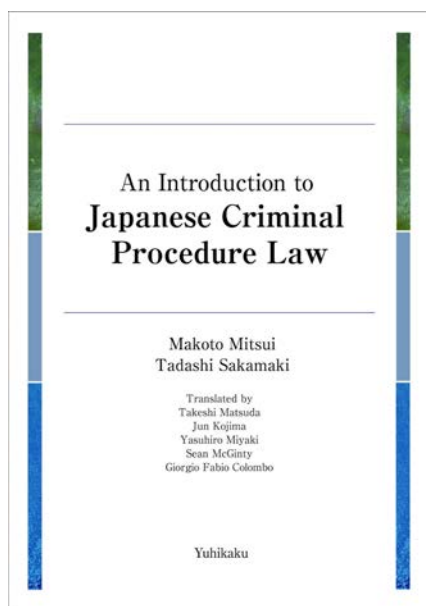


An Introduction to Japanese Criminal Procedure Law

M. Mitsui & T. Sakamaki

translated by

T. Matsuda, J. Kojima, Y. Miyaki, S. McGinty & G. F. Colombo



約30年にわたって読まれ続けている三井誠・酒巻匡著『入門刑事手続法』を、第一線で活躍する研究者が英訳して電子書籍（リフローEPUB）で刊行しました（2022年12月23日発売）。

海外の研究者・実務家や来日外国人・留学生に日本の刑事手続の制度・運用を説明する際の手引きとしてPCやスマホの中に必携の一冊です。


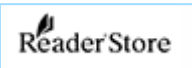






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Preface

This is the English edition of the book “*Nyūmon Keiji Tetsuzuki Hō* [7th Edition]” (Yuhikaku, March 2017).

However, some modifications to the Japanese version have been made in this English version in form and substance, such as (1) referring to important cases or legislations issued/came into force after the publication of the 7th edition, including the Supreme Court decision on GPS searches (Sup.Ct. March 15, 2017) and the partial amendment of the Juveniles Act in 2021, (2) selecting and incorporating the entries in the columns, (3) omitting statistical tables and figures except in a few cases, (4) omitting some of the formats for documents, and (5) using the newest Japanese era name “Reiwa”, valid from May 1, 2019, to show the year thereafter.

The original text presented a rough sketch of the basic structure and the function of criminal procedure in Japan. It was published with the aim of providing readers with an idea of how the system of criminal procedure in Japan is structured, how the procedure is expected to advance, what roles are to be taken by each of the players involved in the process, and how, in reality, the system is functioning at the moment.

The first edition of the original text was published in September 1995, and subsequent editions have been published (every few years) in response to institutional reforms, amendments to the law, developments in judicial decisions and practice, and changes in enforcement of the law.

For the convenience of users, this English edition is published as an electronic book. We sincerely hope that this book will be of use not only to foreign researchers interested in Japanese law (especially criminal procedure law), and to young Japanese criminal law researchers studying in English-speaking countries, but also to suspects, defendants, interpreters, and legal professionals involved in a Japanese criminal case, according to their respective roles and situations, where a foreign individual is the suspect/defendant of the case. We also hope that this edition would be useful for legal (criminal) practitioners from various countries participating in the UNAFEI (United Nations Asia and Far-East Institute for the Prevention of Crime and the Treatment of Offenders), a partner of JICA (Japan International Cooperation Agency), and for those participating in legal assistance projects at various universities, in their training, seminars, and other activities.

We strongly hope that this edition will be freely used by many people in a variety of ways.

The English draft was first prepared by Professor Takeshi Matsuda (Osaka University), Professor Jun Kojima and Professor Yasuhiro Miyaki (Nagoya University). Associate Professor Sean McGinty and Professor Giorgio Fabio Colombo (Nagoya University) took over from that point on for the “native check” of the entire draft. The text of this edition is “based on” the original text, but it is not exactly a word for word translation of the Japanese text. Some parts of the original text have been paraphrased so as to help the readers better understand the context and intent of the original text. We would like to express our sincere gratitude to the five members who took time out of their busy work schedules to prepare this English edition.

