward German law. When the Civil Code was published in 1896 and 1898, he went to Europe again in 1899–1900, and he was in Berlin in 1900, during the time of the enforcement of the new German Civil Code (*BGB*). Unlike Ume and Tomii, Hozumi did not write commentary on the Civil Code. His interest was in the researching of ancient Japanese family systems and he wrote theses on this area³⁵. However, his main interest was the theory of the evolution of law³⁶.

After he retired from the University in 1912, he played a part as a member of the Japan Academy and Privy Council (founded in 1888)³⁷. In 1919 he became a primary member of the Provisional Council for new Legislation. He died in 1926³⁸.

(d) *TOMII Masaaki* (1858–1935)³⁹

(i) After graduating from a foreign language school in Tokyo, *TOMII Masaaki* studied law in France, at the University of Lyons, from 1877 and stayed there until 1883 (he took a doctorate, *docteur en droit*). He returned to Japan and became a professor at Tokyo University in 1885. France was the only country where he studied law but he sometimes held critical opinions of French law.

In the course of the Controversy on the Civil Code Codification, he was one of the members who opposed the first Civil Code, although he wrote a commentary on the first Civil Code (*Minpou Ronkou*, 1890–91). He gave speeches advocating repeal of the first Civil Code in the Upper House and Lower House in 1892⁴⁰.

³⁴ *Hotenron*, op. cit. (at note³¹), p.144. Cf. Matsuo, op. cit. (at note²²), pp.61–64.

³⁵ *Inkyoron* [The Law of Retirement from Active Life], 1891; *Ancestor-Worship and Japanese Law*, 1901, (in English); *Der Einfluss der Ahnenkultus auf das japanische Recht*, 1901, (in German). (3. *Abschnitt* of the latter, *Ahnenverehrung und Gesetz*). On the other hand, he wrote an introductory thesis on the Japanese Civil Code, *The New Japanese Civil Code*, op. cit. (at note³¹).

³⁶ *Horitsu shinkaron* [The Evolution of Law], 1924–27; *Fukushuu to horitsu* [Revenge and Law], 1931.

³⁷ *Ib.* pp.64–65.

³⁸ Other main his works are as follows. *Housou Yawa*, op. cit., (at note²⁶); *Goningumi seidoron* [The System of Joint Responsibility in Rural Districts under the Tokugawa Régime], 1921. etc.

³⁹ There are relatively few works on Tomii: Sugiyama, *Professor Tomii, His Life and Achievements*, in *Memorial Publication for Baron Tomii*, 1936, pp.63; *Hougaku-shirin*, in *Memory of the Late Prof. Tomii*, vol.37 No.11, pp.1. Recently a new work was published. *Ohkawa, Tomii and his Opinion on Legislation*, *Ritsumeikan hougaku* No.231 =232, pp.318 (1993).

(ii) Tomii held a negative attitude toward any codification. However, after the postponement of the first Civil Code he became one of the members of the Drafting Committee in 1893. In spite of his background he was not as devoted to French law as was Ume. This is reflected also in the process of the Drafting Committee. Tomii held that German law was superior to French law. He was a political conservative. In June 1903 seven professors from Tokyo University, including Tomii, insisted on war against Russia in a letter to the Cabinet. The letter had strong influence on public opinion and the war against Russia began in 1904 (it ended in 1905 with signing of a Peace-Treaty in Portsmouth, New Hampshire, USA).

After the publication of the new Civil Code in 1896 and 1898 Tomii began writing a commentary on the Civil Code (*Minpō Genron* [Principles of Civil Law], 1903–29.), which he did not complete. Only the first three volumes were written (A General Provisions on the Civil Law, Law of Real Rights, and A General Provisions on the Law of Obligations)⁴¹.

He was a director of the *Wafutsu Horitsu Gakko*, the president of Kyoto Hosei *Gakko* (the present *Ritsumeikan* University) and a member of the Japan Academy.

After he retired from Tokyo University in 1902, he was a member of the Privy Council and also head of a private university. He worked as a member of the Committee on Judicial Systems in 1919 and died in 1935⁴².

