

# Law and Economics in Japan: 25 Years after the Hatching Stage

Daisuke MORI\*

Faculty of Law, Kumamoto University

---

## Abstract

In this article, I evaluate the status of law and economics in Japan from 1990 to 2016. Through the literature review, we can see distinctive features that did not exist in 1990: the establishment of the Japan Law and Economics Association, change in methodologies, increase in empirical research, expansion of research fields, and influencing policies and statutes in the real world. I then conduct case studies about how law and economics research in Japan offers policy recommendations. I present two examples: repeal of protection of short-term leases and establishment of fixed-term building leases. Finally, I explore the outlook of the next stage of law and economics in Japan. More emphasis on empirical research and more English publications on law and economics in Japan are important to move to the next stage.

**Keywords:** law and economics in Japan, Japan Law and Economics Association, empirical research, protection of short-term lease, fixed-term building lease, Coase theorem

## 1. INTRODUCTION

About 25 years ago, Ota<sup>1</sup> described the status of law and economics in Japan at that time, in his work entitled “Law and Economics in Japan: Hatching Stage.” After that, law and economics in Japan began to gradually grow. In this article, I evaluate the status of law and economics in Japan from 1990 to 2016.

As Ota<sup>2</sup> stated, in the 1980s, legal scholars became aware of the importance of law and economics, and many textbooks on the topic in the US were translated into Japanese; this movement continued thereafter. For example, Kobayashi<sup>3</sup> is the translation of Calabresi,<sup>4</sup> Ota<sup>5</sup>

---

\* Associate Professor of Sociology of Law, Faculty of Law, Kumamoto University. LL.B. the University of Tokyo, 2004; LL.M. the University of Tokyo, 2006; LL.M. George Mason University School of Law, 2009. This research is supported by International Collaborative Research Group for Humanities and Social Sciences at Kumamoto University. Correspondence to Daisuke Mori, 2-40-1 Kurokami, Chuo-ku, Kumamoto-shi, Kumamoto, 860-8555, Japan. E-mail address: mdai@kumamoto-u.ac.jp.

1. Ota (1991), pp. 301–8.

2. *Ibid.*

3. Kobayashi (1993).

4. Calabresi (1970).

5. Ota (1997).

is the translation of Cooter and Ulen,<sup>6</sup> Hosoe<sup>7</sup> is the translation of Miceli,<sup>8</sup> Ueda<sup>9</sup> is the translation of Harrison,<sup>10</sup> and Tanaka and Iida<sup>11</sup> is the translation of Shavell.<sup>12</sup> Among these works, Tanaka and Iida<sup>13</sup> has very distinctive features, as it contains the translators' detailed comments describing the difference between US and Japanese law, and explains how to apply economic analysis to Japanese law. Further, it also contains an introduction to mathematics, which helps readers who are not familiar with the subject.

Although translated textbooks are still the main sources of knowledge of law and economics for Japanese people, the number of original textbooks written by Japanese scholars is increasing. For example, Hayashida<sup>14</sup> published a Japanese textbook of law and economics, which covers broad areas of law such as civil law and procedure, antimonopoly law, government regulation, and even constitutional law, while Shishido and Tsuneki<sup>15</sup> mainly dealt with laws related to corporations. Moreover, Fukui's<sup>16</sup> work was closely related to public policy in the Japanese society, while Yanagawa, Takahashi, and Ouchi<sup>17</sup> wrote a textbook<sup>18</sup> that enables readers to gain basic knowledge of legal and economic studies to understand the similarities and differences between them, as well as to apply them to various social issues.

We can see other distinctive features that did not exist at the time of Ota's<sup>19</sup> work: the establishment of the Japan Law and Economics Association (JLEA), change in methodologies, increase in empirical research, expansion of research fields, and influencing policies and statutes in the real world. In the following sections, I describe these features through the literature review. I then present case studies about how law and economics research in Japan offers policy recommendations. I also explore the outlook of the next stage of law and economics in Japan.

## 2. ESTABLISHMENT OF THE JAPAN LAW AND ECONOMICS ASSOCIATION

The JLEA<sup>20</sup> was established on 15 February 2003,<sup>21</sup> and it aims to promote academic activities related to theory and its application of "law and economics," as well as to build

6. Cooter & Ulen (1997).

7. Hosoe (1999).

8. Miceli (1997).

9. Ueda (2003).

10. Harrison (2000).

11. Tanaka & Iida (2010).

12. Shavell (2004).

13. Tanaka & Iida, *supra* note 11.

14. Hayashida (2002).

15. Shishido & Tsuneki (2004).

16. Fukui (2007).

17. Yanagawa et al. (2014).

18. This was written as a textbook for the Econo-Legal Studies Program in Kobe University, which was provided by the Faculty of Law and Economics in close co-operation; the website is <http://www.lab.kobe-u.ac.jp/iiss-els/index.html> (accessed 1 March 2017).

19. Ota, *supra* note 1.

20. The official website for the JLEA is <http://www.jlea.jp/> (accessed 1 March 2017) and, as of May 2016, it had about 460 members.

21. Hatta et al. (2003) is the report of the founding commemoration symposium.

networks of scholars and practitioners. Its prospectus describes the status of law and economics in those days as follows:

In Japan, findings of law and economics are gradually accumulating, but they are limited to some fields. They are far from covering all the important fields. Methodologies of “law and economics” are yet to be common for lawyers and economists. Accumulating the findings from law and economics—How do statutes and cases affect the amount of social wealth? What actors do they affect and how much do their payoffs increase or decrease?—in more fields will not only provide both lawyers and economists with new insights. It also helps to build networks for sharing knowledge and information. It is significant as new interdisciplinary research activities. “Law and economics” will play an important role in making statutory interpretation and court practice in the real world more objective. Moreover, “law and economics” will provide powerful tools for empirically predicting the impact of law in the law-making process.<sup>22</sup>

The JLEA has held annual meetings at the beginning of July every year, which consist of panel discussions, lectures, and individual presentations. Panel discussions have been made up of timely topics. For example, the topics at the first annual meeting (held at Seikei University in 2003) were “Justice System Reform” and “Special Districts for Structural Reform.” At that time, the former,<sup>23</sup> which introduced several new systems, such as law school and the lay judge (*saibanin*) system, was a hot topic among lawyers, while the latter dealt with a wide range of reforms of the economic and administrative systems, and was engaged by Koizumi’s cabinet.<sup>24</sup>

Some examples of topics at successive annual meetings from 2004 to 2016 are<sup>25</sup>: “Criminal Law and Economics” and “Foreclosure Sale by Auction” (at the Gakujutsu Sogo Center in 2004), “Law and Economics for Lawyers” (at Hokkaido University in 2005), “Hostile Takeover” and “Japanese Bar” (at the National Graduate Institute for Policy Studies in 2006), “Reverse Mortgage” and “Methodologies of Economics which Are Effective to Legal Problems” (at Osaka University in 2007), “Privatization” and “Public-Private Competitive Tendering” (at Tokyo Institute of Technology in 2008), “How to Teach Law and Economics” (at Kumamoto University in 2009), “Antimonopoly Act and Competition Policy” (at the National Graduate Institute for Policy Studies in 2010), “The Future of National Energy Policy and Electric Power Industry in Japan” and “Compensation System for Nuclear Damage”<sup>26</sup> (at Kyoto University in 2011), “Olympus Scandal and Corporate Governance” and “Disaster Management” (at Sophia University in 2012), “The Themes which Will Become Important in Law and Economics in the Future” and “Private International Law and Economics” (at Hokkaido University in 2013), “Employment Law and Economics” and “Fraudulent Disclosure in the Secondary Market” (at Komazawa University in 2014), “Consumer-Group Class-Action System” and “Law Making Process”

22. Jlea.jp (2017). It is written in Japanese and translated into English by the author.

23. For the details of Justice System Reform in Japan, see the Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century. The official English translation is available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html> (accessed 1 March 2017).

24. For the details of Structural Reform, see the website of the Japanese Cabinet Public Office (in English): [http://japan.kantei.go.jp/kouzou/index\\_e.html](http://japan.kantei.go.jp/kouzou/index_e.html) (accessed 1 March 2017).

25. For the topics at the annual meetings from 2003 to 2010, see the following file (in Japanese): <http://www.jlea.jp/archives.xls> (accessed 1 March 2017).

26. This concerns the Great East Japan Earthquake, which occurred on 11 March 2011. A massive earthquake triggered a tsunami that caused an energy accident at the Fukushima I Nuclear Power Plant.

(at the University of Tokyo in 2015), and “Recovery from Kumamoto Earthquakes” (at Kumamoto University in 2016).

