Course Description
This is a survey course that both introduces the basic institutions and thought process of the Japanese legal system and focuses on specific subjects of Japanese law including Constitutional law, Contract law Corporate Governance, Discrimination, etc. Traditional modes of dispute resolution as well as the reception of German Civil Law and American Common Law will be explored to determine their effect on modern Japanese law. Final grade will be based on class participation and a short essay examination.

This is a 4 credit course meeting 2 times a week for two-hour hour sessions. There will be 19 classes covering 38 hours.

Course Materials

In addition there will be selected readings from Japanese cases (in English! – unless stated otherwise only majority opinions are assigned - in some cases only parts of such opinions and in some cases only concurring or dissenting opinions or parts thereof are assigned) and from materials linked to the internet.

For students who desire additional readings on any subject or subjects I will be happy to provide citations for additional source materials. I will establish office hours when I will be available to discuss the course or Japan in general with students who wish to do so. Feel free to contact me at the school or after class to set up such meeting.

Course Requirements and Final Examination
There will an [open] [closed] book final examination at the end of the quarter. Attendance, class participation and the final exam are all part of the final grade for the course. Greatest weight will be given to the final exam and will be the starting basis for the final grade. However, class participation will comprise a significant part of the grading decision and the final grade may be adjusted upwards or downwards based on participation.

You can view the grading policy for the School of Law here: http://www.law.washington.edu/students.academics/Grading.aspx

I recognize that there are times when it may not be possible for students to be fully prepared for a class session – just let me know when the class begins so we can avoid embarrassment to either you or me – and it will not be counted against you in the grading decision.

For the final examinations, you are encouraged to use a computer if at all possible. While you are not required to do so, typing your exams greatly improves their legibility and helps to ensure that they will be graded in an expeditious manner.
Exam4 is the law school’s exam-taking software. If you are taking your exam by computer, I require that you use Exam4. You must download the program before you take your exams; additional time will not be given for downloading on exam days. For additional information about Exam4, please contact Academic Services and consult the law school’s examination policies at: http://www.law.washington.edu/students/academics/Exams.aspx

SCHEDULE AND ASSIGNMENTS

Hours 1 and 2: Introductions
An Overview of the Course, location of Japanese law and cases in the English language, locating Japanese Supreme Court cases, Tokugawa “law”, The Class system - Rule by status, The role of the village in resolving disputes, Magistrates and unresolved issues

Required Reading:
- Jeffrey E. Morrison, Legal Foundations of the Tokugawa Bakufu and Post Colonial United States, p. 21-24
- Web site for Japanese law in English
- Supreme Court of Japan

Hours 3 and 4: A Brief view of The Civil Law System
Codes and structure, French vs. German systems, inquest system, The Meiji Restoration and the adoption of a Constitution and Western Codes, Navigation of the Codes in Civil Law societies and Japan versus navigation of the cases in common law systems.

Required Reading:
- A Primer on the Civil Law System, p. 14–16, 19-32
- Goodman, The Rule of Law in Japan, p. 20-29

Hours 5 and 6: The American Occupation and the adoption of a US style constitution
A 2-House Legislature, Vertical and Horizontal Separation of Powers, Local government in a Unitary Japanese State, Hortatory provisions (when is a right a right?), Lawmaking in Japan, Power of the Bureaucracy

Required Reading:
- Goodman, The Rule of Law in Japan, p. 35-55, 62-65, 184-185
- Governor of Okinawa Case, Case No. 1996 No. 90 - Judgment of (8/28/96), (Part II Items 1 The purview of the power of judicial review in mandamus and 6 The conditions of Articles 151-2(1) of the Local Autonomy Law)
Japanese Law B540 | Winter 2012
Goodman

- Horiki Case, Case No. 1976 Gyo-Tsu No. 30 (GB 7/7/82)
- Post Office Limitation of Liability case, Case No. 1999 No. 1767
- Jun Hongo, Hatoyama quits as prime minister, The Japan Times Online

Hours 7 and 8: The Japanese Legal System
Courts (structure and Separation of Powers), Judges (independence), Prosecutors, Lawyers (Bengoshi), Other legal practitioners, Law Schools and Bar Examination, The Constitution and suits between private parties or involving private rights

Required Reading:
- Attorney Discipline case, Case No. 2126 of 2005 (Concurring opinion J. Tahara),
- Mitsubishi Jushi case, Case No. 932 of 1968 (12/12/73)
- Gokoku Enshrinement Case, Case No. 1982 No. 902 (6/1/88), (Concurring opinion J. Nagashima Part I)

Hours 9 – 10: Judicial Review I
The Occupation hesitancy, Japan’s conservative approach, deference to the Legislative Branch, the balancing and reasonableness test, restrictions, Changes?, Remedy