3. Profiles of the Three Ministers of Justice at the time of the Modern Codification of Japanese Laws

(a) The System of the New Government

(i) Various Ministers of Justice, as well as the three drafters of the Civil Code, played a great role in the codification of the Civil Code. The author thinks that their role had been too underestimated in the Japanese legal history. Here the author would like to present brief profiles of the first three Ministers of Justice.

During this early period, the characteristics of the ministers influenced the work of codification (1868–1892, especially before 1883. In 1889 the Controversy regarding Civil Code Codification began). Because there was neither professors of western law nor professional lawyers in Japan at that time (after 1880s many Japanese professors educated in Europe returned to Japan). We rarely see this phenomenon in modern organizations (ministries or universities).

(ii) The new government, which succeeded the Shogunate-government after 1868, established a *Dajoukan* [Grand Council of State]-system⁴³. The new government aimed to replace the ancient feudal structures. However the newly-founded system of the government concentrated all political power in the *Dajoukan* (a primitive form of cabinet, but different

⁴⁰ His speech in the Upper House in 1892 is extracted in the Memorial Publication for Baron Tomii, pp.154 (cf. *supra.* at note³⁹).

⁴¹ Vol.1 is on the General Provisions of the Civil Code, vol.2 is on the Law of Real Rights and vol.3 is on the General Provisions of the Obligations which treats only small part of the General Provisions of the Obligations.

He co-authored a French translation of the Japanese Civil Code. *Tomii et Motono, Code civil de l'Empire du Japon (Livres I, II & III), 1898.*

⁴² He also wrote a commentary on the Criminal Law (*Keihou Ronkou*, 1889).

⁴³ The model of *Dajoukan* was the ancient system in 8th century (*Dajoukan* system). It continued about 3 centuries. *Dajoukan* after 1868 is called *Dajoukan*. cf. *Wada, Kanshoku youkai* [Commentary on the Names of the Ancient Governmental Posts], 1925 (1983), p.29, p.32, p.50.

from the modern Cabinet system, in that the Prime Minister had no power to initiate the work of cabinet. Sometimes there was no *Dajou-daijin*. The cabinet was managed by consultation among ministers, or sometimes by the balance of power).

Under the system of 1869 Dajoukan Council was organized by the Dajou-daijin [Prime-minister], *Sadaijin* [the second (left) minister], *Udaijin* [the third (right) minister] and other ministers (*Sangi*, lords or members of the cabinet).

Because there was no established ministries in the government, these ministers (*Sangi*) had no particular positions in certain ministries. Government orders were issued en bloc from the Dajoukan to the lower ranking offices (6 ministries -the ministry of Foreign Affairs, Treasury, Military, Criminal Affairs, Civil Affairs, Imperial Household Agency). There was also a *Jingikan* [Grand Council of Priest] which had nominally equal power to the Dajoukan and was concerned with non-worldly affairs. On the other hand, Dajoukan was concerned with worldly affairs. There existed neither a Diet nor courts. There was no separation of the three powers⁴⁴.

(iii) In 1871 the Left-House was established in order to handle legislative affairs. This was only an advisory organ whose members were appointed by the Dajoukan and was far from being a parliament chosen by the people. The Dajoukan was not only the executive department but also the legislature (On the court system, cf. (b) (iii)).

The Right-House was also established in order to handle administrative affairs. Both Houses were under the control of the Dajoukan. In the Right-House eight ministries were re-established, the ministry of Religion (*Jingishou*, the position of the *Jingikan* was abolished), Foreign Affairs, Treasury, Military, Education, Construction, Justice, and the Imperial Household Agency. Under this system the lords of the Dajoukan Council (*Sangi*) became in principle (but not necessarily automatically) the chiefs of the respective ministries (*Kyou*)⁴⁵.

