



The Education of International Arbitration at Japanese Universities

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International arbitration is a primary method for resolving disputes in international commerce. For those who want to practice in the area or understand it better, there are a growing number of opportunities to study the subject at Japanese universities.¹

This article examines the formal education of international arbitration in Japan. It surveys courses and programs, assesses the benefits of formal study, compares the education of international arbitration in Japan with its education abroad, and predicts how the education of international arbitration might develop in Japan in the years to come. I refer to courses and programs at my home university, Kobe University, to provide concrete examples throughout the article.

1. Undergraduate Education of International Arbitration

Few Japanese universities offer courses in international arbitration meant for undergraduates.² Perhaps this is unsurprising given its international and specialist nature. Japanese undergraduate students may nevertheless gain some exposure to the subject in general courses in international business, civil procedure, private international law, and alternative dispute resolution. These may include one or two lectures on arbitration, though the focus is likely to be domestic rather than international in most of the courses.

The best opportunity for Japanese undergraduates to learn about international arbitration is by participating in international moot competitions.³ The annual Willem C. Vis International Commercial Arbitration

Moot is a prominent example. Japanese universities that regularly prepare teams for this competition include Doshisha University, Hitotsubashi University, Hokkaido University, Kobe University, Kyoto University, Kyoto Sangyo University, Nagoya University, and Waseda University.

Students competing in the Vis moot are expected to understand the principles and practice of international commercial arbitration. Japanese universities offer varying degrees of support to assist them in their preparations. Kobe University, for example, organizes a seminar for participating undergraduate and graduate students that covers arbitration concepts and provides guidance on legal research, legal drafting, and oral pleading. The university also invites arbitration specialists to Kobe to give lectures on arbitration to the participants and provide them with feedback about their preparations.

2. Postgraduate Education of International Arbitration

There are more opportunities for students in Japan to study international arbitration at the graduate level. A number of Japanese universities offer degree programs that include international dispute resolution coursework. Hitotsubashi University, Keio University, Kyushu University, Kobe University and Nagoya University offer master's degrees with an international arbitration component. Waseda University will begin a program next spring. Other universities that offer courses in international arbitration include Hokkaido University, Sophia University, and Temple University.

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¹ I would like to thank Prof. Akira Saito, Prof. Hiro Sono, Prof. David Litt, Prof. Narufumi Kadomatsu, Prof. Giorgio Colombo, Prof. Mark Fenwick, and Prof. Loukas Mistelis for insights and comments about this article.

² This is also true outside of Japan. As a counter example, Kobe University offers a course in legal English for undergraduates that proceeds as a course in international commercial arbitration.

³ For an article on the experience of Japanese students in international moot competitions, see Prof. Akira Saito, "Catch the Global Headwinds: Japanese Students Encounter the International Arbitration Moot," JCAA Newsletter, No. 36 (November 2016).

Courses at Japanese universities commonly focus on practical aspects of international commercial arbitration. They may be taught by university staff or attorneys practicing international arbitration. In many cases, the instruction is given in English. The lectures tend to be given by practicing attorneys at universities in Tokyo.

Kobe University offers coursework in international dispute resolution as part of a master's program in law taught in English. This includes a survey course in international arbitration as well as courses in international arbitration practice, international arbitration theory, international investment arbitration, and international commercial mediation. The courses are taught by both university staff and visiting lecturers from abroad. The visiting lecturers, comprising academics and lawyers, tend to give courses in intensive one-week sessions.

Where Japanese universities do not offer graduate courses in international arbitration, the options for graduate students are largely the same as for undergraduates. Students can participate in international moot competitions or gain some exposure to international arbitration in survey courses in related.

3. Extracurricular Education

Some Japanese universities offer extracurricular opportunities for students interested in international arbitration. Options may include seminars, moot competitions, conferences, and study groups.

Kobe University, for example, offers lectures and trainings in international arbitration throughout the year. In the fall, the law faculty hosts a workshop on the administration of international disputes. This event brings together leaders of arbitration, mediation, and judicial institutions from across Asia for two days of presentations and panel discussions.⁴ In the summer, the law faculty organizes a weeklong school of international business and dispute resolution that includes various lectures on international arbitration and an arbitration moot.⁵ Participants include students, academics, attorneys, and business leaders.⁶

4. Benefits of Study in Japan

Broadly speaking, those with interest in international arbitration have diverse options for study. There are master's programs, arbitration academies, online courses, and various free educational resources. For those who decide to pursue formal study, Japanese universities may offer advantages over universities abroad.