Required Reading:
- Goodman, The Rule of Law in Japan, p. 174-176, 188-191
- Tokyo Metropolitan Public Safety Ordinance case, Case No. 1960 (A) 112, (7/20/1960)
- Illegitimate Child Inheritance Case, Case No. 1991 (Ku) No. 143, (7/5/95)
- Case No. 135 of 2006 (Part of Nationality Law Unconstitutional), Majority Opinion and Concurring opinion, J. Imai - and dissenting opinion J. Yokoo item 4, dissenting opinion J. Kainaka

Hours 11 and 12: Judicial Review II
Voting, the Apportionment mess, Election Speech

Required Reading:
- Goodman, The Rule of Law in Japan, p. 180-188
• **Case No. 82 and 83 of 2001** (9/14/05) (Overseas election case), (II. Constitutionality of the restriction of the exercise of the right to vote of Japanese citizens residing abroad)

• Kyodo News, *Vote Gaps illegal but poll isn’t void: court*, The Japan Times Online, 2/25/2010

• Matthew J. Wilson, *E-Elections: Time for Japan to Embrace on line Campaigning*, p. 4-13, and subpart C, p. 19-23

• **Case #1999 (Gyo-Tsu) No.35**, Minshu Vol.53, No.8, at 1704, 11/10/1999, Item iii 4 and dissenting opinion of Justices Kawai Shinichi, Endo Mitsuo, Fukuda Hiroshi, Motohara Toshifumi and Kajitanii Gen on Item iii 4.

**Hours 13 and 14: Freedom of Speech**

Obscenity, Modification?, Defamation, Censorship, Prior restraint

**Required Reading:**

• **Koyama v. Japan, The Lady Chatterley’s Lover Case No. 1953** (A) 1713, 11 Keishu (No. 3) 997 (Sup. Ct. G.B. 3/13/57)


• **Kochi v. Japan, Case No. 1962 (O) No. 815, 20 Minshu No. 5 at 1118** (Sup. Ct., Petty Bench, 6/23/1966)


• **NHK Censorship case, Case No. 1986 (0) No. 800** (Sup. Ct. P.B. 17 April 1990), majority and concurring opinion

• **Web site liable for posting of photo showing defendant in handcuffs**

**Hours 15 – 16: Renunciation of War**

From no military to self defense, definition of self defense and trouble with Japan’s allies (notably US), non-nuclear principles and secret agreements, the political dimension, the legal dimension, the Referendum Law

**Required Reading:**

• Goodman, *The Rule of Law in Japan*, p. 218-240

• Mike M. Mochizuki, *Japan Tests the Nuclear Taboo*, p. 303-322

• **Sakata v. Japan, 13 Keishu 3225, Case No. 1959 (A) No. 710** (Sup. Ct. GB 16 December 1959), (“Sunakawa case”)
• **Hyakuri Air Base Case, Ishizuka v. Japan, 43 Minshu 385, Case No. 1982** (O) No. 164 and (O) No. 165 (Sup. Ct. P.B. 20 June 1989,


**Hours 17 – 18: Contract law**
Choice of law and forum clauses, good faith in negotiations, carrying out terms, issues arising during life of contract, change of circumstances, damages, some continuing relationship contracts: landlord/tenant; manufacturer/distributor, consumer and labor contracts (special choice of law and other rules)

**Required Reading:**

  - [*Good Faith in Contract Particularly in the Contracts of Arbitration and Chartering*, By: Prof. William Tetley, Q.C. (Part VI - 2 The Civil Law and Good Faith, p. 8-10 )]

  - [*Servo Kinetics Inc. v. Tokyo Precision Instruments*, 6th Cir. Court of Appeals, 1/30/07]

**Hours 19 and 20: Contract Law / Corporate Law**
The legal basis for the Lifetime Employment system, employer/employee continuing relationship and contract rights arising there from, restricted market for labor, mandatory retirement, the employee dominated firm, corporate structure of the classic Japanese company, corporate governance and the lost decade of the 1990s, changes, The Company with Committees model

**Required Reading:**


**Hours 21 and 22: Corporate governance and hostile takeover attempts**
Hoarding of assets by Japanese companies (low dividend policy), equal treatment to all shareholders and effect on corporate control, the old law, the Livedoor case, American ownership of minority shares, the Companies Law, triangular mergers and takeover defenses, Steel Partners vs. Bull Dog, METI Guidelines and Study Group Report

**Required Reading:**
- Goodman, *The Rule of Law in Japan*, p. 298-302

  - [*Guidelines Regarding Takeover Defense for the Purposes of Protection and Enhancement of Corporate Value and Shareholders’ Common Interests*]

  - [*Bull Dog / Steel Partners Decision*]

  - [*Study Group Report*]
Hour 23: Derivative Lawsuits
Daiwa Bank and Risk Management, difficulties of proof, J-SOX and risk management and derivative suits

