Day 1. 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


Rafael La Porta, et.al., Legal Determinants and External Finance, 52 J. Fin. 1131 (1997).


Day 2. 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

Economic Sciences Prize Committee of the Royal Swedish Academy of Sciences, Economic Governance (Scientific Backgrounds on the Sveriges Risksbank Prize in Economic Sciences in Memory of Alfred Nobel 2009).


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

J.H. Verkerke, What We Know (and Don’t Know) about How Employment Protection Law Affects Employment, Ch.1 of Enterprise Law.

Toru Kitagawa, Complementarity among the Abusive Dismissal Rule, Company Community Norms, and an Illiquid External Labor Market: Transformation of Directors’ Fiduciary Duty under Japanese Corporate Law, Ch.2 of Enterprise Law.


Kenneth G. Dau-Schmidt & Benjamin C. Ellis, The Relative Bargaining Power of Employers and Unions in the Global Information Age: A Comparative Analysis of the United States and Japan, Ch.3 of Enterprise Law.


Day 4. 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


Takaya Seki, Legal Reform and Shareholder Activism by Institutional Investors in Japan, 13-3 Corp. Governance 377 (2005).

Day 5. 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

Michael Jensen, Takeovers: Their Causes and Consequences, 2 J. Econ. Persp. 21 (1988).

Curtis Milhaupt, Takeover Law and Managerial Incentives in the United States and Japan, Ch.9 of Enterprise Law.


Hidefusa Iida & Kenichi Sekiguchi, Reappraising the Role of the Appraisal Remedy, Ch.12 of Enterprise Law.


Tetsuya Watanabe, Income and Incentives for Corporate Transactions: A Japanese Perspective, Ch.16 of Enterprise Law.


Day 6. 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

George Triantis, The Role of Debt in the Governance of US Business Corporations, Ch. 5 of Enterprise Law.


Kenneth M. Ayotte & Edward R. Morrison, Senior Creditor Control in Chapter 11, Ch. 6 of Enterprise Law.

Wataru Tanaka, Cramdown versus Extinguishing Security Interests: Secured Claims in Bankruptcy in the United States and Japan, Ch. 7 of Enterprise Law.

Day 7. 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

David Gamage & Shruti Rana, Taxation and Incentives in the Business Enterprise, Ch.15 of Enterprise Law

Zenichi Shishido & Sadakazu Osaki, Reverse Engineering SOX versus J-SOX: A Lesson in Legislative Policy, Ch.20 of Enterprise Law.


Hideaki Miyajima, The Diversification of Corporate Governance Arrangements: Ownership Structure and the Board of Directors, Comments on Part III of Enterprise Law.

Kenichi Osugi, Stagnant Japan?: Why Outside (Independent) Directors Have Been Rare in Japanese Companies, Ch.14 of Enterprise Law

Day 8. 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


Benjamin E. Hermalin, Transparency and Corporate Governance, Ch.19 of Enterprise Law.


Pepper Culpepper, Quiet Politics and Business Power: Corporate Control in Europe and Japan, Ch.1 (2011).
Roberta Romano, Regulating in the Dark, Ch.21 of Enterprise Law.

Day9. Guest Speaker: John Sasaki


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