4.1. Cost

The cost of legal education, particularly in the United States and United Kingdom, may be a barrier to candidates wanting to undertake graduate studies. Tuition and fees at many Japanese universities is more affordable, and students may find it easier to secure financial assistance to support their studies.

4.2. Convenience

Japanese applicants, in particular, may have professional and personal commitments in Japan. This may make it difficult to spend the one or two years outside the country to complete graduate studies. Domestic programs may be more suitable in these circumstances.

Study in Japan might also be of heightened interest to candidates from East Asia. Japanese universities are well regarded in the region, and Japan might seem a closer, appealing alternative to studies far from home.

Graduate programs in Europe and the United States in international dispute resolution consistently have high enrollment of students from Asian countries. At Queen Mary in London, for example, one-third of the incoming students in the graduate program in international arbitration and dispute resolution tend to come from Asia. If domestic graduate programs in international arbitration were better defined and publicized, some candidates might prefer to study in Japan.

4.3. Employment in Japan

Students who intend to work in Japan after their studies may benefit from studying in Japan. As a practical

⁴ At the event in 2016, participating institutions included the China International Economic and Trade Arbitration Commission, the Hong Kong International Arbitration Centre, the International Chamber of Commerce, the Japan Commercial Arbitration Association, the Kuala Lumpur Regional Centre for Arbitration, the Singapore International Arbitration Centre, and the Singapore International Commercial Court.

⁵ In 2017, the following lectures on international dispute resolution were given: "Competitive Negotiation and Interest-Based Negotiation," "A Roadmap for Up-and-Coming Arbitral Institutions," "Mediation of International Investment Disputes," "Online Dispute Resolution," "Effective Dispute Resolution Strategies: Business and Legal Considerations," "Recent Developments in International Arbitration in Korea," "Investment Protection and Political Risk Insurance," "The Rise of International Arbitration in Asia," "Sports Law: Disputes and Arbitration," "Cross-Cultural Perspectives on Effective Advocacy in International Arbitration," "Comparative Arbitration Procedure," "International Dispute Resolution and India," and "Latest Innovations in Dispute Resolution in Singapore."

⁶ In 2017, speakers on international dispute resolution included Prof. Yun Zhao of the University of Hong Kong, Prof. Fernando Dias Simões of the University of Macau, Mr. Christopher Tahbaz of Debevoise & Plimpton LLP (New York), Prof. Hi-Taek Shin of Seoul National University, Dr. Rishab Gupta of Shardul Amarchand Mangaldas & Co (Mumbai), Mr. Matthew Secomb of White & Case LLP (Singapore), Prof. Jady Zaidi Hashim of the National University of Malaysia, and Mr. Paul Tan of Rajah & Tann LLP (Singapore) in addition to Kobe University staff.

matter, the proximity to potential employers facilitates networking, meetings, and interviews. Students might also be able to arrange part-time work or internships with local businesses and law firms to complement their studies. In some instances, the lecturers of the international arbitration courses may themselves be arbitration practitioners with an interest in hiring or promoting promising students.

Japanese employers might also prefer hiring candidates with degrees from leading Japanese universities. For candidates who have not spent considerable time in Japan but who want to work in the country, a graduate degree from a Japanese university might reassure employers of the seriousness of their commitment to work and live in Japan.

4.4. Employment abroad

Studying international arbitration in Japan might also open the doors to employment abroad. Some Japanese universities maintain resources to assist students to find jobs overseas. Students may otherwise look to foreign contacts that they make during their studies, including lecturers and classmates, to help them pursue foreign opportunities.

Kobe University requires each student in the Global Master's Program in Law to complete an internship in order to graduate. The students are encouraged to do their internships abroad, and the law faculty maintains relationships with foreign law firms and arbitral institutions for this purpose. Through this network, students have secured employment and paid internships in law firms overseas and in foreign international arbitration institutions.