(b) ETOH Sinpei (1834-74)

(i) *ETOH Sinpei* was a Minister of Justice for only one and a half years (1872.4-1873.10), but greatly influenced the ministry and the work of modern codification. He was born in Saga in 1834 and served as an official in the new government from 1868. In 1871 he became Vice-minister of Education for short period (half a month), Vice-president in the Left-House, which had only advisory power on legislation at that time when Diet members were not elected. He became Minister of Justice in 1872 and insisted on the independency of the Justice. However, he was in the minority faction of the new government which was mainly controlled by regional clans from *Satsuma* and *Choushu*.

Etoh was a specialist on legislation in the new government. He prepared the *Kaitei-Ritsuryo* [Revised Criminal Code]⁴⁶ and encouraged the codification of the Civil Code. His opinion on codification at that time is very well known; "Do not worry about some mis-translations [of the Foreign Civil Code] in order to develop a New [Japanese] Code." or "We can have a new Code simply by translating [French] Civil Code and applying the title

⁴⁴ Regarding the system of Dajoukan, cf. Ishii, op. cit. (at note¹), pp.263.

⁴⁵ At times the lords of Dajoukan (*Sangi*) were separated from the chiefs of these Ministries (*Kyou*). So Ohki in 1881 was a *Sangi* but had no position in any Ministry.

Under the cabinet system, the chief of each ministry had automatically become a member of the cabinet.

⁴⁶ In 1870 the government enacted a new but tentative Criminal Code, *Shinritsu-kouryou*, which codified the customary and written law of the Tokugawa régime and was not influenced by western laws.

In 1873 the government revised this code. We can already see some influence from western laws, especially French law. Cf. Ishii, op. cit. (at note¹), pp.313.

'Japanese Civil Code'.⁴⁷

He resigned in 1873 as a result of a political dispute over Seikanron (External expansionism in order to avert the *samurai* (warrior) class from their sense of dissatisfaction. Gradually after 1868 the *samurai* class lost the privileges enjoyed under the old régime and from 1874 to 1877 there were uprisings in many areas). Etoh proposed the establishment of a Diet chosen by the people, with some other members who also resigned the government in this year. However, he was an old-fashioned politician and directed a rebellion against the government in which he lost both the uprising and his life in 1874.⁴⁸

(ii) In the Dajoukan-system before 1874 the Ministry of Justice was expected to deal with other civil administration matters and the police, as well as judicial matters (A survival from the traditional system before 1868). Etoh insisted on large powers on the basis of the Ministry of Justice in the political strifes against other members of the government.

After his retreat, some of the power of the Ministry of Justice was transferred to other ministries. The newly established Ministry of Home Affairs assumed control of police and civil administration (1873.11.10). In 1882 the Ministry of Agriculture, Forestry and Fisheries, International Trade and Industry was established⁴⁹. The Ministry of Transport, the Ministry of Post and Tele-communications, the Ministry of Health and Welfare and the Ministry of Labor did not exist at that time.

(iii) Even the court-system was concentrated in the hands of the Ministry of Justice in the early period of the new government. Districts courts in each prefecture (founded in 1871) were set under the jurisdiction of the Ministry of Justice in 1872. Lower [County] courts were set up under the jurisdiction of each district court (Dajoukan Proclamation, Meiji 5 [1873], 8, 3, No.218).

The court system under the control of Taishinin [The former supreme court before 1947] was first established in 1875 (Dajoukan Proclamation, in the 8th year of Meiji [1875], 4, 14, No.59). Judgement by administrative officials was abolished in 1877 (Dajoukan Proclamation, in the 10th year of Meiji [1877], 2, 19, No.19)⁵⁰.

(c) OHKI Takatoh (1832-99)

As with Etoh, OHKI Takatoh was born in Saga in 1832 and served as an official in the new government from 1868. He became a governor of Tokyo, Vice-Minister of Civil Affairs for about one year (1870.7-1871.7) and Minister of Civil Affairs for half a month (1871.7.14-27). The Ministry of Civil Affairs was one of the former offices of the Ministry of Justice, which was founded in 1871. At the same time Ohki was the first Minister of Education (1871.7-1873.4) under the Dajoukan system and served in the reformation of the educational system.

