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Earthquake and Property Law: A Historical Perspective

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There are three catastrophic events in Japan’s history – 1923 Kanto Earthquake, WWII bombing, and the 1995 Kobe Earthquake – that can be analyzed from the perspective of property law to provide ideas to facilitate the rebuilding from the disaster. Our focus is on housing-related problems.

The Kanto Earthquake in 1923 was the first major disaster in modern Japan. It hit Tokyo and killed more than 100,000 people with much of the damage caused by fires. Governmental rescue services at that time were limited. Afterwards a lot of ex-tenants in Tokyo became land squatters. Landowners filed lawsuits against them, since, in modern Japanese law, property right has been absolute. Occupants-landowner dispute was a major legal and social problem. Another obstacle to people trying to rebuild houses was that fire insurance policies said they would not cover damage from the earthquake. At that time the contract clauses have been considered to be literally binding. Japanese jurists began to have doubt about these fundamental principles: absolute power of the property right and binding power of contract. So government granted rights to squatters, having property owners build houses, and allowing squatters to rent the reconstructed houses.

During the firebombing of WWII, the vast majority of buildings, made from combustible materials, were suffered heavy destruction. Government enacted a law concerning temporary measure of lease in 1946. The law granted to squatters legal right to lease land from the landowners. The landowners had to have a just reason to exclude squatters. In squatter-property owner disputes, most court decisions, including those of the Supreme Court, came out in favor of the squatters. Necessity was the mother of the law of 1946.

After the 1995 Kobe Earthquake destructing more than 500,000 constructions, government provided common shelters to the victims and distributed them free food. People were allowed to stay for up to two years in the government built free rent housing. Government also decided to apply the law of 1946 to the Kobe Earthquake. However, as for the squatter-landowner disputes after 1995, the most court decisions were rendered in favor of the landlord. This change was supported by most legal professionals. They

argued that the increased value of land should be taken into account and that the law of 1946 was no longer needed.

The 2011 earthquake-tsunami-meltdown obviously hit some areas harder than others. In addition to common shelters and free rent housing, government has distributed 3,000,000 (\$40,000) to each family whose house was destructed; insurance has paid out over 1.2 trillion yen (16 billion dollars) in total. In Sendai area, about 23% of people who have home insurance also have earthquake insurance. Government lowered the requirements for the insurance and urged more property owners to get earthquake insurance, especially after 1995. According to the people in Sendai, the insurance companies have been, so far, rather generous in their pay outs, although there are complaints. As for the lease law of 1946, the ministry of Justice, supported by the Japanese Bar Association, said that there was no need for application. This means the existing property system will not be disturbed.

From these facts we conclude that the problem of restoration depends largely on the government rescue effort and that, if it is not sufficient, victims will react for their survival and may cause a shake even in the fundamental legal principles. So, if another great earthquake hit Tokyo in future, the amount of damage may surpass the financial capacity of government and some amendments to the existing property law will be needed.