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Overview of Legal Systems in the Asia-Pacific Region: Japan

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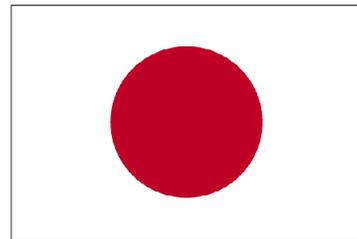
OVERVIEW OF LEGAL SYSTEMS IN THE ASIA-PACIFIC REGION

Jointly Presented By
THE ASIAN AMERICAN LAW STUDENTS' ASSOCIATION
and **LL.M. ASSOCIATION**

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Harriet Stein Mancuso Amphitheater (G90)
Myron Taylor Hall ~ Cornell Law School

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White with a large red disk (representing the sun without rays) in the center

JAPAN
(Capital: TOKYO)

While retaining its time-honored culture, Japan rapidly absorbed Western technology during the late 19th and early 20th centuries. After World War II, Japan recovered to become an economic power. While the emperor retains his throne as a symbol of national unity, actual power rests in networks of powerful politicians, bureaucrats, and business

executives. The economy experienced a major slowdown starting in the 1990s following three decades of unprecedented growth.

- *GEOGRAPHIC DATA* – total: 377,835 sq km; water: 3,091 sq km; land: 374,744 sq km; slightly smaller than California
- *RACE* – Japanese 99%, others 1% (Korean 511,262, Chinese 244,241, Brazilian 182,232, Filipino 89,851, other 237,914) (2000)
- *LANGUAGE AND LITERACY* – Japanese; age 15 and over can read and write;
- *GOVERNMENT TYPE* – Constitutional monarchy with a parliamentary government
- *ADMINISTRATIVE DIVISIONS* – 47 prefectures
- *LEGAL SYSTEM* – Modeled after European civil law system with English-American influence; judicial review of legislative acts in the Supreme Court; accepts compulsory ICJ jurisdiction with reservations
- *ECONOMY* – Government-industry cooperation, a strong work ethic, mastery of high technology, and a comparatively small defense allocation (1% of GDP) helped Japan advance with extraordinary rapidity to the rank of second-most-technologically-powerful economy in the world after the US and third-largest economy after the US and China. One notable characteristic of the economy is the working together of manufacturers, suppliers, and distributors in closely-knit groups called keiretsu. A second basic feature has been the guarantee of lifetime employment for a substantial portion of the urban labor force. Both features are now eroding. Industry, the most important sector of the economy, is heavily dependent on imported raw materials and fuels. The much smaller agricultural sector is highly subsidized and protected, with crop yields among the highest in the world. Robotics constitutes a key long-term economic strength with Japan possessing 410,000 of the world's 720,000 “working robots”.

[Information adapted from the World Fact Book 2003 published by the Central Intelligence Agency of the US Government.]

BROAD OUTLINE OF THE JAPANESE LEGAL SYSTEM

I. Legal System Overview

(i) Historical Background

- Innovation in the industrialization era and post-war transformation after WW II

(ii) Structure and Source of Law

- Ordered mechanism of Constitution and statutes, separate codes in each category

(iii) Legislative Process

- Separation of Powers, Executive Branch's capacity in the legislative process, pro forma role of the Emperor.

(iv) Judiciary

- Members of Supreme Court Justices, the Supreme Court and inferior courts, judge appointment, judicial authority status.

II. Legal Education Overview

(i) Introduction and Structure of Legal Education in Japan

(ii) Faculty of Law (Undergraduate Level)

(iii) Graduate School of Law

(iv) New System – Law School

III. Legal Profession

(i) Types of Legal Profession – judges, public prosecutors, and lawyers

(ii) Bar Admission – overview of the process, note on other legal degree holders

(iii) Bar Associations – JFBA and local associations

(iv) Other Specialized Legal Qualifications

- patent attorneys, judicial scriveners, certified public tax accountants

IV. Legal Practice

- (i) Law Firms – size, forms, practice types
- (ii) Other Forms of Legal Practice – in-house counsel, government works
- (iii) Litigation – civil and criminal cases
- (iv) Others – legal fees, advertisement, retirement