4.5. Expertise

Students may feel more confident beginning or continuing their careers in international arbitration with the benefit of formal study. While skills can be learned on the job, there are practical barriers that can hinder professional growth. In Japan, there are few law firms with active international arbitration practices. Among them, only a small number offer structured training in international arbitration to junior attorneys. Others may not have a sufficient number or variety of cases to enable junior attorneys to develop diverse skills as arbitration counsel.

Most of the courses in international arbitration offered by Japanese universities aim to provide students with a comprehensive overview of its practice. In the course "International Commercial Arbitration Practice" at Kobe University, for example, students act as counsel in a simulated dispute. They advise clients, draft memorials, draft witness statements, make document requests, examine witnesses, and plead at a hearing. Practicing lawyers, arbitrators, and valuation experts give lectures to support the course.

4.6. English language

As international arbitrations are frequently conducted in English, it follows that international arbitration courses in Japan are commonly taught in English. This offers students who are not native speakers the opportunity to improve their spoken and written expression in English as well as increase their legal vocabulary.

At Kobe University, most of the international arbitration courses are taught in English by native speakers. Courses tend to comprise class discussions, case studies, and experiential exercises. Students are expected to express their opinions and answer questions without advanced preparation. This interactive format provides tremendous opportunity for improvement in English. To further assist the students, the law faculty employs an English solicitor to teach legal English courses and provide informal language assistance.

4.7. Japanese law and language

Prospective students in international arbitration who are interested in Japanese culture or the Japanese legal system are natural candidates for study in Japan. They can benefit from law courses in Japanese, easy access to legal materials in Japanese, and opportunities for further language study. Students at Kobe University, for example, can take some courses in Japanese for credit and audit others. The university also provides Japanese language training.

5. Alternatives to Study in Japan

The present interest in the education of international arbitration in Japan is part of a broader global trend. Graduate programs in international arbitration and international dispute resolution are available around the world.⁷ This gives students a variety of options with differing advantages and drawbacks.

⁷ Master's programs with an international arbitration component are offered, for example, at Columbia Law School; Harvard Law School; the London School of Economics; New York University; Stockholm University; Université Paris 2, Panthéon-Assas; Queen Mary, University of London; and the University of Geneva. Graduate programs in international dispute resolution in Asia are offered by such universities as the National University of Singapore, Hong Kong University, and Tsinghua University.

For prospective students from Japan, there are good reasons to consider studying abroad. The experience may improve a student's ability in a foreign language, foster insight into a foreign business culture, and expand their network of international contacts. Foreign study may also give students greater credibility when they apply for international jobs or when they work with international clients.

Studying abroad may have other professional benefits. After completing a master's degree in law in the United States, for example, students may be eligible to qualify as attorney in some states including New York. This may increase the scope of their legal practice and make them more attractive to employers both in Japan and overseas.

It is difficult to generalize about the advantages of studying outside of Japan given the disparate motivations and profiles of potential students. All things considered, study in Japan may be most appropriate for those who have personal or professional connections to Japan, those who intend to work in Japan, and those who plan to work with Japanese companies.

6. Future Developments

The proliferation of master's programs with international arbitration components has been building for nearly a decade. A journalist who surveyed the programs available in 2012 remarked, "specialized master's degrees in international arbitration are multiplying at a dizzying rate."⁸ Based on the evolution of such programs abroad, it is possible to imagine how the education of international arbitration might progress in Japan in the years to come.

6.1. Specialization

While a number of Japanese universities offer international arbitration courses, few have dedicated master's degrees or certificate programs in international arbitration or international dispute resolution. The establishment of dedicated degree programs and certifications may attract more students and resources. It may also open up opportunities for collaboration with other universities, businesses, and law firms.

6.2. University exchanges

Collaborations are increasingly common among universities offering graduate studies in international business and dispute resolution. Some offer students

the possibility of obtaining double degrees on an accelerated basis.

The National University of Singapore and the University of Geneva (MIDS), for example, offer a dual master's program in international arbitration and dispute resolution. Students who spend two semesters in Singapore and one in Geneva receive LL.M. degrees from both universities. Similarly, an arrangement between the Georgetown University Law Center and Tsinghua Law School enables graduate students studying international arbitration to apply credit earned at one university towards a degree at the other.

Some Japanese universities have exchange programs with foreign law faculties and universities in place. Collaborations in graduate studies in international arbitration would provide students the possibility of a more international and diversified academic experience. It might also make study in Japan more attractive to foreign students.

