

HIROYUKI KIHARA

Tort Law in Japan

Wolters Kluwer, Alphen aan den Rijn 2015,
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In his slim but worthwhile volume, Professor Kihara provides an accessible, instructive overview of the Japanese law of tort. This book is his contribution to the *International Encyclopaedia of Laws*, a project from publisher Wolters Kluwer, with the stated goal of providing “comprehensive, up-to-date and readily available information on the most important legal disciplines in leading countries.”

Contributions to this ambitious project are required to fit a very specific format. Any criticisms of Professor Kihara’s book must therefore take account of the major constraints that severely limited his authorial freedom in producing it. In particular, criticisms of the book’s fundamental scope and structure ought fairly to be directed at the *International Encyclopaedia of Laws* series as a whole.

Tort Law in Japan is not a book of ideas. Readers will not encounter novel analyses or profound reflections on tort, either in Japan or in general. The text does yield occasional indications of the author’s stance on questions of theory, but none is sufficiently developed to permit critical review. In light of this, I am perplexed by the publisher’s characterisation of the book as one of its “penetrating country-by-country monographs.” Particularly puzzling is the back cover’s claim that the book provides “a stimulus to harmonization of the rules on tort.” I can only assume this is the publisher’s aspiration for the *International Encyclopaedia* project as a whole. It is certainly not an ambition that can safely be attributed to Professor Kihara on the basis of this book. Wolters Kluwer appears determined to present *Tort Law in Japan* as something grander than it truly is. This is unfortunate and unnecessary. In reality *Tort Law in Japan* has been written to provide a short introduction to the fundamentals of Japanese tort law, and at that task it fares respectably well.

Despite the book’s shortcomings, Professor Kihara has produced one of the better English-language explanations of the key doctrines of Japanese tort law (although the number of competing works is certainly not large). *Tort Law in Japan* sets out the fundamentals of Japanese tort law in more detail than the respective chapters in the leading general textbooks on Japanese law that are available in English. Professor Kihara addresses most of the areas traditionally of scholarly interest to tort lawyers in all legal systems: the tort liability of public authorities, concurrent liability in tort and contract, causation, vicarious liability, etc. He also explains how liability in some areas has developed and expanded from the statutory basis in the Civil Code, such as the rise of the protection of privacy through tort law. He gives a short account of professional liability in specific industries, and explains in an engaging manner the way in which

both judicial decisions and legal scholarship have shaped the law of tort, such as the gradual shift from a subjective to an objective conception of negligence.

Where the author identifies shifts in scholarly opinion about a certain point, citations to the original sources are lacking. It is true that these Japanese sources may be of limited use to those reliant on an English-language primer for their knowledge of Japanese tort law. However, the same could be said of Japanese case law, but Professor Kihara has nonetheless provided thorough citations to relevant leading cases throughout the text.

The very beginnings of the book are uninspiring. Sections 1–22 are devoted to a general outline of Japan and its history. Its latter stages (discussing the contemporary economy, etc.) are unobjectionable, but these are preceded by a rudimentary and frankly pointless account of the nation's anthropological and early political history. This is followed by detailed explanations of the fluctuating dynastic power structures in pre-modern Japan, whose relevance to Japanese tort law is less than self-evident. I understand this section to be required by the *International Encyclopaedia* format, but nonetheless it is tokenistic and in jarring discord with the higher-quality delivery of the book's core contents.

The text is well structured and logically arranged throughout; the general part broadly aligns with the structure of the Civil Code. Information is easily located thanks to clear sub-headings and convenient internal cross-referencing. Nonetheless in some places the uniform *International Encyclopaedia* structure is exposed, disrupting the text's otherwise cohesive flow. For instance, one section reads simply, "Others: There are no other specific issues to explain in this chapter."

Among the book's major shortcomings is the quality of its prose. The English is frequently unnatural and not infrequently ungrammatical. Some of the more severe issues of grammar and style render potentially informative points frustratingly opaque. No competent proof-reader would overlook these problems, and I am forced to conclude that the author's manuscript has been published without anything approaching adequate editing. It is unfortunate that Professor Kihara's efforts have been so compromised by his publisher's low editorial standards.

Tort Law in Japan is a welcome addition to the scholarly literature. Books such as this are necessary in order to facilitate wider foreign engagement with the substance of Japanese private law. English-language *Nihon-hō* scholarship has traditionally been obstructed by an over-emphasis on socio-legal enquiries (most notoriously into that interminable red herring, the litigiousness question) at the expense of sufficient attention to substantive doctrinal private law. This imbalance helps to perpetuate the image of *Nihon-hō* as a little offshore from "normal" comparative law. The wider availability of instructional introductory texts such as *Tort Law in Japan* may help to redress the balance.

Professor Kihara has done well to produce a worthy introductory text in this area. The finished product is open to several criticisms, particularly as to its scope, although it

should be noted that few of these are directly of the author's making. Japanese-speaking jurists are unlikely ever to look to this book for guidance as opposed to the more comprehensive works available in Japanese. So its users are likely instead to be foreign tort lawyers interested in drawing comparisons with Japanese law. For such readers, however, Professor Kihara's short book will not in itself provide the depth necessary for meaningful comparative analysis. Nonetheless detailed, investigative comparisons have to begin somewhere, and the book does serve as a reliable primer and road map for English-speakers keen to understand the basic principles of tort law in Japan.

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