⁴⁷ Cf. Inoue, *The Influence of French Civil Code on Japanese Law, Works celebrating the 100th Anniversary of French Civil Code, 1905*, pp.55. (in Japanese).

⁴⁸ Cf. Concise World Chronology (Sanseido), 1976, pp.761-763. Gotou Y., *Encyclopedia*, op. cit. (at note¹⁶), Vol.2, 1984, p.590.

⁴⁹ Fukushima (ed.), op. cit. (at note¹), I, 1981, pp.93 (by Yoshii); Shindou, *Encyclopedia*, op. cit. (at note¹⁶), Vol.11 (1985), p.26; Ishizuka, *Encyclopedia*, op. cit., Vol.6 (1985), p.1103.

After World War II the Ministry of Agriculture, Forestry and Fisheries, International Trade and Industry was divided into two Ministries, ① the Ministry of Agriculture, Forestry and Fisheries and ② the Ministry of International Trade and Industry.

⁵⁰ Details in Kinoshita, M., *Ishin-kyubaku-hikakuron* [Works on the Comparison between the system under the Tokugawa régime and after the new reformation period], 1876-77 (ed. 1993), p.41, p.68 and commentaries by Miyaji, p.245, pp.264.

Under the system of Dajoukan, which was then the legislature, the Dajoukan Proclamation meant a law.

He opposed Etoh in the political *Seikanron* dispute and remained in the government after the dispute.

Ohki was a Minister of Justice for approximately 9 years (1873.10–1880.2 and 1881.10–1883.12.) in the Ohkubo administration (mainly 1873–78). During his tenure of office Boissonade came to Japan and engaged in the codification of the Draft of the first Civil Code. Except for a short period from 1880.3 to 1881.10 (TANAKA Fujimaro was the Minister of Justice during this period), Ohki held the post of Minister of Justice.

He again became Minister of Education from 1883.12 to 1885.12. He then became President of the Senior Council and President of the Privy Council. After the establishment of the modern Cabinet system in 1885 (for the first time the Cabinet was put under the control of the Prime Minister) he became Minister of Justice in the first Yamagata Cabinet (1889.12–1891.5) and Minister of Education in the first Matsukata Cabinet (1891.5–1892.7).⁵¹

(d) YAMADA Akiyoshi (1844–92)

(i) YAMADA Akiyoshi was originally a military officer who became a vice-secretary of the Military Ministry in 1868 and a major general. He was one of the directors in the Iwakura Mission to Europe and America (from 1871.11–1873.9). After the Mission he became an ambassador plenipotentiary to China. He also served in putting down the uprising by Etoh in Saga as a Vice-minister of Justice (1874.7–1879.9). He worked as a brigade commander and a lieutenant general in the uprising by a politician in the *Seikanron* dispute of in 1877, which was directly caused by the abolition of pensions to the *samurai* class and the banning of the privilege of wearing swords. He was a Minister of Construction in 1879.9–1880.2 and a Minister of Home Affairs in 1881.10–1883.12.⁵²

(ii) During this period he worked as a member of the Drafting Committee of the Codification of the Criminal Code. After 1883 he became Minister of Justice (1883.12–1885.12). He was also the head of the Drafting Committee of the Codification of the first Civil Code. Under the Cabinet system after 1886 he was also a Minister of Justice (in the first Itoh Cabinet, 1885.12–1888.4; in the Kuroda Cabinet, 1888.4–1889.10; in the first Yamagata Cabinet, 1889.12–1891.5; in the first Matsukata Cabinet 1891.5–1892.7). He resigned the post because of illness in 1892. In 1889 he founded *Nihon Horitsu Gakkou* (now *Nihon University*) and died in 1892.