DETAILED DESCRIPTION OF THE JAPANESE LEGAL SYSTEM

I. Legal System Overview

(i) *Historical Background*

- Mid-19th century to early 20th century (industrialization period): German and French codes were introduced, and served as a model for the major Japanese codes
- After WWII (under Allied occupation): some laws were amended or replaced on the basis of American law

(ii) *Structure and Source of Law*

a. Civil law

b. Constitution and Statutes

1. The Constitution of Japan

- Written; Rigid
- Hierarchical structure with the constitution at the top;

Article 98 : “The Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity,” *Mohan Roppo, 2003, p45, Sanseido.*

- Total 99 main clauses, consisting of 10 chapters: The Emperor (Ch.1), Renunciation of War (Ch.2), Rights and Duties of the People (Ch. 3), the Diet (Ch. 4), the Cabinet (Ch.5), Judiciary (Ch. 6), Finance (Ch. 7), Local Self-Government (Ch. 8), Amendments (Ch. 9), and the Supreme Law (Ch. 10);
- Promulgated on November 3, 1946 and went into effect on May 3, 1947 (after the WW II);
- Amendment to the Imperial Japanese Constitution (former constitution so-called *Meiji* Constitution) in form;

2. Statutes

- Often sorted, by the nature of subject, into the public laws and private laws, or into the substantive laws and procedural laws;
- Major codes: Civil Code, Commercial Code, Civil Procedure Code, Criminal Code, and Criminal Procedure Code.

(iii) *Legislative Process*

a. Separation of Three Branches: Legislative, Executive, and Judiciary

- Legislative: Diet

Diet = The highest organ of the state power and the sole law-making body of the State (Constitution Art. 41)

- Bicameral: the House of Representatives and the House of Councilors (Constitution Art. 42);
- Multiparty system.
- Executive: Prime Minister & Cabinet
 - The Executive power is vested in the Cabinet (Constitution Art. 65);

- The Cabinet consists of the Prime Minister and other Ministers;
- The Prime Minister shall be designated from among the members of the Diet by its resolution, the Prime Minister appoints the Ministers, of whom majority shall be chosen from among the members of the Diet;
- Legal status of the executive-made “Regulations”
 - Legislative power is often delegated to:
 - Cabinet orders
 - Ministerial ordinances
 - Administrative rules

b. Legal Position of the Emperor

- “The symbol of the State and of the unity of the people,” (Constitution Art.1) without powers relating to government;
- No political function. In all his state functions, the Emperor must have the advice and approval of the Cabinet and the Cabinet is responsible thereof (Constitution Art. 3)
- Limited to symbolic roles, such as performing “acts in matters of state” enumerated in the Constitution (Constitution Arts. 4 and 7);
 - As designated by the Diet, the Emperor appoints the Prime Minister and as designated by the Cabinet, appoints the Chief Justice of the Supreme Court.
 - Other duties are stipulated in the Constitution: e.g., the promulgation of laws and treaties enacted and approved by the Diet, the convocation of the Diet, and reception of credentials of foreign ambassadors.

*(iv) Judiciary**

a. The Supreme Court and Inferior Courts

- The whole judicial power is vested in the Supreme Court and inferior courts established by law (Constitution Art. 76);
- Inferior courts consist of 8 High Courts, 50 District Courts, 50 Family Courts and 438 Summary Courts;
- Final adjudicators of all legal disputes including those arising from the administrative actions;
- Three-phase trial.

b. Jurisdiction

- **Supreme Court:** the highest court in the nation exercising appellate jurisdiction;
- **High Courts** appellate courts primarily hearing appeals from judgments by district courts or family courts;
- **District Courts:** primarily courts of general and original jurisdiction handling all cases;
- **Family Courts:** courts primarily handling family affairs, juvenile delinquencies as well as indictments of adults for the offenses detrimental to the welfare of juveniles;