### 3. CHANGE OF METHODOLOGIES

Law and economics in Japan were influenced by the massive change of economics as a whole, which occurred in the 1980s. During this period, the keyword of economics changed from “market” to “information,” “incentive,” and “contract.”<sup>27</sup>

Prior to the 1980s, as is the case with microeconomics, the main analytical tool of law and economics was traditionally price theory, which mainly focuses on the market mechanism and analysis of how the market price equilibrates the supply and demand as well as the efficiency of perfect competitive market.<sup>28</sup>

However, in the 1980s, things changed. Game theory and the concept of Nash equilibrium infiltrated into economics. Economists did not feel it to be a drastic and discontinuous change and, thus, relatively smoothly accepted it because game theory inherits and develops the rational choice assumed in neoclassical economics. Yet, this change was of great importance in the history of economic theory. Therefore, it is referred to as the “quiet revolution” of economics.<sup>29</sup>

This quiet revolution broadens the topics with which economics can deal. The analytical targets of game theory are not limited to the market; it can analyze the various situations where two or more players decide their actions based on their expectations of what actions the other players will take.

Moreover, information economics and contract theory have a great impact on economic analysis. With regard to information asymmetry—the situation in which some players have private information not known to other players—the market is not always efficient. One typical kind of information asymmetry is moral hazard, which occurs when some players’ (“agents”) actions are not observable or verifiable to other players (“principals”). In this case, the design of mechanisms, such as contracts that incentivize agents, is important. Another type of information asymmetry is adverse selection, which occurs when the information that some players retain is hidden from other players. In this case, the design of mechanisms that help to draw out the hidden information is important. More recently, the problem of incomplete contracts, in which every possible contingency is not included in contracts, has drawn attention.

Many Japanese books influenced by these streams have been published. Ramseyer<sup>30</sup> used game theory to analyze contracts and ongoing relationships in Japan, while Ota<sup>31</sup> and Iida<sup>32</sup> analyzed law and social norms using not only ordinary, but also evolutionary, game theory. Ito and Kosano’s<sup>33</sup> work contained articles that apply contract theory to various legal,

27. Fujita (1999), p. 70.

28. Fujita indicates that a lot of Japanese scholars who criticize law and economics still hold this traditional view of economics. *Ibid.*

29. Kandori (1994), p. 40.

30. Ramseyer (1990).

31. Ota (2000).

32. Iida (2004).

33. Ito & Kosano (2003).

economic, and social institutions. Hosoe<sup>34</sup> used information economics to analyze topics such as contract law, employment, corporate governance, and government regulation. Further, Yanagawa<sup>35</sup> presented an intelligible introductory book of incomplete contracts, which is applicable to many legal issues.

#### 4. INCREASE IN EMPIRICAL RESEARCH

Empirical research that tests the theory of law and economics by means of statistics or econometrics is gradually increasing. Before the 1990s, this type of research was relatively rare in Japan. Ramseyer<sup>36</sup> pioneered the literature on empirical law and economics in Japan; by using quantitative data, he tested several hypotheses related to Japanese law, such as the one that Japanese people rationally choose between litigation and settlement.<sup>37</sup>

Thereafter, Ramseyer empirically analyzed various fields of Japanese law continuously. For example, Ramseyer and Rasmusen<sup>38</sup> dealt with judicial independence in Japan. Using a regression model, they tested whether the political orientation of the opinions that a judge writes affects the assignments that he or she receives. Nakazato, Ramseyer, and Rasmusen<sup>39</sup> tried to solve several puzzles concerning Japanese attorneys, using micro-level data from tax records on attorney incomes. One of such puzzles is the reason that Japanese attorneys do not earn much, even though it is very difficult to become an attorney and, consequently, there are very few in Japan. Ramseyer and Rasmusen<sup>40</sup> analyzed the relationship between the difficulty of bar exams and quality of attorneys, and tested the hypothesis that a relaxation in occupational licensing standards can increase the quality of those who enter the industry. Using the data of the Japanese bar exam, they made use of the method of natural experiment since the Justice System Reform in the early 2000s introduced the new bar exam, which is easier to pass than the old one.

Other researchers also started to conduct empirical research. For example, Matsumura and Takeuchi<sup>41</sup> tested whether capital punishment has a deterrent effect, using the regression model similar to those used in the US, while Akiba<sup>42</sup> analyzed the deterrent effect of punishment more generally. Kinoshita<sup>43</sup> used regression to examine the effects of lawyers' market regulations, such as supply-side (strict bar exam) and demand-side (long trial time policy) regulations. Miyoshi<sup>44</sup> estimated the induced demand of lawyers and econometrically analyzed the data relating to company scandals and insider trading. In addition, Morita<sup>45</sup> introduced new econometric tools that can be used to reveal causal relationships

34. Hosoe (2005).

35. Yanagawa (2000).

36. Ramseyer, *supra* note 30.

37. Empirical research on this hypothesis was originally conducted by Ramseyer & Nakazato (1989).

38. Ramseyer & Rasmusen (2003).

39. Nakazato et al. (2010).

40. Ramseyer & Rasmusen (2015).

41. Matsumura & Takeuchi (1990).

42. Akiba (1995).

43. Kinoshita (2000).

44. Miyoshi (2013).

45. Morita (2014).

such as difference-in-difference analysis, instrumental variables, and the fixed-effect model, and presented many examples of how to apply them to legal issues.

Further, other empirical methods, such as the economic experiment, also began to be used. Iida<sup>46</sup> conducted experiments to test the focal point theory of law, which states that setting the salient point by law can change the behaviour of people even without sanction. Mori and Ikeda<sup>47</sup> tested decoupling the liability system, where the amount of damages the plaintiff receives differs from the amount paid by the defendant.

## 5. EXPANSION OF RESEARCH FIELDS

Law and economics began in Japan in those fields in the US where law and economic approaches are relatively popular. For example, Hamada,<sup>48</sup> famous works from the early days of law and economics in Japan, analyzed tort law and product liability. Tort law has been one of the most popular fields for law and economics in the US, and Hamada<sup>49</sup> introduced Calabresi's<sup>50</sup> theory and Brown's<sup>51</sup> analysis.<sup>52</sup> Further, Miyazawa<sup>53</sup> studied product liability.

Research fields involving applied law and economics have been expanding, though economic analysis of tort law (e.g. Ikeda and Mori<sup>54</sup>) and product liability (e.g. Hamada<sup>55</sup>) is still popular. Civil-law fields other than tort law have also been the subject of law and economics studies; for example, Kobayashi<sup>56</sup> and Zasu<sup>57</sup> analyzed contract law, while Hosoe<sup>58</sup> analyzed property law.<sup>59</sup>

Commercial law, especially corporate,<sup>60</sup> is one of the fields where economic analysis has become relatively popular, and Tokutsu<sup>61</sup> described its popularity. This development means that, nowadays, one cannot even participate in debate about recent issues, such as to what extent we should restrict defensive tactics against a hostile takeover, if he or she does not understand law and economics.<sup>62</sup>

46. Iida (2007).

47. Mori & Ikeda (2015).

48. Hamada (1976); Hamada (1977).

49. Hamada, *supra* note 48.

50. Calabresi, *supra* note 4.

51. Brown (1973).

52. However, as Ota (*supra* note 1) indicated, I emphasize that Hamada (*supra* note 48) not only introduced these theory and analysis, but also applied them to product liability and obtained original results.

53. Miyazawa (1982).

54. Ikeda & Mori (2015).

55. Hamada (1995).

56. Kobayashi (1991).

57. Zasu (2011).

58. Hosoe (2015).

59. Japanese Civil Code contains articles relating to tort, contract, property, and family law. For the details of the Civil Code, see Oda (2011).

60. In Japanese law, corporate law is considered to be a part of commercial law because most of its elements were included in the Commercial Code until the Companies Act was enacted in 2005.

61. Tokutsu (2009), pp. 343–4.

62. *Ibid.*

Much literature on corporate law and economics has been published. One example is Miwa, Yanagawa, and Kanda,<sup>63</sup> which presented an epoch-making literature. It is a collaborative work of both legal and economic researchers; they clarified the difference between the ways of thinking of both types of researchers and discussed how they can co-operate to analyze corporate law. Other examples are Fujita,<sup>64</sup> which explained how information economics and contract theory are applicable to corporate law, and Yanagawa,<sup>65</sup> which analyzed issues related to corporate law, such as corporate governance, M&As, and business restructuring and revitalization, using contract theory.

Corporate law researchers have also begun to pay attention to empirical research. Tanaka<sup>66</sup> discussed the significance of empirical studies in corporate law and explained the numerical tools to analyze corporate law, one of which is an econometric model. Morita<sup>67</sup> presented many examples of how to apply this type of model to corporate law issues.

Tax law is another field in which economic analysis was introduced early<sup>68</sup>; and, now, economic analysis in that area has become relatively common. Particularly, Nakazato and Ramseyer<sup>69</sup> is a unique study that deals with Japanese history from 645 to 1992 from the perspective of tax law and economics. Fujitani<sup>70</sup> showed that law and economic analysis of other public law fields has been less popular, and discussed the possibility of its use in public law. There are some other examples of economic analysis of public law. For example, Yashiro<sup>71</sup> dealt with government regulation, while Tsuneki<sup>72</sup> presented the economic approach to public policy.