6.3. Private partnerships

Some graduate programs in international arbitration are supported by private law firms and outside institutions. The University of Miami in the United States, for example, offers a master's degree in international arbitration that is supported by the global law firm White & Case LLP. From this platform, the law school has expanded its network of lecturers, added research capacity, and increased funding for student scholarships.

The International Chamber of Commerce, the International Arbitration Institute, and the Chartered Institute of Arbitrators have undertaken similar educational initiatives. They offer trainings and accelerated certification programs to support graduate courses offered by universities. Partnerships of this sort may improve university education of arbitral practice and increase opportunities for students.

Kobe University, for its part, has recently collaborated with the Centre for Effective Dispute Resolution ("CEDR") to provide education and training in international commercial mediation. This included both courses for academic credit as well as a mediation-accreditation program that was open to participants outside of the university community.

⁸ Sebastian Perry, "Mastering the Trade," *Global Arbitration Review*, 26 November 2012.

6.4. Scholarship

At a number of universities, international arbitration is increasingly regarded as a subject of academic rather than purely practical interest. There are now university research centers dedicated to international arbitration,⁹ grants earmarked for international arbitration scholarship,¹⁰ and courses that explore the relationship between arbitration and other disciplines including global governance, human rights, and international economic law.

In this connection, Kobe University began offering a Ph.D. degree in international arbitration in 2016. The program is supported by seminars taught in English by professors and a lawyer practicing international arbitration in Tokyo. It aims to give legal professionals a holistic understanding of international arbitration, including theoretical aspects of the subject, and to promote legal scholarship.

6.5. Progressive instruction

Courses in international arbitration can be improved by integrating outside resources. There is wealth of support available to teachers and students ranging from online trainings to free “massive open online courses” that cover international arbitration concepts.¹¹ These resources could be used to better effect and might even play a central role in basic instruction, freeing up classes to explore the material more deeply.

The law faculty at Kobe University uses online resources, technology, and interactive teaching in international arbitration instruction. In the course on arbitral practice mentioned previously, student exercises are video recorded, and the professor and students meet individually to review the videos and evaluate student performances. The course also uses training videos published by arbitral institutions to support classroom instruction.

Kobe University also uses technology to make classes more accessible to students and the public. Courses in investment arbitration, commercial arbitration, and international arbitration theory have been taught to postgraduate students from Tokyo and Kobe simultaneously through videoconferencing. Events, including the summer program in international business, are video recorded and published online with open access to the public.

6.6. Flexible study options

In recent years, graduate programs in international arbitration have become more flexible in order to accommodate a wider range of students. The London School of Economics, for example, offers an Executive LL.M. with instruction in one-week modules. Students can join the programs at any time during the course of the year. Hong Kong University offers part-time study of its master’s degree in arbitration and dispute resolution. Classes are offered on weeknights, and the program can be completed in one or two years. Queen Mary offers a diploma in international dispute resolution with all courses taught online.

The trend to make study more flexible has already taken root in Japan and is likely to continue. The Kobe University Ph.D. program in international arbitration, for example, is tailored to working professionals. Courses are taught on weekends, and students can join seminars from either Kobe or Tokyo.

7. Conclusion

Interest in international arbitration among students and attorneys in Japan is expanding, and Japanese companies increasingly turn to arbitration to resolve their international disputes. A number of universities in Japan offer courses in international arbitration and international dispute resolution. They may better address the growing demand through strategic collaborations, specialized programs, and flexible instruction that accommodates working students.

⁹ For example, there are research centers focusing on international arbitration at Columbia University, the University of Miami, Queen Mary, McGill, and the London School of Economics.

¹⁰ For example, Georgetown University and the University of Miami offer dedicated scholarships.

¹¹ The International Chamber of Commerce offers arbitration training online for purchase. Popular online platforms for free courses include edX, Coursera, and Future Learn.

Family Court conciliation: some topics from the recent law amendment

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1. Amendment of Family Case Procedural Law (FCPL)

1. Family case procedural law (*Kaji-jiken tetsuduki-ho*) was amended in 2011. It contains both the adjudication of domestic relations (*kaji-shimpan*; hereinafter simply “adjudication”)¹ and conciliation of domestic relations (*kaji-chotei*; hereinafter simply “conciliation”) processes for all family disputes. The Family Court has run these special processes for almost 70 years (since 1949).