His work as a Minister of Justice totaled for approximately 9 years and as a Vice-minister of Justice about 5 years. The Controversy regarding the Codification of the Civil Code occurred during his tenure of office as Minister. He had a sense of sympathy for the first Civil Code but the enforcement of the code was suspended (1892) and at last abolished after his resignation and death (in 1898).⁵³

(e) After 1892

⁵¹ Cf. Chronology, op. cit. (at note⁴⁸), 1976, pp.761–763. Tamura S., Encyclopedia, op.cit. (at note¹⁶), Vol.2, p. 856.

⁵² Cf. Chronology, op. cit. (at note⁴⁸), 1976, pp.761–763. Gotou Y., Encyclopedia, op. cit. (at note⁴⁸), Vol.14, p. 1201.

⁵³ Because of the Controversy on the Civil Code Codification, enforcement of the first Commercial Code was also postponed in 1890. Yamada, as Minister of Justice, was against the postponement. His resignation from office was meant as a protest against the postponement and the compromise by the government, which worried about the general (but restricted) election and the first elected Diet (in 1890). (Nishikawa, Historical materials, Horitsu Jihou No.814, back of the title page (1994 May); ib., No.831 (1995 Sep.)). He was promoted in the peerage and was called the Count of Codes.

(i) After 1892 YAMAGATA Aritomo (1838–1922) and AGAWA Yoshimasa were the Ministers of Justice in the second Ihoh Cabinet (1892.8–1896.8). For most of his career Yamagata served as a military officer and was a Minister of Military (1873–78) and one of the leaders of the *Choushu* faction, which controlled the government and army with the *Satsuma* faction at that time. Yamagata organized a Cabinet twice (1889.12–1891.5 and 1898.11–1900.9) and became the chief of the general staff in the Japan-Russian War in 1904–05⁵⁴. As his career shows he had no interest in any kind of legislation.

(ii) After the first three, the Ministers of Justice no longer had strong passions for legislative acts or other judicial affairs, and they were appointed from among a group of common politicians.

In 1889 the [former, before 1947] Imperial Constitution was enacted and the first Diet elected by a restricted group of voters was convoked in 1890. The new Civil Code was also enacted in 1896 & 1898⁵⁵.

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⁵⁴ Cf. Chronology, op. cit. (at note⁴⁸), pp.761–763.

⁵⁵ The short chronological tables on the three drafters of the Civil Code and on the first three Ministers of Justice at the time of early codifications are shown in Appendix I.

This Year (1996) is the 100th anniversary of the Enactment of the first three Books of the Civil Code (Book I–III).

APPENDIX I, CHRONOLOGICAL TABLE

① Three Drafters of the Civil Code

	born	1868	study abroad	Drafting Committee	died
Ume	1860		1885-89(Lyons)-90(Berlin), 1891 Prof.	1893-96(98)	1910
Hozumi	1856		1876-79(London)-80(Berlin), 1882 Prof. 1900(Berlin)		1926
Tomii	1858		1877(Lyons)-83, 1885 Prof.		1935

○ 1896(98) Civil Code
 ▲ 1889 Controversy on the first Civil Code
 (1873-Boissonade in Japan-1895)
 △ 1890 the first Civil Code × 1892 postponed
 × 1898 abolished

② Three Ministers of Justice at the time of early Codifications

	born	1868	
Etoh	1834		1874
		1872-1873	
		M. of J. (Minister of Justice)	
Ohki	1832		1899
		1871-72 1873-80 81-83 1890 (provisional)	
		Civil A. M. of J. M. of J. M. of J.	
Yamada	1844		
		1874-79 1883-1892	
		Vice-M. M. of J.	