Additionally, law and economics is spreading into the various fields that are closely related to economic activities, one such field being intellectual property. Aoki<sup>73</sup> conducted an economic analysis of patent law, while Hayashi<sup>74</sup> analyzed copyright law. Other examples of such fields are consumer protection law (Ota<sup>75</sup>; Yanagawa<sup>76</sup>), antimonopoly law (Arai<sup>77</sup>; Okada and Hayashi<sup>78</sup>), employment law (Iida<sup>79</sup>), and securitization (Takahashi<sup>80</sup>).

63. Miwa et al. (1998).

64. Fujita, *supra* note 27.

65. Yanagawa (2006).

66. Tanaka (2009); Tanaka (2013).

67. Morita, *supra* note 45.

68. This is largely attributable to Hiroshi Kaneko. Before Kaneko, tax scholars had few acceptable ways to debate economic analysis. He created a way for tax scholars to debate the economic substance of tax and income. See Nakazato & Ramseyer (2010).

69. Nakazato & Ramseyer (2000).

70. Fujitani (2011).

71. Yashiro (2003).

72. Tsuneki (2012).

73. Aoki (2010).

74. Hayashi (2004).

75. Ota (2001).

76. Yanagawa (2001).

77. Arai (2006).

78. Okada & Hayashi (2009).

79. Iida (2012).

80. Takahashi (2009).

The number of economic studies that deal with social norms is increasing. Social norms are the rules that govern the behaviour of members of society, other than legal rules. In Japan, studies of social norms are relatively popular among legal scholars because there is an established field, referred to as “sociology of law,” which argues that legal scholars should focus not only on legal rules, but also on “living law,” or mainly social norms. Ota<sup>81</sup> and Iida,<sup>82</sup> being researchers familiar with the sociology of law, conducted economic analyses of social norms, while Fujita and Matsumura,<sup>83</sup> one a legal scholar and the other an economic scholar, used ordinary and evolutionary game theory to analyze social norms. Further, Zasu<sup>84</sup> and Tsuneki and Zasu<sup>85</sup> analyzed the relationship between law and social norms.

Additionally, the studies of soft law, which is similar to social norms, have also begun to attract the attention of law and economics researchers. Soft law refers to the norms that nations, firms, or people comply with, although they are not legally bound to do so. The University of Tokyo is the centre of the study of soft law<sup>86</sup> and it also publishes articles, such as Fujita,<sup>87</sup> and books called “soft law studies series,” such as Nakayama and Fujita<sup>88</sup> and Nakayama and Kanda.<sup>89</sup>

Other fields of law have also been studied from the perspective of law and economics. Akiba<sup>90</sup> constructed an economic model of criminal law and punishment, and empirically tested it using data on crimes in Japan. Ota<sup>91</sup> dealt with methods of civil dispute resolution such as litigation, negotiation, and alternative dispute resolution, while Ito<sup>92</sup> discussed the philosophy of law using game theory. Moreover, Basedow, Kono, and Rühl<sup>93</sup> published a collection of papers written by German and Japanese researchers concerning the economic analysis of private international law, which governs the relations across different countries between persons or firms, such as international marriage and a contract between persons from different countries. They analyze the problem of the choice of laws, as well as international contract, tort, and corporate law. Further, Kagami<sup>94</sup> presented an economic analysis of private international law, while Mori<sup>95</sup> analyzed public international law, which governs the relationship between countries, using game theory.

---

81. Ota, *supra* note 31.

82. Iida, *supra* note 32.

83. Fujita & Matsumura (2013).

84. Zasu (2007).

85. Tsuneki & Zasu (2015).

86. The University of Tokyo Global COE Program “Soft Law and the State-Market Relationship: Forming a Base for Education and Research of Private Ordering,” and the University of Tokyo 21st Century COE Program “Soft Law the State-Market Relationship: Forming a Base for Strategic Research and Education in Business Law.” The website is <http://www.gcoe.ju-tokyo.ac.jp/en/index.html> (accessed 1 March 2017).

87. Fujita (2013).

88. Nakayama & Fujita (2008).

89. Nakayama & Kanda (2009).

90. Akiba, *supra* note 42.

91. Ota (2008).

92. Ito (2012).

93. Basedow et al. (2006).

94. Kagami (2009).

95. Mori (2011).



There are books that cover broad areas of Japanese law and discuss them from the perspective of law and economics. Ramseyer and Nakazato<sup>96</sup> analyzed property, contracts, torts, corporations, civil procedure, criminal law and procedure, administrative law, and income tax in Japan. Hosoe and Ota<sup>97</sup> presented papers about the economic analysis of contract, civil procedure, corporate governance, and eminent domain. Yano's<sup>98</sup> work contained papers that deal with the economic analysis of competition law, M&A, finance, employment, and education. Additionally, Tsuneki<sup>99</sup> addressed the normative foundations law and economics, and its application to employment law and justice system reform. Usami<sup>100</sup> presented a collaborative work by researchers of philosophy of law, positive law, and economics, and it discussed the normative foundations of law and economics, and its application to social security, education, civil litigation, etc.

## 6. INFLUENCING POLICIES AND STATUTES IN THE REAL WORLD

More and more law and economics research deals with policies and statutes,<sup>101</sup> offering policy recommendations for reform. For example, Fukui and Ohtake,<sup>102</sup> Kanbayashi,<sup>103</sup> and Ouch and Kawaguchi<sup>104</sup> studied employment policies and laws, such as the regulation on dismissal in Japan, while Fukui, Toda, and Asami<sup>105</sup> discussed educational reform in terms of law and economics.

There are also a few cases where law and economics researchers' arguments helped to change statutes. I will now discuss two examples.

### 6.1 *Repeal of Protection of Short-Term Leases*

When someone borrows a large amount of money, he or she often mortgages the immovable property owned, such as land or buildings.<sup>106</sup> In Japan, mortgages are created by an agreement between the creditor and owner of the immovable property, and are perfected by registering them at the local Legal Affairs Bureau. If the debtor cannot pay back the money, the mortgage will be foreclosed for default. In other words, the debtor's mortgaged property is auctioned. In Japan, all foreclosure auctions are conducted by the courts, and the creditor who has the mortgage receives payment from the proceeds of its sale by auction.

There is a case where a tenant leases a space in the mortgaged building. A tenant who leases a space in a building before the mortgage is registered has the right to assert its contractual rights against any subsequent third-party purchaser. In contrast, if a tenant

96. Ramseyer & Nakazato (2000).

97. Hosoe & Ota (2001).

98. Yano (2007).

99. Tsuneki (2008b).

100. Usami (2010).

101. For the general description of research on law and policy in Japan, see Usami (2015).

102. Fukui & Ohtake (2006).

103. Kanbayashi (2008).

104. Ouch & Kawaguchi (2014).

105. Fukui et al. (2010).

106. In Japan, land and buildings are considered separate and independent real properties.

leases a space in the mortgaged building after the mortgage is registered,<sup>107</sup> the tenant is forced to vacate the building if the mortgage is foreclosed and a third party purchases it.<sup>108</sup>

There is an exception—the so-called protection of short-term leases. Short-term leases of less than five years for land and three years for buildings were not extinguished, even when the tenant leased a space in the mortgaged building after the mortgage was registered.<sup>109</sup> This protection of short-term leases had been in the Civil Code since it took effect in 1898, and its purpose is to promote the lease of real property. One cannot rest assured to lease real property if he or she is suddenly forced to vacate it because of a mortgagor's default.

Article 395 and 602 of the Civil Code of Japan stipulated this exception as follows:

#### Article 395

A lease which does not exceed the duration specified in Art. 602 may be set up against the mortgagee even though registered after the mortgage; but if such lease causes damage to the mortgagee, the court may on his application order its cancellation.

#### Article 602

If a person who has not disposing capacity or authority to do so, makes a contract of hiring, such hiring cannot be for longer than the following periods:

1. In case of the hiring of mountain or wood land for the purpose of planting or cutting trees, ten years;
2. In case of the hiring of other land, five years;
3. In case of the hiring of buildings, three years;
4. In case of the hiring of movables, six months.<sup>110</sup>

However, the problem is that the debtor can abuse this protection. The debtor, by default, can employ professional squatters (*senyuya*) to occupy the mortgaged property. The purchaser of such property, which is foreclosed, cannot use it because of the occupancy by the *senyuya*. If the debtor leased the property to the *senyuya*, it is difficult for the purchaser to force the *senyuya* to vacate the property because of the protection of short-term leases. The *senyuya* demands money to vacate it from the purchaser and the purchaser will pay, since the *senyuya* continues to occupy the property and, thus, it cannot be used unless he or she pays money. The debtor who defaults can make a profit if he or she shares the money with the *senyuya*. In some cases, reflecting the risk that the purchaser cannot use the property, the winning bid price of the property falls below the market price,<sup>111</sup> by anywhere from 40 to even 50%.<sup>112</sup>

107. The distinctive feature of a Japanese mortgage (*teito-ken* or hypothec) causes this case. In Japan, when the real property is mortgaged, neither the title to or possession of it is not transferred to the mortgagor. Instead, they remain with the person who mortgaged it. This means that the mortgagee may borrow money while continuing to use the property. Therefore, the mortgagee can lease the mortgaged property to other people. For a more detailed explanation of a Japanese mortgage, see Oda, *supra* note 59, p. 175.