2. The Family Court processes have a few special features.

① Firstly, the governing procedural principle is not adversarial, but more informal and “inquisitorial.” The adversary system is the backbone of formal civil procedure, so that the judge him/herself would not collect evidence or find facts without arguments from one or both parties. If one party makes an admission, the judge has to find the admitted fact without evidence. However, those rules do not govern Family Court processes. Truth seeking is more important than the “*jus disponendi*” of parties to control the facts dealt with in the civil procedure, which is the key conception of the adversary system. The judge at the Family Court is entitled and obliged (arguably with some discretion) to collect evidence, to find truth (rather than alleged or admitted facts), and to deliver dispute resolution through informal processes. This is because the Family Court decision, which has wide influence on parties and beyond, should consider public policy/value and the interests of third parties outside of the court processes; especially the best interests of children.

② Secondly, Family Courts are run not only by judges but also Family Court Inspectors (*Katei-saibansho Chosakan*; FCI) and Family Conciliators (*kaji chotei-iin*). The FCI is a

court employer, and has expertise in child psychology and development, and other human sciences. Conciliators are assigned by the Supreme Court as quasi-public employers, put on the list of Conciliators, and appointed as members of the Conciliator Commission on a case-by-case basis by the Family Court. Their backgrounds vary, comprising lawyers, other professionals, retired businesspersons, retired court clerks, housewives, and so on. The conciliation is presided by the Conciliator Commission consisting of two conciliators and a judge.

3. The aim of this law amendment is to regulate the Family Court processes according to the trend of legalization in the sphere of family law.

① The Family Court processes had aimed to be more informal, swifter, and more flexible than ordinary civil procedures. These features were thought to promote a user-friendly atmosphere and amicable dispute resolution among family members.

② However, 70 years since World War II, people seek legal rights in both substantive law and procedural law even in family disputes. For example, divorcing parties seek a more transparent process because it determines the custody of their only child. It is not unusual for both grandparents to fight over their grandchild in this age of “fewer children.” Or, successors seek legally precise fact-finding and decision over the division of estates and other assets. The will, if any, does not completely govern the distribution of assets, so successors want a “fair” distribution designated by the court.

4. In addition to the changing trends that urged the Family Courts to develop the court practice, a judgment delivered by the Supreme Court on May 8, 2008 triggered an academic argument

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¹ Adjudication (*shimpan*) is a less formal judgment, resulting from an informal (closed) court procedure, and does not have *res judicata*. Therefore, the parties are allowed to bring the case before a different formal court. It is tried by a judge (or judges) and the judgment (*hanketsu*) is authorized to withdraw the adjudication.

² The Decision by the Supreme Court 3rd Petty Bench (Saiko-Saibansho dai 3 sho-hotei kettei), May 8, 2008, available at Katei-Saibansho Geppo, vol. 60-8, p. 51 (in Japanese).

over the due process of parties in the Family Court process². The point was the appellee's procedural right to be informed about the appellant's appeal and to be given opportunity to argue over the case at the appeal court. They are of course the fundamental rights in the formal civil procedure, but in the Family Court adjudication (*shimpan*) procedure, because of its informality, the former law had no clear article on this situation being left to the discretion of the appeal court. The Supreme Court dismissed the case, but the necessity of law amendment was suggested.

5. Taking these changes into account, the former law was amended wholly. The current law aims to strengthen the procedural status of parties, by making the process more transparent, providing parties and interested persons the opportunity to follow the process, and saving the procedural discretion of judges. As a result, these amendments have further formalized the processes. Some experienced lawyers and retired judges moan that the "old and good" Family Court has disappeared with this amendment.

2. Family disputes

1. Under this new law, family disputes are categorized into two groups based on party disposition. One group is called "(Appended) Table 1 cases (*Dai-ichi hyou jiken*)" and the other is called "(Appended) Table 2 cases (*Dai-ni hyou jiken*)."
Table 2 cases, such as divorce, succession, custody, adoption, etc., can be disposed by the agreement of the disputing parties. For example, in Japan, spouses are entitled to divorce legally by simply submitting a written agreement of divorce to the local government, such as city hall, near their residence. Therefore, in many cases, the detailed agreement of asset division, payment of support visitation, and other contracts for their child does not exist. The number of cases regarding custody is increasing.
2. On the other hand, the number of conciliation cases regarding division of estates has also increased recently. Since they are more like normal civil cases, in some Family Courts, the conciliation process is run on the "quasi-adversarial" principle. More like a formal civil procedure

where due process is protected broadly.