- **Summary Courts:** courts having original jurisdiction over civil cases involving claims not exceeding 900,000 yen and minor criminal offenses.

c. Appointment of Judges

- o The Supreme Court
 - As of March 2004, the Chief Justice, a professional judge, and 14 justices, consisting of 5 professional judges, 4 lawyers, 3 former bureaucrats, 1 scholar and 1 former prosecutor, including one female judge;
 - At least 10 Justices must be selected from among distinguished jurists, the rest need not be jurists;
 - Generally, no particular influence of political ideologies in the appointment procedure;
 - Chief Justice: appointed by the Emperor as designated by the Cabinet in form;
 - Other Justices: appointed by the Cabinet, and their appointment is attested by the Emperor in form;
 - Subject to the review of appointment by the people;
 - Retire at the age of 70.
- o Inferior Courts
 - Approximately 3,000 judges;
 - Cabinet appoints from a list of candidates nominated by the Supreme Court.
 - Judges are categorized into the presidents of High Courts, judges, assistant judges and summary court judges;
 - Assistant judges are appointed from among those who passed the National Bar Examination, completed the training at the Legal Training and Research Institute and passed the qualifying exam, and in principle only act as a member of the three-judge court for certain years before becoming a judge;
 - Offices of Summary Court judges are open to people other than qualified jurists with some legal practice and ability.

d. Judicial Authority

Constitution Art. 76.3 “All judges...shall be bound only by this Constitution and the laws.”

- o Court judgments and certain customary laws can be *de facto* source of law;
- o Among others, the judgments of the Supreme Court have the authority as precedents over the lower courts;
- o The precedents clarify the interpretation of the Codes and fill the lack of law.

(*Data and information excerpted from the Supreme Court of Japan’s website at [http://courtdomino2.courts.go.jp/home.nsf/ehome?OpenPage.](http://courtdomino2.courts.go.jp/home.nsf/ehome?OpenPage))

II. Legal Education

- (i) ***Introduction and Structure of Japanese Legal Education***
- a. Background of development of new system and institutions' diverse aims
 - b. Characteristics of Professors
 - Mainly legal scholars (with LLM and PhD in legal field)
 - Few practitioners
- (ii) ***Faculty of Law as Under Graduate***
- a. Admission Process
 - Prerequisite: High school graduate or equivalent
 - While admission process varies by each institution, mainly it is determined by admission examination. (There are few exceptions, such as US style admission, special admission for working-experienced)
 - Examples of admission exam subjects: Japanese, World history, Japanese history, Social studies, Geography, Foreign language (rarely: individual interview, essay)
 - b. Number of Faculties
 - There are roughly 600 law faculties
 - Ranks of schools: usually measured by competitiveness of admission, popularity, or number of bar admitted (ex.ref: <http://www.yozemi.ac.jp/rank/gakka/index.html> , <http://www.moj.go.jp/PRESS/031112-1/15-2univ.html> , apology for Japanese-language-only webs)
 - c. Average number of student body
 - 400 to 600 new students enroll in each year in one law faculty
 - overall, about 198,045 students enroll (as of May 2002)
 - average of 1,600 to 2,400 student studies in each school
 - d. Curriculum
 - Semester system
 - General Education Part (includes 2 Foreign Language –often one in English)
 - Legal Education Part → 90 credit [90-minute class meeting once a week, semester-long class = 2 credits, year-long class = 4 credit] (including a Seminar class –not all school requires)
 - e. Method of Teaching and class size
 - Requirement Classes (Such as Constitution, Criminal Law, Private law –Contracts, Property) → as big as 600 students in one class –usually lecture style
 - Elective Classes → usually in lecture style but tend to be smaller than requirement classes, and occasional interaction (questions and answers)
 - Seminar classes → average of 20 students in one seminar class
 - f. Tuition (average)
 - Public Schools (National, Prefecture-funded, Municipal-funded) →\$5,000/year
 - Private Schools →\$8,000 to \$9,000