108. For an explanation of this kind of tenant right written in English, see Oda, *supra* note 59, p. 176; Wynkoop (2012), pp. 77–8.

109. See Oda, *supra* note 59, p. 176.

110. For the text of the Civil Code of Japan before the amendments in 2004, see Lönholm (1898).

111. Toda & Ide (2000) empirically researched this and estimated the hedonic function; they concluded that the winning bid prices go down when tenants occupy the property and it seems difficult to force them to vacate.

112. See Fukui (2003), p. 67.

This abuse has become a more serious problem because *senyuya* are often related to *yakuza* (Japanese mafia). Through *senyuya*, *yakuza* enjoy rent-free use of commercial and residential property, purchase real estate at below-market prices after they scare off other prospective buyers and then resell it at a profit, and collect payoffs for vacating occupied property.<sup>113</sup>

Law and economics researchers analyzed the protection of short-term leases and proposed its reform (e.g. Suzuki, Yamamoto, Fukui, and Kume<sup>114</sup>; Fukui<sup>115</sup>; Seshimo and Yamazaki<sup>116</sup>); in other words, they argued that the protection is inefficient and should be abolished. One of the rationales for such an argument was the Coase theorem, which states that “when property rights are well defined and transaction costs are low, the allocation of resources will be efficient regardless of the initial assignment of property rights.”<sup>117</sup> However, in the real world, the transaction cost is often not low. If the transaction cost is high enough, it will prevent private bargaining, which leads to inefficient use. In this case, the efficient use of resources will depend on property rights.

The protection of short-term leases is problematic in terms of the Coase theorem in two respects.<sup>118</sup> First, the rights are not well defined. Article 395 of the Civil Code stipulates that, if a short-term lease causes damage to the mortgagee, the court may, on his or her application, order its cancellation. However, the criteria to decide whether a short-term lease causes damage to a mortgagee are not clear.<sup>119</sup>

Second, the rights are assigned to the tenant who will not use the property efficiently and the transaction costs in this case are high. The tenant is often *senyuya*. His or her purpose is not to use the property, but to demand money from the purchaser of the property. Even if his or her rights are expired, it is not easy to force the *senyuya* to vacate the property. The purchaser will have to file a lawsuit against the tenant and it will take a long time to get the court’s judgment.

In contrast, if the rights are assigned to the purchaser—in other words, if a short-term lease is abolished—the transaction costs become low and the efficient use of resources results from private bargaining. In this case, the purchaser does not have to file a lawsuit. He or she can force the tenant to vacate the property by the court’s order,<sup>120</sup> which is much easier to get

113. See Dillon (2010), p. 86.

114. Suzuki et al. (2001).

115. Fukui, *supra* note 112; Fukui (2006).

116. Seshimo & Yamazaki (2007).

117. Coase theorem is originally described in Coase (1960). For the explanation of this theorem, see Cooter & Ulen, *supra* note 6; Miceli, *supra* note 8; Miceli (2009); Harrison, *supra* note 10; Shavell, *supra* note 12.

118. Fukui, *supra* note 115.

119. Although the court had tried to clarify the criteria, they are still unclear. For example, see Case concerning the Cancellation of Building Lease Contract, Case No.1995 (O) No.1346, Minshu 50(8), 1374 (Sup. Ct. Second Petty Bench, September 13, 1996) and Case concerning the Claim for Vacation, Case No.1996 (O) No.1697, Minshu 53(8), 1899 (Sup. Ct. G.B., November 24, 1999).

120. This order is based upon the following Article 83 of the Civil Execution Act. Article 83 stipulates that “[a]n execution court may, upon petition by a purchaser who has paid the price, order an obligor or a possessor of real property to deliver the real property to the purchaser; provided, however, that this shall not apply to a person who is recognized, under the record of the case, to possess the real property based on a title that may be duly asserted against the purchaser.” For the entire English text of the Civil Execution Act, see <http://www.japaneselawtranslation.go.jp/law/detail/?id=70&vm=&re=02> (accessed 1 March 2017).

than judgment. If the tenant can use the property more efficiently than can the purchaser, the purchaser will buy the right to use from the tenant.

Under the influence of these arguments based on law and economics, in 2004, Article 395 of the Civil Code was amended and the protection of short-term leases was repealed. Under the new Article 395, the tenant who leased a space in the mortgaged building after the mortgage is forced to vacate the building within six months if the mortgage is foreclosed on and a third party purchases it.<sup>121</sup>

Some empirical studies show that the repeal of the protection has brought about positive effects. Kume and Fukui<sup>122</sup> and Fukui and Kume<sup>123</sup> find that the establishment of a short-term lease increases the winning bid price of apartments for families after the repeal, while decreasing the winning bid price before the repeal.

More specifically, Kume and Fukui<sup>124</sup> analyze the data of the apartments' auction conducted by the Tokyo district court before the repeal in 2004. They distinguish between apartments for families and studio apartments, and then estimate the effect of establishment of a short-term lease on the winning bid price separately. For apartments for families, they estimate that the winning bid price of an apartment with a short-term lease is 15.4% lower than one without a short-term lease. For studio apartments, the winning bid price of an apartment with a short-term lease is 11.3% higher than one without a short-term lease.

On the other hand, Fukui and Kume<sup>125</sup> analyze the data after the repeal in a similar way. For apartments for families, the direction of the effect changes. They estimate that the winning bid price of an apartment with a short-term lease is 7.2% higher than one without a short-term lease. As for studio apartments, in contrast, the direction of the effect does not change. They estimate that the winning bid price of an apartment with a short-term lease is 15.0% higher than one without a short-term lease.

Why does the direction of the effect change for apartments for families and not for studio apartments? One reason is that apartments for families are more valuable than studio apartments.<sup>126</sup> Therefore, the short-term lease of the former was more often abused than

---

121. The English text of new Article 395(1) is as follows:

(1) Any person who uses or receives profits from a building subject to a mortgage by virtue of a lease that cannot be asserted against the mortgagee, and who is listed as follows (in the following paragraph referred to as "Mortgaged Building User") shall not be required to deliver that building to the purchaser thereof until six months have elapsed from the time when the purchaser purchased that building at auction:

- (i) A person who has been using or receiving profits from the building since prior to the commencement of auction procedures; or
- (ii) A person who is using or receiving profits from the building by virtue of a lease given after the commencement of auction procedures by the administrator of compulsory administration or execution against profits from secured immovable properties.

For the entire English text of the amended Civil Code, see <http://www.japaneselawtranslation.go.jp/law/detail/?id=2057&vm=&re=02> (accessed 1 March 2017).

122. Kume & Fukui (2015).

123. Fukui & Kume (2015).

124. Kume & Fukui, *supra* note 122.

125. Fukui & Kume, *supra* note 123.

126. For a more detailed explanation of the reasons, see Kume & Fukui, *supra* note 122, p. 28; Fukui & Kume, *supra* note 123, pp. 81–2.

that of the latter. The repeal of the protection of short-term leases eliminates most of these abuses, and it is reflected in the increase of the winning bid price of apartments for families.<sup>127</sup>

## 6.2 Establishment of Fixed-Term Building Leases

Japanese law had provided relatively strong protections for tenants of land and buildings.<sup>128</sup> An example of the protection is a “justifiable reason,” which the landlord is required to provide. At the time of the expiration of a lease agreement, if the tenant would like to renew, the landlord may refuse renewal only when he or she has a justifiable reason to do so.

The courts have judged what constitutes a justifiable reason, and usually require, in any case, that landlords demonstrate the need to use the leased premises themselves, either for residential or commercial purposes. Failure to pay the rent or some other infraction or indicia of bad faith on the part of the tenant is also often necessary.<sup>129</sup> However, these factors alone are not enough; the courts require that landlords pay “eviction money” (*tachinoki-ryo*) to tenants.<sup>130</sup>

Moreover, the courts virtually control the rent of the renewed lease. In contrast, the rent of a new lease is determined only by agreement between the landlord and tenant. As a result, the more the tenant renews the lease, the larger the disparities between the rent of the renewed lease and that of the new lease.<sup>131</sup>

As with the protection of short-term leases, the building lease in Japan is problematic in terms of the Coase theorem.<sup>132</sup> The factors of a justifiable reason used by the courts were vague; it was unclear how much one needed to use the leased premises themselves, what constitutes bad faith, and how much eviction money is required. In addition, it was unclear how much the courts control the rent of the renewed lease. Thus, the rights assigned in this case are not well defined. Further, transaction costs are high. When the landlord files a lawsuit against the tenant for eviction, he or she requires plenty of time, energy, and money.