3. The changing characteristics of Family Conciliation: formalization or legalization

1. Under the formalization of adjudication procedure, the Family Conciliation process is also changing. Here I state three points: 1) the parties tend to share information in the conciliation process; 2) the court tries to increase the success (agreement) rate by delivering legal evaluation; 3) the med-arb situation remains and may urge more legalized conciliation.

2. The first change was brought by the law amendment. Article 256 (1)³ says that, in principle, "Where a petition for conciliation of domestic relations is filed, the Family Court must send a copy of a written petition for conciliation of domestic relations to the respondent" except when the petition is unlawful and other rare cases.

① It may seem a very basic procedural rule, but under the former law, the court was afraid that the written petition might anger the respondent and frame the emotional conflict, ending the conciliation. As a result, the Court did not send a petition to the respondent. The respondent would sit at the conciliation table in the Family Courthouse without being informed why he/she was ordered to be present.

② However, despite Courts' those concerns before the amendment, under the current law, this new duty has not triggered new troubles. The Courts have offered a new "petition form" on their website that says, "this petition will be sent to the respondent"; thus petitioners reasonably consider that emotional accusing words, if any, do not invite success.

③ On the other hand, the Courts started to guide the Conciliator Committees to ensure the parties were informed equally about how far the conciliation had proceeded and what issues they still had. Again, it may sound strange, since if the parties are negotiating each other in conciliation, they must know

³ Article 256 (1) Where a petition for conciliation of domestic relations is filed, the Family Court must send a copy of a written petition for conciliation of domestic relations to the respondent, except when the petition is unlawful or when it closes the case for conciliation of domestic relations pursuant to the provision of Article 271 without holding a date for proceedings for conciliation of domestic relations; provided, however, that if it is found that there is a risk of interfering with the smooth progress in proceedings for conciliation of domestic relations, the Family Court may give notice to the respondent of the fact that a petition for conciliation of domestic relations is filed, in lieu of sending a copy of a written petition for conciliation of domestic relations.

what is happening in the process. In Japan, almost all dates (conciliation conferences) have been presided on a caucus basis, so usually parties do not meet each other during their conciliation conferences until they are complete, and on the last date, they convene in one room, hear the explanation of the conciliation agreement, and exchange signatures on the agreement.

- ④ Following the Courts' new policy above, some leading Committees are trying to establish a short meeting time at the end of each date where both parties and the Committee convene in one room, and the Committee shares the above information with the parties and suggests "homework" before the next date. In this meeting, for now, there would be no real discussion directly between the parties on the merit of the case⁴. However, this could be a step forward in assisting direct conciliation between parties in the future.

3. The second point is that the current law expands the possibility of "ruling in lieu of conciliation" (*chotei ni kawaru shimpan*).

- ① Article 284 provides that where conciliation is unsuccessful and when the court finds it appropriate, the court (judge) may make a ruling for the resolution of a case in the form of adjudication. Each party can "veto" this ruling (*igi*) which should be filed with the court within two weeks from the day on which a party has received this ruling in the form of adjudication (Art. 286 (1) (2), Art. 279 (2)). The veto does not require any reason. When no valid veto is filed, the ruling "regarding any of the particulars set forth in Appended Table 2 shall have the same effect as a final and binding adjudication made under the provision of Article 39." (Art. 287). Binding adjudication under Article 39 is enforceable (see, note 1 and Art. 75⁵).

- ② This is an interesting scheme. The ruling is in

fact a conciliation proposal, but it is delivered by the court by its own authority in the form of adjudication and has a significant impact on parties. The ruling could be based on equity rather than positive law (Art. 284 (1)), but more than before, parties want legal evaluation even in family disputes.