Required Reading:
- Goodman, *The Rule of Law in Japan*, p. 279-282
- "Eleven Misunderstandings about the Internal Control Report System", Financial Services Agency publication

Hour 24: Issues of Discrimination
The Constitution, American Occupation goals, Insiders treated like outsiders, Ryukians (Okinawa issue), Ainu – so-called Burakumin, lack of a general anti-discrimination law, age discrimination

Required Reading:
- Goodman, *The Rule of Law in Japan*, p. 128-129, 102-110

Hours 25 and 26: Issues of Discrimination
Ethnic Koreans, loss of citizenship after the Peace Treaty, no right to vote (local elections?), Employment discrimination, foreign workers and foreign spouses, Sex discrimination, Nissan Motors case (good faith and the Constitution), the Equal Opportunity Law and its evolution, two-track hiring, the declining population and limited recognition of “indirect” discrimination

Required Reading:
- Case No. 93 of 1998, 1/26/05 (reservation of supervisory jobs to Japanese)
- “Phase III” Of the Japanese Equal Employment Opportunity Act subparts 1-3 of Part 1 and Parts 2 and 3, p. 11-23

Hours 27 – 28: Family Law and the Family Register
Marriage, Divorce and Child Custody, “illegitimate” child issues, Inheritance and the “illegitimate child”, Transnational Marriage, the Hague Convention Issue, De Facto Marriage and the law

Required Reading:
- Goodman, *The Rule of Law in Japan*, p. 117-134
- Colin P. Jones, *Signing Hague treaty no cure-all for parental abduction scourge* 'Best interests of the bureaucracy' standard applies in Japan, The Japan Times Online
• **De Facto Marriage case No. 2005 No. 354, 8/3/07**

• **Illegitimate Child Inheritance case No. 1991 (Ku) 143, 7/5/1995**

**Hours 29 – 30: Family Law and Family Issues**

In-vitro fertilization, surrogacy, end of life decisions, and brain death and transplants

**Required Reading:**

- Goodman, *The Rule of Law in Japan*, p. 134-142, 139-142

- **Surrogate Birth Child Denied Registration case, Case No. 47 of 2006** (Sup. Ct. 2nd Petty Bench, 23 March 2007)

- Gillett-Netting v. Barnhart, 371 F.3d 595 (9th Cir., 2004)

- **Posthumous in vitro Fertilization Legitimacy case, Case No.1748 (Ju) of 2004**, (Sup. Ct. 2nd Petty Bench, 4 September 2006)

- Natsuko Fukue, *Kin agree to donate brain-dead man's organs*, The Japan Times Online, 8/9/2010


**Hours 31 and 32: The Civil Litigation System**

Role of the Legal System / Access to the Legal System, Structural impediments, ADR - an Inquest system with common law adversary system features, inquiries, pro-se parties, The function of the Japanese Judge, limited oral testimony, privileges of witnesses, production of documents under the New Civil Procedure Code, remedy

**Required Reading**


- **Punitive Damages case, Case No. 1993** (O) No. 1762 (Sup. Ct. P.B. 11 July 1997)

- **Case No. 2 of 1999**, 11/12/99 (Fuji Bank case),

- **Case No. 39 of 2005** – document ordered produced (not prevent making decisions – not self-use)

**Hours 33 and 34: The Criminal Justice system**

Police, prosecutors, discretion, suspension of prosecution, confession and compensation, Constitutional guarantees such as counsel, no self incrimination, no forced confession and the real world, Confession and the problem of false confession
Required Reading:
- [Comment on Using Criminal Punishment to Serve Both Victims and Social Needs](#) by John O. Haley
- [X and 5 others case, Case No. 1189 of 1993](#) (3/24/99)

Hours 35 – 36: Administrative Law and Church State Issues
History, Standing, the need for a “disposition”, special panels but no Administrative Court, Administrative Guidance in the Administrative State, Yasukuni Shrine and Government official visits, Religion and Culture ties, Accession of the Emperor

Required Reading:
- Goodman, *The Rule of Law in Japan*, p. 463-488, 75-81
- [Odakyo Railroad case, Case No. 114](#) (Gyo-hi) of 2004, 59 Minshu No. 10 (Sup. Ct. 7 December 2005)
- [Tsu City Shinto Groundbreaking Ceremony Case, Case # 1971 #69](#) (7/13/77)
- Shinto Shriners and Public Land cases
- [Case to seek a declaration of the illegality of the omission of administration of property, Case No. 2007 No. 260](#)

Hours 37 and 38: Communitarianism and Understanding Japanese Law

Required Reading:
- Goodman, *The Rule of Law in Japan*, p. 497-518, 82-84
- [Communitarianism](#), Stanford Encyclopedia of Philosophy