These issues made landlords reluctant to rent and leave from leased business. Moreover, the landlords chose to supply studio apartments for single persons instead of apartments for families because the former has higher turnover rates. According to Fukui,<sup>133</sup> the market share of studio apartments increased from 5.5% in 1941 to 25.6% in 1988, while apartments for families declined substantially.

Under the influence of these arguments based on law and economics,<sup>134</sup> in 1999, the rules for the fixed-term building lease (*teiki-shakka*) were created,<sup>135</sup> giving landlords the right to end a tenancy conclusively at the end of the contracted term, provided the minimum legal

127. One of the reasons for which the establishment of the short-term lease increases the winning bid price without abuses is that the purchaser can save the cost of searching for a tenant. When there are no abuses, establishment of a short-term lease of the apartment means that it already has a tenant who can pay the rent to the purchaser. He or she does not need to search for a new tenant from the beginning. See Fukui & Kume, *supra* note 123, p. 81.

128. For the explanation of the protection of tenants in Japan written in English, see Haley (1992); Oda, *supra* note 59, pp. 172–4; Wynkoop, *supra* note 108, pp. 69–74.

129. Haley, *supra* note 128, p. 164.

130. The eviction money was required in order to force a landlord to compensate for the tenant’s loss. See *ibid.*, p. 165.

131. Fukui, *supra* note 16, p. 66.

132. *Ibid.*, p. 66; Fukui, *supra* note 115.

133. Fukui (1995).

134. For an example of arguments about the building leases and other housing issues in Japan, from the perspective of law and economics, see Ito (1994); Fukui (1995); Fukui, *supra* notes 112, 115, 133; Kanemoto (1997); Iwata (2002); Seshimo (2003); Seshimo & Yamazaki, *supra* note 116.

135. For a detailed explanation of the fixed-term building lease, see Abe et al. (1998).

requirements, such as written notices that the lease is not renewed, are met.<sup>136</sup> The fixed-term building lease is only an option, and the landlords and tenants can agree to choose between it and the traditional building lease, where a justifiable reason is required for landlords to refuse renewal.

Empirical research shows that fixed-term leases influence the rents of buildings.<sup>137</sup> Specifically, Ohtake and Yamaga<sup>138</sup> analyzed the microdata of rents from March to August in 2000, and found that there is a significant difference between the rents of the fixed-term building lease and those of the traditional one. They estimate that the former is about 10% lower than the latter when floor spaces of buildings for fixed-term leases are 70 square metres and about 25% lower when floor spaces are 100 square metres. In contrast, when floor spaces are less than 51 square metres, there is no significant difference. These results indicate that fixed-term leases influence the rents at least when leased houses are spacious.

However, surveys show that people in Japan do not often choose fixed-term building leases. For example, a survey conducted by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) shows that only 1.5% of households who moved into private rental housings chose fixed-term leases in 2015.<sup>139</sup>

Why are fixed-term leases so rare? Yamazaki<sup>140</sup> offers several explanations and proposes reforms. The legal requirements for fixed-term leases<sup>141</sup> are so strict that landlords and real-estate agencies avoid concluding them.<sup>142</sup> Yamazaki<sup>143</sup> recommends the easing of legal requirements such as simplifying written notices.

Another issue is that the law<sup>144</sup> allows tenants to cancel fixed-term leases mid-term, making it difficult for landlords to conclude long- and fixed-term leases.<sup>145</sup> Tenants who want to conclude long-term leases prefer spacious houses, since they often have families with children, while tenants who do not need long-term leases prefer small houses. As we see above, Ohtake and Yamaga<sup>146</sup> show that fixed-term leases are more beneficial than traditional leases for tenants only when leased houses are spacious. Thus, tenants do not have incentive to conclude fixed-term leases, as landlords propose only short- and fixed-term

136. Wynkoop, *supra* note 108, pp. 74–5. According to Article 38 of the Act on Land and Building Leases, the legal requirements are: (1) the contract must be written, notarized, and clearly state the lease is for a fixed term and will not be automatically renewed; (2) at the time of contracting, the landlord must provide a separate written notice and explain verbally to the tenant that at the end of the term the lease will not be renewed; and (3) only in the case where the lease term is at least one year, the landlord must provide notice to the tenant no more than one year or less than six months before the end of the term that the lease will end at expiration. For the entire English text of the Act on Land and Building Leases, see <http://www.japaneselawtranslation.go.jp/law/detail/?id=1944&vm=&re=02> (accessed 1 March 2017).

137. Ohtake & Yamaga (2001a); Ohtake & Yamaga (2001b); Ohtake & Yamaga (2002); Ohtake & Yamaga (2003).

138. *Ibid.*

139. See Housing Bureau of MLIT (2015), p. 22.

140. Yamazaki (2014).

141. For the explanation of the legal requirements for fixed-term leases, see note 136 of this article.

142. See Yamazaki, *supra* note 140, p. 113.

143. *Ibid.*

144. See Article 38 (5) of Act on Land and Building Leases.

145. See Yamazaki, *supra* note 140, pp. 108–11.

146. Ohtake & Yamaga, *supra* note 137.

leases given tenants' mid-term cancellation. Yamazaki<sup>147</sup> proposes amendments to the law to make tenants who cancel leases mid-term pay a penalty.

## 7. CONCLUSION

In this article, I have reviewed the growth and examined the impact of law and economics in Japan after 1990.<sup>148</sup> JLEA was established and has promoted the activities of scholars and practitioners alike. The methodologies of law and economics have changed, and game and contract theory have occupied an important place. Moreover, the number of empirical studies on the various topics of law and economics are gradually increasing. The research fields of law and economics have expanded from tort law and product liability to tax law, commercial law, and many other fields of law. Further, law and economics begins to influence policies and statutes in the real world in Japan.

What is important in taking a step to the next stage? In this regard, it is noteworthy that the JLEA has organized a panel discussion entitled "The Themes which Will Become Important in Law and Economics in the Future." In this panel discussion, all panellists mentioned the importance of empirical research.<sup>149</sup> Although, as I have observed, the growth of empirical research was one of the important features during these 25 years, its quantity and quality are still not sufficient. In economics in general, there is a trend in which the importance of empirical research is emphasized. New empirical methods and tools have been introduced into economics.<sup>150</sup> Japanese policy-makers have also begun to place importance on empirical perspectives, which is referred to as "evidence-based policy."<sup>151</sup> I expect that future research that joins this trend will help to shape law and economics in Japan.

In addition, publishing findings in English will be important. Most of the works referenced in this article are written in Japanese.<sup>152</sup> Because of this, law and economics researchers in Japan lose opportunities to share their knowledge and experience with counterparts in other countries, since the language of international scholarly communication seems to be English. For example, the two Japanese cases discussed in this article—repeal of protection of short-term leases and establishment of fixed-term building leases—have never before been introduced in detail to English readers. As explained in Section 2, the JLEA aims to build networks of scholars and practitioners. More publication in English will enable them to build such an international network, helping to increase the study of law and economics in Japan, which, even at 25, is still only in its infancy.

147. Yamazaki, *supra* note 140.

148. Note that, in this article, I do not argue that law and economics in Japan is thriving without any problems. Tsuneki (2008a) and Kagami (2010) pointed out that it has not grown to the extent that the scholars had expected, and its influence remains limited. Ramseyer (2011) indicated that Japanese scholars have embraced law and economics less enthusiastically than their US peers. One of the reasons of this situation is because the obstacles Ota, *supra* note 1, described—both institutional and cultural—still have not been overcome.

149. This panel discussion was held at the annual meeting of JLEA in 2013. See Section 2 of this article. The report of it is on the following website: [http://www.jlea.jp/ronbun/1&review\\_9-1.pdf](http://www.jlea.jp/ronbun/1&review_9-1.pdf) (accessed 1 March 2017).

150. For example, see Angrist & Pischke (2009).

151. For the details of "evidence-based policy," see Ieko et al. (2016).

152. One of the reasons that the number of English publications is relatively small is that Japanese law faculties generally do not demand that their scholars publish in English. See Ramseyer, *supra* note 148, p. 1462.