(iii) **Graduate School**

a. Admission Process

- Prerequisite: university diploma (no major restriction)
- Generally Admission Exam →one foreign language + several legal subjects, and interview
- Exceptions: Inner school proceeding →skip exam part, just interview

b. Number of student body

- Greatly varies from school to school [New students in Public: University of Tokyo = 20, Kyoto University = 45; Private: Keio =150, Waseda = 80 (exclude political science candidate). ←all in Master, excluding Ph.D. candidate]
- Total 1900 students enrolled (as of May 2002)

c. Curriculum

- 2-year program
- Master candidates are required to obtain around 20 to 22 credits and to submit qualified Thesis.

d. Method of Teaching

- Most classes are in seminar style
- Average class size of smaller than 20 student

e. Tuition

- Public \$5000
- Private \$8,000 to \$9,000

(iv) **New System Law School**

New system commenced April 2004.

a. Admission Process

- The process is very similar to that of US law school.
- Admission is determined based on: university GPA, LSAT, TOEFL + admission examination placed in each school
- LSAT: 2 types of LSAT provided by 2 different institutions.
- LSAT consists of 2 parts: first part testing ability of logical analysis; second part testing ability of reading comprehension and expression.
- LLB v. BA: some schools recognize candidates' undergraduate law degree, and require shorter/fewer terms/credits in law school.

b. Number of Law Schools

- Total of 66 Law Schools are established

c. Average Student Bodies

- 5,600 new students are enrolling law school each year

d. Curriculum

- Most students are required to obtain 90 credits in the program

e. Method of Teaching

- Mainly classes are taught by lecture style.
- It is encouraged that law school emphasize interaction in its teaching
- Instructor-student ratio greatly depends on each school. [Generally sought to be smaller than law faculty classes]

- f. Tuition
 - Public \$7,000
 - Private \$15,000

III. Legal Profession

(i) *Types of Legal Profession in Japan*

- judges (about 3,000, including summary court judges), public prosecutors (about 2,300, including assistant prosecutors), and lawyers (about 20,000); [Note: summary court judges and assistant prosecutors can be (and actually are) appointed without passing the Bar Exam]
- New graduates of LTRI start their careers as either judge, prosecutor, or lawyer; judges and prosecutors can quit or retire to become a lawyer; a small number of lawyers choose to become a judge in the middle of their career

(ii) *Bar Admission*

a. General Process

- Same process for all three professions
 - (1) Bar Exam (once every year)
 - (2) practical training at Legal Training and Research Institute (one and a half years)
 - (3) Second Bar Exam (once every year – “graduation exam” for LTRI)
- Low passage rate for Bar Exam (1,170 out of 50,166 (2.33%) in 2003)
- The percentage of women in the profession has been increasing (in 1975, 3.1% of lawyers; in 2003, 11.7%)

b. Process After Second Bar Exam

- To become a judge or a prosecutor, the new graduate of LTRI is hired by the court or the government (no registration as a lawyer)
- To become a lawyer, the new graduate of LTRI must register with the Japan Federation of Bar Association and one of the local bar associations

c. Note on Legal Degree Holders Not in the Legal Profession

- Overwhelming majority of graduating undergraduate students with law degree (total of about 45,000 each year) do not come into the legal profession in the narrow sense. They join government services or companies to utilize their legal knowledge in various fields of the society.

(iii) *Bar Associations*

- Japan Federation of Bar Associations is the central organization
- Local bar associations exist for each court district (except for Tokyo, where there are three associations)

- Mandatory registration for all lawyers (both JFBA and local association)
- Autonomous; only bar associations can discipline lawyers – not court or government
- Each local bar association set forth such requirement as mandatory continuing education and mandatory public service (pro-bono, etc.) for its members

(iv) *Other Specialized Legal Qualifications*

There are several other qualifications related to legal profession. They are not lawyers (they do not take the Bar Exam, and they do not have general power to represent their clients in court), but each play important role in the legal practice in Japan.

a. Patent Attorney (“benrishi”)

Handles registration and legal advice regarding patent, trademark, designs, and other intellectual property rights, as well as assistance in certain litigation works related to those matters. Ongoing reforms allowed them to represent their clients in certain litigation regarding infringement of intellectual property rights. (In general, see: <http://www.jpaa.or.jp/english/>)

b. Judicial Scrivener (“shiho-shoshi”)

Handles real estate and commercial registration matters, as well as gives legal advice and assistance (but not representation) in litigation. Ongoing reforms allowed them with power of representation for civil cases in summary court.