APPENDIX II. THE COMPARISON OF THE FIRST CIVIL CODE AND THE FRENCH CIVIL CODE

Code Civil Français, 1804

Livres 1 Des personnes

- titre 1 De la jouissance et de la privation des droit civils
- tit. 2 Des actes de l'état civil
- tit. 3 Du domicile
- tit. 4 Des absents
- tit. 5 Du mariage
- tit. 6 Du divorce
- tit. 7 De la filiation
- tit. 8 De la filiation adoptive
- tit. 9 De l'autorité parentale
- tit. 10 De la minorité, de la tutelle et de l'émancipation
- tit. 11 De la majorité et des majeurs protégés par la loi

Livres 2 Des biens et des différentes modifications de la propriété

- tit. 1 De la distinction des biens
- tit. 2 De la propriété
- tit. 3 De l'usufruit, de l'usage et de l'habitation
- tit. 4 Des servitudes ou services foncier

Livres 3 Des différentes manières dont on acquiert la propriété

Disposition générales

- tit. 3 Des contrats ou des obligations conventionnelles en général
- tit. 4 Des engagements qui se forment sans convention

- tit. 6 De la vente
- tit. 7 De l'échange
- tit. 8 Du contrat de louage

The first Japanese Civil Code, 1890

Livres 5 Des personnes

Chap. 1 De la jouissance des droit civils

- Chap. 2 Des actes de l'état civil
- Chap. 3 Du rapports de parenté
- Chap. 4 Du mariage
- Chap. 5 Du divorce
- Chap. 6 De la filiation
- Chap. 7 De la filiation adoptive
- Chap. 8 Du abandon d'adoption
- Chap. 9 De l'autorité parentale
- Chap. 10 De la tutelle
- Chap. 11 De l'émancipation
- Chap. 12 Des majeurs protégés par la loi
- Chap. 13 De l'autorité du chef de famille
- Chap. 14 Du domicile
- Chap. 15 Des absents
- Chap. 16 Du acte de l'état civil

Livres 1 Des biens

Dispositions préliminaires

Partie 1 Des droits réels

- Chap. 1 De la propriété
- Chap. 2 De l'usufruit, de l'usage et de l'habitation
- Chap. 3 Du bail, de l'emphytéose et de la superficie
- Chap. 4 De la possession
- Chap. 5 Des servitudes foncières.

Partie 2 Des droits personnels ou de créance et des obligations en général

Dispositions préliminaires

- Chap. 1 Des causes ou sources des obligations
- Chap. 2 Des effets des obligations
- Chap. 3 De l'extinction des obligations
- Chap. 4 De droit naturel

Livres 2 Des moyens d'acquérir les biens

Dispositions préliminaires

- Chap. 1 De l'occupation
- Chap. 2 De l'accession
- Chap. 3 De la perception des fruits par le possesseur de bonne foi
- Chap. 4 De la tradition
- Chap. 5 De l'acte judiciaire ou administratif portant expropriation pour cause d'utilité publique
- Chap. 6 De l'adjudication sur saisie
- Chap. 7 De la confiscation spéciale
- Chap. 8 De l'attribution directe par la loi.
- Chap. 9 Du legs à titre particulier
- Chap. 10 Des conventions et contrats innommés
- Chap. 11 De la donation entre-vifs.
- Chap. 3 De la vente
- Chap. 4 De l'échange
- Chap. 5 De la transaction