## REFERENCES

- Abe, Yasutaka, Yoshihiro Nomura, & Hideo Fukui (1998) *Teiki Shakka Ken [Fixed-Term Building Leases]*, Tokyo: Shinzansha (in Japanese).
- Akiba, Hiroya (1995) *Hanzai no Keizaigaku [Economics of Crimes]*, Tokyo: Taiga Shuppan (in Japanese).
- Angrist, Joshua D., & Jörn-Steffen Pischke (2009) *Mostly Harmless Econometrics: An Empiricist's Companion*, Princeton, NJ: Princeton University Press.
- Aoki, Reiko, ed. (2010) *Topics in Economics of Intellectual Property and Innovation*, Tokyo: Maruzen.
- Arai, Koki (2006) *Dokusen Kinshi Ho to Keizaigaku [Antimonopoly Law and Economics]*, Suita: Osaka University Press (in Japanese).
- Basedow, Jürgen, Toshiyuki Kono, & Giesela Rühl, eds. (2006) *An Economic Analysis of Private International Law*, Tübingen: Mohr Siebeck.
- Brown, John P. (1973) "Toward an Economic Theory of Liability." 2 *Journal of Legal Studies* 323–49.
- Calabresi, Guido (1970) *The Costs of Accidents: A Legal and Economic Analysis*, New Haven: Yale University Press.
- Coase, Ronald H. (1960) "The Problem of Social Cost." 3 *Journal of Law and Economics* 1–44.
- Cooter, Robert, & Thomas Ulen (1997) *Law and Economics*, 2nd edn, Reading, MA: Addison-Wesley.
- Dillon, Christopher (2010) *Landed: The Guide to Buying Property in Japan*, Hong Kong: Dillon Communications.
- Fujita, Tomotaka (1999) "Shoho to Keizairon" ["Commercial Law and Economic Theory"]. 1155 *Jurisuto* 69–75 (in Japanese).
- Fujita, Tomotaka (2013) "Corporate Governance and the Rule of Soft Law." 5 *UT Soft Law Review* 9–14.
- Fujita, Tomotaka, & Toshihiro Matsumura (2013) "The Evolution of Social Norm: Economic Modeling." 5 *UT Soft Law Review* 35–52.
- Fujitani, Takeshi (2011) "Koho ni okeru 'Ho to Keizaigaku' no Kanosei?—Sozei Hogaku no Keiken wo Tegakari ni" ["The Possibility of Law and Economics in Public Law?—Learning from the Experience of Tax Law and Economics"]. 365 *Hogaku Kyoshitsu* 16–24 (in Japanese).
- Fukui, Hideo (1995) "Shakuchi Shakka no Ho to Keizai Bunseki" ["Law and Economic Analysis of Land and Building"], in T. Hatta & N. Yashiro, eds., *Tokyo Mondai no Keizaigaku [Economics of Problems in Tokyo]*, Tokyo: University of Tokyo Press, 191–228 (in Japanese).
- Fukui, Hideo (2003) "'Ho to Keizaigaku' no Reimei" ["The Dawn of 'Law and Economics'"]. 578 *Keizai Seminar* 64–70 (in Japanese).
- Fukui, Hideo (2006) *Shiho Seisaku no Ho to Keizaigaku [Law and Economics of Judicial Policy]*, Tokyo: Nippon Hyoron Sha (in Japanese).
- Fukui, Hideo (2007) *Keisu kara Hajimeyo Ho to Keizaigaku: Ho no Kakureta Kino wo Shiru [Law and Economics Starting from Cases: Learning Hidden Functions of Law]*, Tokyo: Nippon Hyoron Sha (in Japanese).
- Fukui, Hideo, & Yoshiaki Kume (2015) "Tanki Chintaishaku Hogo Seido no Teppai (2003 Nen Ho Kaisei) ga Keibai Shijo ni Ataeta Eikyo no Keizai Bunseki" ["Economic Analysis of the Impact of Repealing the Protection of Short-Term Leases (2003 Amendment of the Civil Code) on the Auction Market"]. 58 *Evaluation* 71–84 (in Japanese).
- Fukui, Hideo, & Fumio Ohtake, eds. (2006) *Datsu Kakusa Shakai to Koyo Hosei—Ho to Keizaigaku de Kangaeru [Breaking Out of the Disparity Society and Employment Legislation: A Study from the Standpoint of Law and Economics]*, Tokyo: Nippon Hyoron Sha (in Japanese).
- Fukui, Hideo, Tadao Toda, & Yasushi Asami, eds. (2010) *Kyoiku no Shippai: Ho to Keizaigaku de Kangaeru Kyoiku Kaikaku [Failure of Education: Thinking about Educational Reform in Law and Economics]*, Nippon Hyoron Sha (in Japanese).
- Haley, John O. (1992) "Japan's New Land and House Lease Law," in J.O. Haley & K. Yamamura, eds., *Land Issues in Japan: A Policy Failure?*, Seattle: Society for Japanese Studies, 149–73.
- Hamada, Koichi (1976) "Liability Rules and Income Distribution in Product Liability." 66 *American Economic Review* 228–34.



- Hamada, Koichi (1977) *Songai Baisho no Keizai Bunseki* [Economic Analysis of Compensation Rules], Tokyo: University of Tokyo Press (in Japanese).
- Hamada, Koichi (1995) “Product Liability Rules: A Consideration of Law and Economics in Japan.” 46 *Japanese Economic Review* 2–22.
- Harrison, Jeffrey L. (2000) *Law and Economics in a Nutshell*, 2nd edn, St. Paul, MN: West Group.
- Hatta, Tatsuo, Naohiro Yashiro, & Hideki Kanda (2003) “Ho to Keizai Gakkai Setsuritu Kinen Symposium Ho to Keizaigaku no Tenbo—Ho Kaisyaku, Hanrei, Gyosei Jitsumu, Seisaku, Rippo, Kakusyu Shigyo Kongo Dou Kawaruka” [“Founding Commemoration Symposium of Japan Law and Economics Association—How Will It Change Legal Interpretations, Cases, Administrative Practices, Policies, Legal Professions”]. 580 *Keizai Seminar* 42–9 (in Japanese).
- Hayashi, Koichiro (2004) *Chosakuken no Ho to Keizaigaku* [Law and Economics of Copyright], Tokyo: Keiso Shobo (in Japanese).
- Hayashida, Seimei (2002) *Ho to Keizaigaku—Atarashii Chiteki Teritori* [Law and Economics—New Intellectual Territory], 2nd edn, Tokyo: Shinzansha (in Japanese).
- Hosoe, Moriki (1999) *Ho no Keizaigaku—Fuho Koui, Keiyaku, Zaisan, Soshu*, Fukuoka: Kyushu University Press, trans. T.J. Miceli (1997) *Economics of the Law: Torts, Contracts, Property, Litigation*, New York: Oxford University Press (in Japanese).
- Hosoe, Moriki (2005) *Joho to Incentive no Keizaigaku* [Economics of Information and Incentive], Fukuoka: Kyushu University Press (in Japanese).
- Hosoe, Moriki (2015) “Bukken Hendo to Toki no Keizaigaku” [“Economic Analysis of Title Systems and Land Values”]. 21 *Kumamoto Gakuen Keizai Ronshu* 5–27 (in Japanese).
- Hosoe, Moriki, & Shozo Ota, eds. (2001) *Ho no Keizai Bunseki—Keiyaku, Kigyo, Seisaku* [Economic Analysis of Law—Contract, Firm and Policy], Tokyo: Keiso Shobo (in Japanese).
- Housing Bureau of MLIT (2015) “Heisei 27 Nendo Jutaku Shijo Doko Chosa Hokokusho” [“Survey Report on Housing Market Trends in 2015”], <http://www.mlit.go.jp/common/001135951.pdf> (accessed 1 March 2017) (in Japanese).
- Ieko, Naoyuki, Yohei Kobayashi, Natsuko Matsuoka, & Shinji Nishio (2016) “How Policy Formation Changes with Evidence: Trends toward Evidence-Based Policy in the UK, as Verified by Randomized Controlled Trials, and Some Implications for Japan,” Mitsubishi UFJ Research and Consulting Policy Research Report, [http://www.murc.jp/uploads/2016/02/seiken\\_160212\\_1.pdf](http://www.murc.jp/uploads/2016/02/seiken_160212_1.pdf) (accessed 1 March 2017).
- Iida, Takashi (2004) “*Ho to Keizaigaku*” no *Shakai Kihan Ron* [Social Norms and Rationality: A Perspective from Law and Economics], Tokyo: Keiso Shobo (in Japanese).
- Iida, Takashi (2007) “Fokaru Pointo to Ho (2)—Ho no Hyoshutsu Kino no Bunseki ni Mukete” [“Focal Points and the Law (2)—Towards the Analysis of ‘Expressive Function of Law’”]. 65 *Seikei Hogaku* 137–74 (in Japanese).
- Iida, Takashi (2012) “Rodo no Ho to Keizaigaku” [“Economic Analysis of Labor and Employment Law”]. 54 *Nippon Rodo Kenkyu Zasshi* 72–5 (in Japanese).
- Ikeda, Yasuhiro, & Daisuke Mori (2015) “Can Decoupling Punitive Damages Deter an Injurer’s Harmful Activity?” 11 *Review of Law and Economics* 513–28.
- Ito, Hideshi, & Hiroshi Kosano, eds. (2003) *Insentibu Sekkei no Keizaigaku* [Economics of Incentive Design], Tokyo: Keiso Shobo (in Japanese).
- Ito, Takatoshi (1994) “Public Policy and Housing in Japan,” in Y. Noguchi & Poterba, eds., *Housing Markets in the U.S. and Japan*, Chicago/London: University of Chicago Press, 215–38.
- Ito, Yasushi (2012) *Geimu Riron to Ho Tetsugaku* [Game Theory and Philosophy of Law], Tokyo: Seibundo (in Japanese).
- Iwata, Shinichiro (2002) “The Japanese Tenant Protection Law and Asymmetric Information on Tenure Length.” 11 *Journal of Housing Economics* 125–51.
- Jlea.jp (2017) <http://www.jlea.jp/61.htm> (accessed 1 March 2017).
- Kagami, Kazuaki (2009) *Kokusai Shakai ni okeru Shiteki Kankei no Kiritsu to Funso Kaiketsu—Kokusai Shiho no Keizai Bunseki: Josetsu* [Rules for Relations between Private Citizens and Dispute Resolutions in International Society—Economic Analysis of Private International Law: Introduction], Tokyo: Mitsubishi Economic Research Institute (in Japanese).

