

## EDITORIAL

The ARTICLES section of this issue opens with an in-depth comparative analysis by *Robert B Leflar* on how Japanese law tries to prevent harm resulting from medical malpractice.<sup>1</sup> As opposed to most other developed countries, in Japan criminal law plays a strikingly prominent role. The author stresses that this is at least in part *faute de mieux* and due to the weakness of other institutions. In addition, he reports on recent reform efforts. *Verena Meckel* looks into the practical effects of the new Japanese corporate law on the governance of Japanese enterprises. The article thus continues the discussion on various aspects of Japanese corporate governance, a topic that has repeatedly constituted the focus of articles in earlier issues.<sup>2</sup> She describes the increasing appointment of external (independent) directors and auditors. In her view, this development, while contradicting the traditional mentality, can be viewed as reinforcing the convergence toward the U.S. model that started after 1945. The contribution by *Sara Konoe* analyzes the shift in corporate finance observed both in Japan and Germany from bank-based to capital market-based financing in recent years, as well as the background and consequences of this trend.

*Kiyoshi Endô* describes the buyer's liability under Japanese commercial and corporate law in the event that an acquired enterprise is continued under the same trade name. The author examines the relevant case law, in particular the Japanese Supreme Court's lead case of 2004, where the acquisition of a golf club was at issue. *Andreas Schloenhardt* takes a critical look into the rarely discussed topic of Japan's 'war' against organized crime. In his assessment, the measures taken by the Japanese government have been rather halfhearted and, not surprisingly, have yielded rather limited results. *Erik Heber* gives an assessment of change and continuity in Japanese criminal justice, whereas the contribution by *Andrea Ortolani* more specifically reports on the implementation of the new lay-judge system in criminal justice (*saiban-in seido*) and the experiences made since its start of operations in 2009. Here as well, earlier contributions to this journal have looked into this development from different angles.<sup>3</sup>

Whether a party to a contract can cancel the contract and claim damages at the same time is at the center of *Yohei Nagata's* comparative analysis. Under German law prior to

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<sup>1</sup> The article thus continues the author's earlier contribution in *ZJapanR/J.Japan.L.* 22 (2006) 39 et seq. co-authored by F. IWATA.

<sup>2</sup> See D.W. PUCHNIAK, *ZJapanR/J.Japan.L.* 28 (2009) 89 et seq.; J. BUCHANAN/S. DEAKIN, *ZJapanR/J.Japan.L.* 26 (2008) 59 et seq.; D.H. WHITTAKER/M. HAYAKAWA, *ZJapanR/J.Japan.L.* 23 (2007) 5 et seq.; S.M. JACOBY, *id.*, 23 et seq.

<sup>3</sup> See A. DOBROVOLSKAIA, *ZJapanR/J.Japan.L.* 24 (2007) 57 et seq.; K. ANDERSON/L. AMBLER, *ZJapanR/J.Japan.L.* 21 (2006) 55 et seq.

the reform of the obligations law in 2002, these remedies were stipulated only as mutually exclusive alternatives; however, the Japanese Civil Code has allowed for combining both remedies ever since its enactment in 1898. Still, as the author explains in more detail, the reception of German law doctrines at the beginning of the 20<sup>th</sup> century unnecessarily complicated the interpretation of the Civil Code's provisions. *Frederike Zufall* examines another civil law issue from a comparative perspective, namely the principles applicable to the transfer of property. In particular the author asks whether under the Japanese Civil Code the conclusion of a sales contract as such effects the transfer of ownership, as is the rule under French civil law, or whether the obligation to transfer in the sales contract and the transfer of ownership as such are to be considered separable and abstract, as under German civil law.

In the SHORT ARTICLES section, this issue offers two contributions. The first, by *Takayuki Soda*, gives an overview of the Japanese rules on spam mails, recently amended in 2008 to make the existing protection more effective. In the second contribution, *Satomi Tokuda* describes the tasks of court clerks in Japan.

In this issue's CASE LAW section, *Eiji Takahashi* and *Tatsuya Sakamoto* comment on important corporate law cases rendered by the Supreme Court in the year 2009. Furthermore, *Christopher Heath* presents a 2008 patent law decision of the Japanese Supreme Court. Finally, *Dan Tidten*, continuing the overview for the year of 2006 in issue no. 28 (2009), summarizes important cases from civil law and civil procedure rendered by the Supreme Court in 2007.

As usual, several REVIEWS introduce new Western publications on various fields of Japanese law, this time supplemented by a review of an interesting new Japanese volume. In this issue's REPORTS section, *Dominik Wagner* covers a German-Japanese symposium on criminal justice theory, staged in cooperation with the German-Japanese Lawyers' Association at Augsburg in September 2009. And *Felician Scheu* gives an account of his experiences as an exchange student at Gakushuin University in Tokyo.

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