(In general, see: <http://www.shiho-shoshi.or.jp/welcome-e/english.htm>)

c. Certified Public Tax Accountant (“zeirishi”)

Handles preparation of tax related documents, representation in administrative complaints against tax authorities, gives tax and accounting advice, and assists clients and lawyers in tax related litigation in court.

IV. Legal Practice

(i) *Law Firms*

a. Sizes and Legal Forms

- Majority of firms is relatively small (20 or less lawyers). Solo practitioners are common.
- In Tokyo, larger firms are also common; there are five firms with over 100 lawyers
- Law firms are usually partnerships; special type of “legal corporation” is allowed, but provides no limited liability for participating lawyers

b. Practice Types

- Most of the smaller firms are general practitioners, while larger firms tend to have certain specialty
- International practice has been growing recently, especially with the lift of ban on joint venture between foreign and Japanese firms. Many foreign firms now have branches or joint venture partners in Tokyo or other large cities in Japan

(ii) *Other Forms of Legal Practice*

a. In-house Counsel

- Number of in-house lawyers are said to be growing, but still not very large
- Many companies have legal sections, which often consist of employees who are not lawyers but hold a degree in law. When confronted with legal issues, other sections of Japanese companies usually consult their legal section before consulting lawyers.

b. Government Works

- Government officials have strong influence on the national industry, through various legislation and regulatory powers. (over 90% of the bills submitted to the Diet are submitted by the Cabinet, which are essentially drafted by the government officials.) Many officials are law degree holders who are not lawyers.

(iii) *Litigation*

a. Civil Cases

- No jury, no discovery (court may, under certain conditions, order submission of certain evidence to a party).
- Many cases end with settlement, and judges are eager to assist formation of settlements.

b. Criminal Cases

- No jury (although upcoming reform is expected to establish a similar system where a panel of citizens will join with the judges in fact finding and determination of the penalty)
- Public Prosecutors' Office has the discretion to prosecute or not..
- Once the case goes to court, it is extremely rare that a defendant is found not guilty.

(iv) *Other*

a. Legal Fees

- Generally, lawyers' fees are determined either by (1) amount of the claim involved, or (2) time spent. Traditionally, contingent fee where the client risks nothing (no fee at all if no recovery) has been considered unethical.
- For corporate and international work, fees are usually determined based on the time spent.

b. Advertisement

- Traditionally, advertisement by lawyers has been strictly regulated. Now, the regulation has been relatively loosened. (The most direct effect of this de-regulation was that many law firms started to have their web pages.)

c. Retirement

- Judges and prosecutors usually become lawyers or public notaries after their retirement. (Note that the number of public notaries in Japan is very small compared to U.S. (about 550 in the entire country). In fact, with a few exceptions, documents are rarely notarized in Japan.)
- No mandatory retirement age for lawyers.

REFERENCES (English Web Pages)

Supreme Court of Japan

<http://courtdomino2.courts.go.jp/home.nsf/ehome?OpenPage>

Ministry of Justice

<http://www.moj.go.jp/ENGLISH/preface.html>

Public Prosecutor's Office

<http://www.moj.go.jp/ENGLISH/PPO/ppo-01.html>

Japan Federation of Bar Associations

<http://www.nichibenren.or.jp/en/index.html>

-Particularly, the following gives a good overview of the Japanese attorney system

<http://www.nichibenren.or.jp/en/about/system.html>

Japan Patent Attorney's Association

<http://www.jpaa.or.jp/english/>

Japan Shiho-shoshi Lawyers Association

<http://www.shiho-shoshi.or.jp/welcome-e/english.htm>