- Kagami, Kazuaki (2010) "Mudadumo Naki 'Ho to Keizaigaku' Kaikaku" ["Reform with No Wasted Draws of 'Law and Economics'"]. 7 *Shinsedai Hoseisakugaku Kenkyu* 345–411 (in Japanese).
- Kabayashi, Ryo (2008) *Kaiko Kisei no Ho to Keizai—Roshi no Goi Keisei Mekanizumu toshiten Kaiko Ruru [Law and Economics of the Regulation on Dismissal—Rules of Dismissal as Mechanism for Consensus Building between Labor and Management]*, Tokyo: Nippon Hyoron Sha (in Japanese).
- Kandori, Michihiro (1994) "Geimu Riron ni yoru Keizaigaku no Shizukana Kakumei" ["Game Theory: A Quiet Revolution in Economics"], in M. Itoh & K. Iwai, eds., *Gendai no Keizai Riron [Modern Economic Theory]*, Tokyo: University of Tokyo Press, 15–56 (in Japanese).
- Kanemoto, Yoshitsugu (1997) "The Housing Question in Japan." 27 *Regional Science and Urban Economics* 613–41.
- Kinoshita, Tomio (2000) "The Nature and Consequences of Lawyers' Market Regulation in Japan." 18 *Contemporary Economic Policy* 181–93.
- Kobayashi, Hidefumi (1993) *Jiko no Hiyo—Ho to Keizaigaku ni yoru Bunseki*, Tokyo: Shinzansha, trans. G. Calabresi (1970) *The Costs of Accidents: A Legal and Economic Analysis*, New Haven: Yale University Press (in Japanese).
- Kobayashi, Isao (1991) *Goriteki Sentaku to Keiyaku [Rational Choice and Contract]*, Tokyo: Kobundo (in Japanese).
- Kume, Yoshiaki, & Hideo Fukui (2015) "Tanki Chintaishaku Hogo Seido (Seido Kaisei Izen) ga Rakusatsu Kakaku ni Ataeta Eikyo" ["The Impact of the Protection of Short-Term Leases (Before 2003 Amendment of the Civil Code) on the Winning Bid Price"]. 16 *Shisan Hyoka Seisaku Gaku [Journal of Property Assessment Policy]* 22–30 (in Japanese).
- Lönholm, Ludwig H. (1898) *The Civil Code of Japan*, Bremen, Tokyo, Yokohama/Shanghai/Hong Kong/Singapore: Max Nossler, Maruya, Kelly & Walsh, <https://archive.org/details/cu31924069576704> (accessed 1 March 2017).
- Matsumura, Yoshiyuki, & Kazumasa Takeuchi (1990) "Shikei wa Hanzai wo Yokushi Surunoka—Erlich no Bunseki no Nippon eno Tekiyo no Kokoromi" ["Does Capital Punishment Deter Crimes? A Trial on Application of Analysis Done by Erlich to Japan"]. 959 *Jurisuto* 103–8 (in Japanese).
- Miceli, Thomas J. (1997) *Economics of the Law: Torts, Contracts, Property, Litigation*, New York: Oxford University Press.
- Miceli, Thomas J. (2009) *The Economic Approach to Law*, 2nd edn, Stanford, CA: Stanford Economics and Finance.
- Miwa, Yoshiro, Noriyuki Yanagawa, & Hideki Kanda (1998) *Kaishaho no Keizaigaku [Economics of Corporate Law]*, Tokyo: University of Tokyo Press (in Japanese).
- Miyazawa, Kenichi, ed. (1982) *Seizobutsu Sekinin no Keizaigaku [Economics of Product Liability]*, Tokyo: Sanrei Shobo (in Japanese).
- Miyoshi, Yusuke (2013) *Ho to Funso Kaiketu no Jissho Bunseki: Ho to Keizaigaku no Apurochi [Empirical Analysis of Law and Dispute Resolution: Law and Economics Approach]*, Suita: Osaka University Press (in Japanese).
- Mori, Daisuke (2011) *Geimu Riron de Yomitoku Kokusaiho: Kokusai Kanshu Ho no Kino [Game Theory and International Law: The Role of Customary International Law]*, Tokyo: Keiso Shobo (in Japanese).
- Mori, Daisuke, & Yasuhiro Ikeda (2015) "Songai Baisho ni okeru Dekappuringu Seido no Yokushi Koka ni Kansuru Keizaigaku Jikken" ["An Experimental Study of the Deterrent Effect of Decoupling Liability System"]. 133 *Kumamoto Hogaku* 224–173 (in Japanese).
- Morita, Hatsu (2014) *Jissho Bunseki Nyumon: Deita kara "Inga Kankei" wo Yomitoku Saho [Empirical Analysis]*, Tokyo: Nippon Hyoron Sha (in Japanese).
- Nakayama, Nobuhiro, & Tomotaka Fujita, eds. (2008) *Sofuto Ro no Kiso Riron [Theory of Soft Law]*, Tokyo: Yuhikaku (in Japanese).
- Nakayama, Nobuhiro, & Hideki Kanda, eds. (2009) *Shijo Torihiki to Sofuto Ro [Soft Law and Commerce]*, Tokyo: Yuhikaku (in Japanese).

- Nakazato, Minoru, & J. Mark Ramseyer (2000) “The Tax Incentives That Destroyed the Government: An Economic Analysis of Japanese Fiscal Policy, 645–1192. 51 *Shakai Kagaku Kenkyu* 3–12.
- Nakazato, Minoru, & J. Mark Ramseyer (2010) “Tax Law, Hiroshi Kaneko, and the Transformation of Japanese Jurisprudence.” 58 *American Journal of Comparative Law* 721–36.
- Nakazato, Minoru, J. Mark Ramseyer, & Eric B. Rasmusen (2010) “The Industrial Organization of the Japanese Bar.” 7 *Journal of Empirical Legal Studies* 460–89.
- Oda, Hiroshi (2011) *Japanese Law*, 3rd edn, Oxford: Oxford University Press.
- Ohtake, Fumio, & Hisaki Yamaga (2001a) “Teiki Shakka Seido ga Yachin ni Ataeru Eikyo” [“The Impact of the Fixed-Term Tenancy Law on Housing Rent”]. 42 *Nippon Keizai Kenkyu* 1–20 (in Japanese).
- Ohtake, Fumio, & Hisaki Yamaga (2001b) “Teiki Shakkaken Seido to Yachin” [“The Fixed Term Tenant Rights and Housing Rent”]. 41 *Jutaku Tochi Keizai* 10–9 (in Japanese).
- Ohtake, Fumio, & Hisaki Yamaga (2002) “Teiki Shakka no Jissho Bunseki” [“An Empirical Analysis of the Effects of the Terminal Tenancy System”]. 16 *Nippon Fudosan Gakkaishi* 54–64 (in Japanese).
- Ohtake, Fumio, & Hisaki Yamaga (2003) “Teiki Shakka Seido to Minkan Chintai Jutaku Shijo” [“The Impact of the Terminal Tenancy System on the Private Rental Housing Market”]. 43 *Toshi Jutaku Gaku* 78–83 (in Japanese).
- Okada, Yosuke, & Shuya Hayashi, eds. (2009) *Dokusen Kinshi Ho no Keizaigaku: Shinpanketsu no Jirei Bunseki* [Economic Impact of Antimonopoly Law: Case Studies in Recent Court and Tribunal Decisions], Tokyo: University of Tokyo Press (in Japanese).
- Ota, Shozo (1991) “Law and Economics in Japan: Hatching Stage.” 11 *International Review of Law and Economics* 301–8.
- Ota, Shozo (1997) *Ho to Keizaigaku* (Shin Ban), Shoji Houmu Kenkyukai, trans. R. Cooter & T. Ulen (1997) *Law and Economics*, 2nd edn, Reading, MA: Addison-Wesley (in Japanese).
- Ota, Shozo (2000) *Horitsu [Law]*, Tokyo: University of Tokyo Press (in Japanese).
- Ota, Shozo (2001) “Shohisha Keiyaku to Geimu Riron—Shohisha Torihiki Chitsujo wa Jiseiteki ni Sohatsu Shiuruka?” [“Consumer Contract and Game Theory—Is Order of Consumer Transaction Spontaneously Generated?”]. 1200 *Jurisuto* 159–64 (in Japanese).
- Ota, Shozo (2008) *Minji Funso Kaiketsu Tetsuduki Ron* [Theory of Civil Dispute Resolution Process], 2nd edn, Tokyo: Shinzansha (in Japanese).
- Ouch, Shinya, & Daiji Kawaguchi, eds. (2014) *Ho to Keizai de Yomitoku Koyo no Sekai—Korekara no Koyo Seisaku wo Kangaeru* [Understanding the World of Employment: A Perspective from Law and Economics], Tokyo: Yuhikaku (in Japanese).
- Ramseyer, J. Mark (1990) *Ho to Keizaigaku—Nihon Ho no Keizai Bunseki* [Law and Economics: The Economic Analysis of Japanese Law], Tokyo: Kobundo (in Japanese).
- Ramseyer, J. Mark (2011) “Law and Economics in Japan.” 2011 *University of Illinois Law Review* 1455–73.
- Ramseyer, J. Mark, & Minoru Nakazato (1989) “The Rational Litigant: Settlement Amounts and Verdict Rates in Japan.” 18 *Journal of Legal Studies* 263–90.
- Ramseyer, J. Mark, & Minoru Nakazato (2000) *Japanese Law: An Economic Approach*, Chicago: University of Chicago Press.
- Ramseyer, J. Mark, & Eric B. Rasmusen (2003) *Measuring Judicial Independence: The Political Economy of Judging in Japan*, Chicago: University of Chicago Press.
- Ramseyer, J. Mark, & Eric B. Rasmusen (2015) “Lowering the Bar to Raise the Bar: Licensing Difficulty and Attorney Quality in Japan.” 41 *Journal of Japanese Studies* 113–42.
- Seshimo, Hiroyuki (2003) “Optimal Tenant Protection.” 33 *Regional Science and Urban Economics* 59–92.
- Seshimo, Hiroyuki, & Fukuju Yamazaki (2007) *Kenri Tairitsu no Ho to Keizaigaku: Shoyuken, Chinshakuken, Tetoken no Koritsusei* [The Law and Economics of Property Rights, Leasing Contract, and Mortgage], Tokyo: University of Tokyo Press (in Japanese).
- Shavell, Steven (2004) *Foundations of Economic Analysis of Law*, Cambridge, MA: Belknap Press of Harvard University Press.

