

**THE NEW JAPANESE CIVIL CODE  
A SHORT EXPLANATION OF ITS  
PROVISIONS AND OF THOSE  
PARTS OF THE NEW TREATIES,  
RELATING TO IT**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649258222

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Cover @ 2017

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# THE NEW JAPANESE CIVIL CODE.

A short explanation of its provisions and of  
those parts of the new Treaties  
relating to it.

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TOKYO, JULY 1896.

PUBLISHED BY THE AUTHOR.

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PRINTED BY THE KOKUBUNSHA, TOKYO.

Jpn 89.4.10

Jap 89.4.10

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THE revised Japanese Civil Code will probably be put into force in the course of next year. As the new treaties with the Powers have already been concluded or will be concluded within a short time upon the principle of the abolition of extraterritoriality, it cannot any longer be doubtful that foreigners will ere long be subjected to the rules of the Japanese Code. Reading Japanese laws in the original text being a matter quite out of the question for most of the foreigners, I believe it will not be without value to point out the principles of the new code so far as they have any relation to the status and business of foreigners.

The Japanese Civil Code as a whole is very well made. It is founded upon the new German Code, but contains also some principles taken from the English, Swiss, French and Italian law. There is not much original Japanese law to be found in the new code. In two respects it is better than the first draft founded upon the Code Napoléon. It shows a greater simplicity, and its separate provisions are much easier to be understood than those of the former draft, which, although a work of great diligence, was rather artificial and therefore not quite fit for a newly opened country like Japan. The second point is that the new code is written in pure, clear and original language, while the Japanese text of the former draft, being a too literal translation of Boissonade's elegant French phrases, was almost unintelligible to any one except those who made the translation.

The present code is not yet complete, the parts on family law and succession being still under preparation. That part of the code which has already been promulgated is divided into three books consisting of 724 articles. The first book, art. 1—174, contains general provisions, the second, art. 175—397,

provisions relating to real rights, the third book, art. 398—724, those on obligations, especially on contracts and wrongs.

#### FIRST BOOK.

The first section of the first book treats of *persons*. Every person as such is able to have private rights; foreigners, however, only as far as is not otherwise provided by law or by treaty. It is to be understood that Japan cannot take away from foreigners by law any right guaranteed to them by treaty.

A person becomes of age on the day when he has finished his twentieth year. Transactions and other juristic acts of a minor are valid, but can be rescinded, if they have been done without the consent of his legal representative—father or guardian. This restriction, however, does not apply to such acts of a minor, the purpose of which is merely to acquire rights without consideration or to fulfil his obligations. If a minor has been permitted to start a business, he may act as if he were of full age in all transactions relating to such business.

A person who is *insane* or suffers from any other derangement of mind may be put under guardianship upon his own application, on the application of a relative, of her husband or his wife, or of the public procurator. Transactions or other juristic acts performed by such a person may be rescinded.

Persons who are deaf, dumb, blind or feeble-minded may likewise be put under certain restrictions as to their right of disposition.

A *married woman*, as a rule, cannot perform legal transactions or other juristic acts without the consent of her husband. Otherwise her acts may be rescinded. The code enumerates specially all those legal acts for which the consent of the husband is required.

If a person has left his place of residence and nothing has been heard of him for seven years, he may upon application be declared dead by a judicial decision.

The next section of the first book treats of *artificial persons*. Artificial persons include corporations and also in



certain cases funds and property devoted to purposes of religion, or of education, charity or pleasure, which for convenience sake are treated by the law as a kind of persons. Artificial persons whose purpose it is to earn money are subjected to the provisions on commercial companies.

The charter or articles of an artificial person which are framed by the promoters or donors, are to be approved by the proper public office. Changes in the charter of a corporation require the consent of three fourth of all the members and a like approval.