- ③ The application of this scheme used to be limited under the old law, but taking the tendency that parties want to know the judge's legal evaluation into consideration, the current law provides that in almost all agreeable disputes, including Table 2 cases, this scheme can be applied. The statistics shows that this "ruling in lieu of conciliation" cases has dramatically increased; the conciliation cases concluded with "ruling in lieu of conciliation" was only 5 in 2013, and it amounts 4,035 in 2016, at the same time the number of all disposed Table 2 cases was 71,352 in 2013, and it has increased slightly in 2016, comes to 78,564. The number of veto has also increased, from 0 in 2013 to 620 in 2016.

4. The third point is that Family Conciliation is closely connected to the adjudication (*shimpan*) procedure when conciliation is unsuccessful.

- ① When conciliation is unsuccessful, the court has two options. One is to deliver ruling in lieu of conciliation, mentioned above, and the other is to conclude it, following which the adjudication procedure starts "automatically" with no filing of petition by a party for an adjudication on the case (Art. 272 (4))⁶.

- ② A noteworthy factor is that the judge who has overseen the conciliation process as a member of the Conciliators Committee and the judge who presides over the adjudication procedure as a judge is usually the same person. The judge would wear two hats, conciliator and decision maker (judge)⁷. This is the "med-arb" situation and there might be problems such as the

⁴ In Japan, conciliators are not required to take courses like conciliation/mediation skills, theories, ethics, role-playing, and other training programs. To supervise direct discussion between parties is difficult and demanding, more if you are untrained. The courses the court offers are more legal theory oriented and are not necessarily required.

⁵ Article 75 An adjudication to order the payment of money, delivery of an object, performance of an obligation to register, or performance of any other act shall have the same effect as an enforceable title of obligation.

⁶ Article 272 (4) Where a conciliation case regarding any of the particulars set forth in Appended Table 2 has been closed pursuant to the provision of paragraph (1), it shall be deemed that a petition for the adjudication of domestic relations regarding said matter has been filed.

⁷ This situation can be observed when in an adjudication procedure a judge orders parties to refer the case to Conciliation process (Art. 274 (1)), as well. Furthermore, the judge him/herself is allowed to be the only Conciliator for the case (Art. 274 (3)). Parties have no veto to this order, merely the judge must ask parties their opinion about the case reference to Conciliation and about whether the Conciliation be presided by Conciliator Committee or by the judge (Art. 274 (1)).

judge's neutrality, conflict of both roles, fear that parties may not talk frankly during conciliation, and limited admissibility of evidence that were distributed during conciliation. However, this issue has not been considered seriously in Japan because this system makes the procedure more efficient and swift; the judge has detailed facts through conciliation, especially the caucus setting, and the party can be spared the burden of filing a petition with a court. On the other hand, considerable academics do not

agree on this justification.

5. Family Court in Japan stands at a crossroads and is trying to strengthen its role in domestic dispute resolution, at the same time, the new law strengthens the procedural rights of parties despite these informal procedures. To accomplish this policy, the judicial culture, including the conciliator's ethics and skill, attorney's role and relationship with clients, and judge's attitude should change. It has just started.

Standard Arbitration Clause

All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in (name of city) in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association.

Notes to Contributors for Article Submissions

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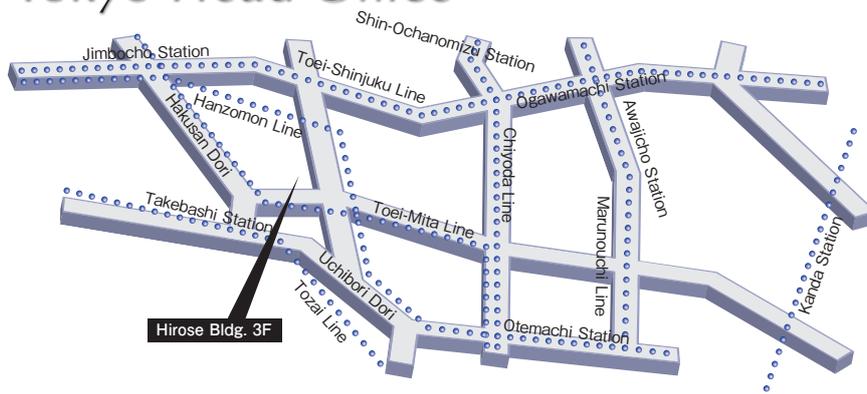
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