

Business Law in Japan and the U.S.: Laws, Contracts, Markets, and Social Norms

Zenichi Shishido

Day1. Introduction

1. The Olympus Scandal and Japanese Corporate Governance

Company Community Explanation

2. Overview of the Course

A. What Are We Doing?

Comparative Business Model and Enterprise Law

Micro Analysis from Macro Perspective

B. Why Study Japanese Law?

The US Model v. Japanese Model

Common Law v. Civil Law

C. What Will Be the Models of the Future?

D. Analytical Framework

Incentive of the Players

Binary Contracts and Coalitions

Transaction Cost

Complementarities

3. Road Map of the Course

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Day2. Keiretsu

1. Markets and Hierarchies

Ex-post Conflicts Cost

Ex-ante Investment Distortion

2. Relational Contracts

Fisher Body

Vertical Keiretsu

3. Cross-Shareholding and Its Influence on Corporate Governance

Horizontal Keiretsu

Its Unwinding

4. Equity Carve-Outs and Parent-Subsidiary Listing

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Day3. Incentives of Human Capital Providers and Internal Governance

1. Employment Protection Laws and Labor Markets: Lifetime Employment?

Social Norm

The Four Factors Test

Tax-Free Reorganization

Liquidity of Labor Markets: Firm Specific or Industry Specific Information

2. Labor Union Laws and Labor Management Relationships

Coalition among Employees

Coalition between Management and Employees

3. Internal Governance

Continuity of Human Capital Providers and Different Time Horizon

Care about Future Firm Value and Long-Term Perspective

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Day4. External Governance and Shareholder Activism: Exercise of Voice

1. The Role of External Governance and Balance between Autonomy and Monitoring

2. Shareholders' Voting Right and Proxy Machinery

3. Minority Shareholders Right

Right of Proposal

Shareholder Suits

4. Stock Ownership Structure

Myth of Dispersed Ownership

Cross-shareholding

Institutionalization

5. Financial Regulations on Coalition among Shareholders

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Day5. External Governance by Exit: Mergers and Acquisitions

1. Shareholder Exit and Significance of Control Market

2. Regulations of Buyers and Sellers in Hostile Takeovers

Tender Offer Regulations

Poison Pills and Independent Directors

Shareholder Choice and Cross Shareholdings

3. Conflicts of Interest in Friendly Takeovers

Revlon Duty or Not

Stakeholder Interests and Fiduciary Duties of Management

4. Tax Law and Employment Law Effects

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Day6. The Role of Creditors and Bankruptcy Law as the End-Game Norm

1. Creditors' Role in Corporate Governance

Monitoring Role of Debt

Main Bank System as a Coalition among Monetary Capital Providers

2. Pre-Bankruptcy Incentive Problems

Main Bank Monitoring and Out-of-Court Workouts

Renegotiation and Insurance

3. Problems of Post-Bankruptcy Senior Creditor Control

Fire Sale Bias

Trade-off between Keeping Priority and Maximizing Asset Value

4. Discontinuity between Corporate Law Regime and Bankruptcy Law Regime

Directors' Fiduciary Duty in the Zone of Insolvency: Companies Act Art. 429

Pre-Package Reorganization

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Day7. Incentives of Management: Executive Compensation and Board Systems

1. Incentives of Management: Reputation, Money, and Risk Taking
2. Reputation and Influence of Markets
3. Executive Compensation
4. Risk Taking

SOX and J-SOX

5. Board Systems and Independent Directors

The Role of Independent Directors and Regulations

The Determinants of Board Structure

Statutory Auditor (*Kansayaku*)

6. Board as an Intersection of Internal Governance and External Governance

Managing Board, Monitoring Board, and Bargaining Board

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Day8. The Role of Government and Legislative Policy

1. Government as Tax Collector, Law Maker, Law Enforcer, and Regulator

2. Incentive Effects of Tax

3. Significance of Enforcement

Public Enforcement and Private Enforcement

4. Industry Regulations

Administrative Informality

5. Desirable Legislative Policy?

The Cost and Benefit of Disclosure Regulations

Backward Induction

6. Political Economy of Law Making: The Law Maker as the Fifth Player

Incentive of Lawmakers

Coordination Problems

Social Democracy and Shareholder Diffusion

Interest Group Coalitions and Electoral Institutions

Scandals and Salience

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Day9. Guest Speaker: John Sasaki

Day10. Discussions: Searching for New Business Systems

1. Pros and Cons of the Japanese Business System
2. Pros and Cons of the US Business System
3. Different Environments and Future Possibilities