

COMPARATIVE STUDIES ON THE LAW OF PROPERTY AND OBLIGATIONS

SHUSEI ONO

(PART I)

Preface

Recently the meaning of the comparative study of law has become more and more important. Especially in the Japanese Civil Code the comparative method has been the most important method from the beginning of modern legislation (*Gesetzgebung*). The Japanese Civil Code, which was enacted in 1896 and put into force in 1898, was compiled in reference to many foreign laws. It includes not only elements of English, French and German law but also laws of many other relatively small countries. The drafters of our Civil Code paid great attention to many codes and drafts extant at that time, which was a time of the development of modern legislation.

We can see many provisions which have their origin in foreign law. The influence of foreign law can be seen in any part of the Code. The Japanese Civil Code adopted the *Pandect-system*. The first book of the Code is the General Provisions, the second is the Law of Property and the third is the Law of Obligations. The fourth is the Law of Family and the fifth is the Law of Succession. The System came from the Draft of the German Civil Code (1900), although in the Japanese Civil Code the second book is the Law of Obligations (*Obligationsrecht*) and the third is the Law of Property (*Sachenrecht*).*

The author would like to investigate the influence of foreign law in each part of the Code (from book 1 to book 3). First, in the Law of Obligations. The author examines a provision which has its origin in German law and compares its interpretation at present (infra [Part II] “Restitution and the Extinction of Rescission”).

The influence of foreign law can be seen even after the legislation of the Code. At times a new institution was adopted in place of a former one. At times an adopted institu-

* The weight and importance of the Property Law was greater than the Obligation Law at that time (it is called *the Sachsisches-System*, which was adopted by the BGB (Civil Code) of Saxony in 1865). Another system of the Code is the *Institutiones-System*, which was adopted by the French Civil Code (1804). The first book is the Law of Persons, the second the Law of Estates and Property and the third is the Law of Acquisitions of Property, which include the Law of Succession and the Law of Obligations. The Family Law is included in the first book. The *Pandect-System* is not only characteristic of the abstract part of the General Provision, but of the institution of *Juristic Act* or *Declaration of Intention*.

tion was assimilated into the law with some modifications. Secondly, in the Law of Property, the author examines the Land Law and considers the meaning of comparative study (infra [Part III] "Land Reform in Japan 1945-1951 and in the former East Germany 1945-1949").**

** This study is the result of the author's stay in Germany in 1991-92. For the general section of the Civil Code, the author is preparing a new paper ("Recent Problems in the Japanese Incompetency and Absentee Law"). It will be published in the next volume in this series.