E-books are still a new area to many publishers in Japan. This work could not have seen the light of day without the collaborated attempts and efforts by the Book Editing Department and the Digital Publishing Department of Yuhikaku. We would like to express our sincere gratitude to Yoriko Fujimoto, Narumi Shimabukuro, Maki Yashiro and Yukihiko Nobukuni for their support.

The publishing of the book outlining the Japanese Criminal Procedure Law in English was a promise that was made in Palo Alto in 1972 to Professor Herbert L. Packer of Stanford University. We would like to dedicate this book, completed half a century thereafter, to the late Professor Packer.

September 2022

Makoto Mitsui
Tadashi Sakamaki

はしがき (Preface in Japanese)

本書は、『入門刑事手続法 [第7版]』（有斐閣・2017年3月発行）の英語版です。

もともと、第7版発刊後に出された重要判例であるGPS捜査に関する最高裁判決（最大判平成29・3・15）及び2021（令和3）年の少年法の部分改正について言及する、書式中の年号について令和の元号を使用する、第7版中のコラム欄の記載を取捨選択して本文中に組み込む、統計表・図等の再掲は若干のものを除き行わない、書式についても一部掲載を見送るなど、英語化にあたって実質・形式の両面で若干第7版に手を加えています。

『入門刑事手続法』は、日本の刑事手続の制度及び運用を素描したものです。すなわち、日本の刑事手続の仕組みがどのようになっており、どのように進行していくのか、制度の関与者はどのような活動を行うのか、刑事手続の実態はどのような姿を呈しているか、読者の皆さんに大づかみしてもらうことを目指して発刊されました。

初版は1995年9月、その後、制度の改革、法の改正、判例・実務の動き、運用実態の変化などに応じて、数年ごとに版を重ねました。

本書は、利用者の便を考慮し電子書籍として刊行されることとなりました。日本法、とくに刑事手続法に関心を有する海外の研究者、英語圏に留学する若手の日本人の刑事法研究者についてはもとよりのこと、来日外国人を対象とする日本の刑事事件の実務において、被疑者・被告人、通訳人、法曹三者等にそれぞれの役割・場面に応じて、本書籍が積極的に活用されればと切に願います。また、JICA（Japan International Cooperation Agency）のパートナーであるUNAFEI（United Nations Asia and Far-East Institute for the Prevention of Crime and the Treatment of Offenders）の企画に参加する各国の刑事実務者にとっても、研修やセミナーを受けるうえで手助けになる面があるかと思われます。

本書が多様な形で多くの方々に自在に活用されるよう強く希望します。

英語版の作成は、大阪大学の松田岳士教授、名古屋大学の小島淳教授、同じく名古屋大学の宮木康博教授の手になります。基本はむろん原本の英訳ですが、読者の理解を助けるべく、逐語訳ではなくより原本の趣旨・文脈が読者に伝わるよう工夫が施された箇所も少なくありません。また、英語化された原稿全体について、最終的にいずれも名古屋大学のSean McGinty 准教授、Giorgio Fabio Colombo教授に、いわゆるnative checkをお願いしまし

た。本務ご多忙のなか、英語版作成にご尽力いただいた5名の方々に厚く御礼をお申し上げます。

電子書籍の刊行は、書籍出版社において未だその例が多いとはいえません。今回の作品も、種々の試み・工夫を重ねながら有斐閣の書籍編集部とデジタル出版部の連携によって陽の目を見ることとなりました。藤本依子さん、鳥袋愛未さん、八代麻希さん及び信国幸彦さんのご支援に心から感謝いたします。

日本の刑事手続法の概略を英文で解説する本の作成は、1972年、 Palo Alto において Stanford大学のHerbert L. Packer教授と交わした約束事でした。半世紀を経て完成した本書を故Packer教授に捧げたいと思います。

2022年9月

三井 誠
酒巻 匡

電子書籍（リフロー-EPUB）の特長

1. 画面の大きさ等に応じた見やすい組み方に変えられます

画面に合わせて1行の文字数を変更したり、色の設定を変更（背景色付きや白黒反転）したりできます（アプリの機能によります）。

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10-19
as representative postmortem inspections (*daikō kenshi*). When a police officer conducts the inspection it is required for them to do so with the assistance of a doctor and the results of the inspection must be promptly reported to the public prosecutor.