Every artificial person must have one or several *directors*. In the latter case the affairs of the artificial person are determined by a majority vote of the directors. The directors are the representatives of the artificial person in its dealings with outsiders; they are, however, bound to conform to the provisions of the constating documents of the artificial person, and, in case of a corporation, also to the resolutions of the general meeting of members. The artificial person is usually responsible for wrongs committed by its directors in the course of its business.

There are to be appointed for every artificial person one or more *inspectors*, whose duty it is to supervise the doings of the directors and the conduct of the business. The supreme authority of a corporation is the *general meeting* of the members. It controls the whole management of the affairs of the corporation and the directors are, as already mentioned, obliged to comply with its resolutions. But it has no right to act for the corporation in its dealings with third persons. The general meeting acts by a majority vote.

Meetings are called by the directors; an ordinary meeting once a year, and extraordinary meetings, whenever the directors think it proper or one fifth of the members request it. Each member has one vote without regard to the amount of his interest. Members who do not attend in person a general meeting, may give their votes in writing or by proxy.

An artificial person may be put an end to in accordance

with any provision for that purpose contained in its charter or constating documents. It terminates also, if its object has been fully accomplished or has become impossible; if it has become bankrupt, if the permission of the Government for its existence is revoked or, in the case of a corporation, by a resolution of a general meeting passed by a three fourth's vote, or if for any reason there are no longer any members. The liquidation is carried out by its directors or by special liquidators appointed by a general meeting or by a competent court. The liquidators are subject to the supervision of the court.

One of the most important sections contained in the first book is that on "*hōritsukōi*", which may be approximately translated "juristic acts." The definition of *hōritsukōi* is taken from the German law. By a juristic act is meant any act which according to the intention of those who perform it has the effect of creating, transferring or extinguishing a right, for instance a contract, a transfer of land, a will or the payment of a debt. The subdivisions of this subject are:

1. Expression of the parties' intention;
2. Authority to act for another;
3. Validity and rescission of juristic acts;
4. Conditions and time.

As to the *expression* of the intention the following rules are established: If a person expresses an intention to do a certain juristic act, although actually he does not intend to do any juristic act at all or intends to do a different kind of an act, the act is nevertheless valid and binding as to all parties who acquire rights under it in good faith, not knowing the real intention of the doer of it. *Mistake* as to an essential element of the act, for instance if A promises B to lend him money, supposing him to be C, makes the act void, unless such mistake is due to the gross negligence of the actor. A juristic act produced by unlawful *threats* or *fraud* is not absolutely void, but voidable. Fraud by a third person, however, will not affect the validity of the act, unless the other

party to the transaction is privy to it; nor can a fraudulent act be rescinded against a person who has acquired rights under it in good faith.

2. *Authority to act for another.* Any act done by a duly authorized representative for another and in the latter's name is valid in favour of or against the latter, as if done by him in person. If anybody, who is in fact a representative for another, acts without declaring his representative capacity, he is personally bound, unless the other party to the transaction knows that he was acting for another. The authority of a representative may be founded on law, for instance in the case of a guardian, or on the will of the party whom he represents. In the latter case he cannot delegate his authority to another or appoint another to act in his place, except by the consent of his principal or in some case of necessity.

The authority of a representative terminates, if he or his principal dies, or if he is adjudged insane, or, being a spendthrift, is put under guardianship. If an authority conferred by the principal has come to an end as between the parties, and the representative nevertheless continues to act under it, his acts will be binding on the principal in favour of third persons, unless they know or ought to have known of his lack of authority.

If a person assumes to act for another without authority, the latter is not bound, unless he ratifies the act. The other party to the transaction, however, is bound at the outset, but he may call upon the principal to ratify the act within a reasonable time, and will be discharged, unless ratification is made within that time.

As to the rules on validity and rescission as well as on conditions and time they do not offer anything especially important for foreign business men. Of more interest are the provisions on *limitation*. Generally a claim is barred, if not prosecuted within ten years. Claims for money or other property are prescribed after five years, if the term for payment is one year or a shorter period. Certain claims are barred