(Deleted)
cf. at note 7

×

tit. 8 bis-Du contrat de promotion immobilière	Chap. 6 De la société particulière
tit. 9 De la société	Chap. 7 Des contrats aléatoires
tit. 9 bis-Des conventions relatives à l'exercice des droit indivis	Chap. 8 Du prêt de consommation et de la rente perpétuelle
tit. 10 Du prêt	Chap. 9 Du prêt à usage
tit. 11 Du dépôt et du séquestre	Chap. 10 Du dépôt et du séquestre
tit. 12 Des contrats aléatoires	Chap. 11 Du mandat
tit. 13 Du mandat	Chap. 12 Du louage de services et d'ouvrage ou d'industrie
tit. 15 Des transactions	× Chap. 22 Du louage de bétail ou bail à cheptel
tit. 16 Du compromis	Chap. 13 Des successions
tit. 1 Des successions	Chap. 14 Des donations
tit. 2 Des donations entre vifs et des testament	Chap. 15 Du contrat de mariage
tit. 5 Du contrat de mariage et des régimes matrimoniaux	Livre 3 Des sûretés ou garanties des créances
	Dispositions préliminaires
tit. 14 Du cautionnement	Partie 1 Des sûretés ou garanties personnelles
	Chap. 1 Du cautionnement
	Chap. 2 De la solidarité entre débiteurs et entre créanciers
	Partie 2 Des sûretés réelles
tit. 17 Du nantissement	Chap. 1 Du droit de rétention
tit. 18 Des privilèges et hypothèques	Chap. 2 Du gage ou nantissement mobilier
tit. 19 De l'expropriation forcée et des ordres entre les créanciers	Chap. 3 Du nantissement immobilier
	Chap. 4 Des privilèges
	Chap. 5 Des hypothèques
	Livre 4 Des preuves et de la prescription
	Partie 1 Des preuves
	Dispositions préliminaires
	Chap. 1 De l'expérience personnelle du tribunal
	Chap. 2 Du témoignage de l'homme ou de la preuve directe
	Chap. 3 Des présomptions ou preuve indirectes
tit. 20 De la prescription et de la possession	Partie 2 De la prescription
	Chap. 1 De la nature et des applications de la prescription
	Chap. 2 De la renonciation à la prescription
	Chap. 3 De l'interruption de la prescription
	Chap. 4 De la suspension de la prescription
	Chap. 5 De la prescription acquisitive des immeubles
	Chap. 6 De la prescription acquisitive des meubles
	Chap. 7 De la prescription libératoire
	Chap. 8 De quelques prescriptions particulières

APPENDIX III. THE COMPARISON OF THE JAPANESE CIVIL CODE AND THE GERMAN CIVIL CODE

BGB, 1900

1. Buch. Allgemeiner Teil

1. Abschnitt. Personen

2. Abs. Sachen

3. Abs. Rechtsgeschäfte

4. Abs. Fristen. Termine

5. Abs. Verjährung

6. Abs. Ausübung der Rechte.

Selbstverteidigung. Selbsthilfe

7. Abs. Sicherheitsleistung

2. Buch. Recht der Schuldverhältnisse

1. Abs. Inhalt der Schuldverhältnisse

2. Abs. Schuldverhältnisse aus Verträgen

3. Abs. Erlöschen der Schuldverhältnisse

4. Abs. Übertragung der Forderung

5. Abs. Schuldübernahme

6. Abs. Mehrheit von Schuldnern und Gläubigern

7. Abs. Einzelne Schuldverhältnisse

1. Titel. Kauf. Tausch

2. Tit. Schenkung

3. Tit. Miete. Pacht

4. Tit. Leihe

5. Tit. Darlehen

6. Tit. Dienstvertrag

7. Tit. Werkvertrag und ähnliche Verträge

8. Tit. Maklervvertrag

9. Tit. Auslobung

10. Tit. Auftrag

11. Tit. Geschäftsführung ohne Auftrag

12. Tit. Verwahrung

13. Tit. Einbringung von Sachen bei Gastwirten

14. Tit. Gesellschaft

15. Tit. Gemeinschaft

16. Tit. Leibrente

17. Tit. Spiel. Wette

18. Tit. Bürgschaft

19. Tit. Vergleich

20. Tit. Schuldversprechen. Schuldanerkenntnis

21. Tit. Anweisung

22. Tit. Schuldverschreibung auf den Inhaber

23. Tit. Vorlegung von Sachen

24. Tit. Ungerechtfertigte Bereicherung

25. Tit. Unerlaubte Handlungen

3. Buch. Sachenrecht

Japanese Civil Code, 1896

Book 1 General Provisions

Chapter 1 Persons

Chap. 2 Juristic Persons

Chap. 3 Things

Chap. 4 Juristic Acts

Chap. 5 Period

Chap. 6 Prescription

Book 3 Obligations

Chap. 1 General Provisions

Sec. 1 Subject of Obligation

Sec. 2 Effect of Obligation

Sec. 5 Extinction of Obligation

Sec. 4 Assignment of Claim

Sec. 3 Obligation with Plural Parties

Chap. 2 Contracts

Sec. 1 General Provisions

Sec. 2 Gift

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