- Shishido, Zenichi, & Atsushi Tsuneki (2004) *Ho to Keizaigaku: Kigyo Kanrenho no Micro Keizai-gakuteki Kosatsu* [Law and Economics: Microeconomic Consideration on Laws Related to Corporation], Tokyo: Yuhikaku (in Japanese).
- Suzuki, Rokuya, Kazuhiko Yamamoto, Hideo Fukui, & Yoshiaki Kume, eds. (2001) *Keibai no Ho to Keizaigaku* [Law and Economics of Foreclosure Sale by Auction], Tokyo: Shinzansha (in Japanese).
- Takahashi, Masahiko (2009) *Shokenka no Ho to Keizaigaku* [Law and Economics of Securitization], Tokyo: NTT Publishing (in Japanese).
- Tanaka, Wataru (2009) “Kaisha Hogaku ni okeru Jissho Kenkyu no Igi” [“The Significance of Empirical Studies in Corporate Law”]. 1874 *Shunkan Shoji Homu* 5–15 (in Japanese).
- Tanaka, Wataru, ed. (2013) *Suji de Wakaru Kaishaho* [Numerical Analysis of Corporate Law], Tokyo: Yuhikaku (in Japanese).
- Tanaka, Wataru, & Takashi Iida (2010) *Ho to Keizaigaku*, Tokyo: Nikkei Publishing, trans. S. Shavell (2004) *Foundations of Economic Analysis of Law*, Cambridge, MA: Belknap Press of Harvard University Press (in Japanese).
- Toda, Yasushi, & Takako Ide (2000) “Fudosan Keibai Sijo to Akewatashi no Kenri Kankei” [“Real Property Market and Legal Relationship Regarding Vacation”]. 37 *Jutaku Tochi Keizai* 20–7 (in Japanese).
- Tokutsu, Akira (2009) “Makeinu no Tohboe—Tagenteki Hoseisakugaku no Hitsuyosei matawa sono Fuyosei” [“Manifest of the New Global Law and Policy for Multi-Agential Governance”]. 1 *Shinsedai Hoseisakugaku Kenkyu* 341–73 (in Japanese).
- Tsuneki, Atsushi (2008a) “‘Ho to Keizaigaku’ wa Nani wo Oshie, Nani wo Oshie Nakatta ka?” [“Law and Economics: What Did It Teach Us, and What Did It Not Teach Us?”]. 1356 *Jurisuto* 40–7 (in Japanese).
- Tsuneki, Atsushi (2008b) *Horigaku to Keizaigaku—Kihanteki “Ho to Keizaigaku” no Saitei* [Jurisprudence and Economics—Repositioning Normative “Law and Economics”], Tokyo: Keiso Shobo (in Japanese).
- Tsuneki, Atsushi (2012) *“Ho to Keizaigaku” ni Yoru Kokyo Seisaku Bunseki* [Public Policy Analysis—A Law and Economics Approach], Tokyo: Iwanami Shoten (in Japanese).
- Tsuneki, Atsushi, & Yoshinobu Zasu (2015) “On the Complementarity between Law and Social Norms.” 11 *Review of Law and Economics* 503–12.
- Ueda, Junko (2003) *Ho to Keizai—Koritsu to Shakaiteki Seigi tonno Balance wo Motomete*, 2nd edn, Minerva Shobo, trans. J.L. Harrison (2000) *Law and Economics in a Nutshell*, 2nd edn, St. Paul, MN: West Group (in Japanese).
- Usami, Makoto, ed. (2010) *Hogaku to Keizaigaku no Aida: Kihan to Seido wo Kangaeru* [Law and Economics: Exploring the Foundations and Frontiers], Tokyo: Keiso Shobo (in Japanese).
- Usami, Makoto (2015) “Law and Public Policy in Contemporary Japan,” in Y. Adachi, S. Hosono & J. Iio, eds., *Policy Analysis in Japan*, Bristol: Policy Press, 73–87.
- Wynkoop, Jeff (2012) *Legal Issues in Japanese Real Estate Investment*, Costa Mesa, CA: SCW Publishing.
- Yamazaki, Fukuju (2014) *Nippon no Toshi no Nani ga Mondai ka* [What Are the Problems Faced by Cities in Japan?], Tokyo: NTT Publishing (in Japanese).
- Yanagawa, Noriyuki (2000) *Keiyaku to Soshiki no Keizaigaku* [Economics of Contract and Organization], Tokyo: Toyo Keizai Shinpo Sha (in Japanese).
- Yanagawa, Noriyuki (2001) “Shohisha Keiyaku Ho to Keizaigaku” [“Consumer Contract Law and Economics”]. 1200 *Jurisuto* 153–8 (in Japanese).
- Yanagawa, Noriyuki (2006) *Ho to Kigyo Kodo no Keizai Bunseki* [Economic Analysis of Law and Corporate Behavior], Tokyo: Nikkei Publishing (in Japanese).
- Yanagawa, Takashi, Hiroshi Takahashi, & Shinya Ouchi, eds. (2014) *Econo-Legal Studies no Susume—Shakai wo Mitosu Hogaku to Keizaigaku no Fukugan Shiko* [Econo-Legal Studies: Thinking through the Lenses of Economics and Law], Tokyo: Yuhikaku (in Japanese).
- Yano, Makoto, ed. (2007) *Ho to Keizaigaku: Shijo no Sitsu to Nihon Keizai* [Law and Economics: Market Quality and Japanese Economy], Tokyo: University of Tokyo Press (in Japanese).

- Yashiro, Naohiro (2003) *Kisei Kaikaku: "Ho to Keizaigaku" Karano Teigen* [Law and Economics on Regulatory Reform], Tokyo: Yuhikaku (in Japanese).
- Zasu, Yoshinobu (2007) "Sanctions by Social Norm and the Law: Substitutes or Complements?" 36 *Journal of Legal Studies* 379–96.
- Zasu, Yoshinobu (2011) "Minpo 94 Jo 2 Ko no 'Daisansha' wa Naze 'Zenni' nanoka?" ["Why the Third Party Should Be Bona Fides in Article 94 of the Japanese Civil Code?"]. 62 *Shakai Kagaku Kenkyu* 81–96 (in Japanese).

Reproduced with permission of copyright owner. Further reproduction prohibited without permission.