Complaints and Accusations

Investigations may start also with a complaint (*kokuso*) or an accusation (*kokuhatsu*) (art. 230-, 239-). A complaint is the act of requesting punishment of an offender through the reporting of criminal facts. Under the CCP either the victim of a crime or their legal representative is entitled to file a complaint with the investigative authorities. An accusation is also an act of requesting punishment of an offender through the reporting of the criminal facts, but it is filed by a person other than the offender or a person entitled to file a complaint.

The main difference between the two, with the exception of some minor points such as

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The main difference between the two, with the exception of some minor points such as retraction, are the person who expresses the intention to file the complaint. An accusation in practice is often used in so-called "victimless crimes" such as bribery with an accusation being the means by which such crimes are detected by investigative authorities. Public officers are obliged to file accusations regarding crimes which they discover in the course of executing their duties (art. 239 II).

is directly carried out by a prosecutor with the purpose of determining whether the death was caused by a crime. In order to make that determination the prosecutor may enter the place where the corpse is located, observe it (externally) and examine the belongings of the deceased.

Prosecutors, rather than police, conduct postmortem inspections in principle because life is the most important legal interest that needs protection and thus any crime which violates the life of a person is of the utmost seriousness. A warrant is not required to perform a postmortem inspection (Warrant requirements in general are discussed later. cf. [Ch.1-V-2](#)). Prosecutors are, in fact, required to perform postmortem inspections as part of their duties, though they may delegate the task to a public prosecutor's assistant officer or a judicial police officer (art. 229 II, art. 5 the Rule of Postmortem Inspection). These are referred to as representative postmortem inspections (*daikō kenshi*). When a police officer conducts the inspection it is required for them to do so with the assistance of a doctor and the results of the inspection must be promptly reported to the public prosecutor.

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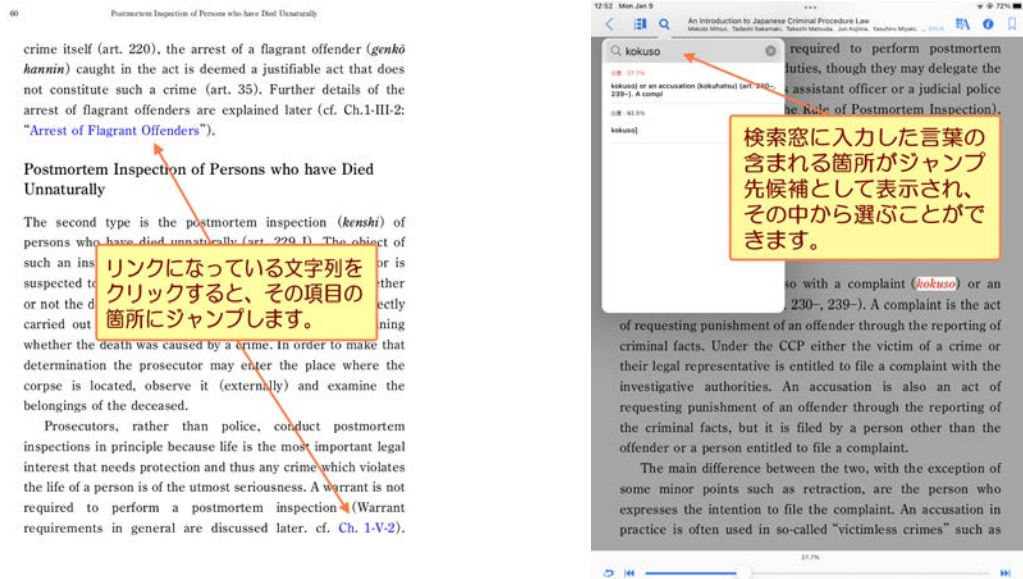
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Ordinarily, a complaint/accusation is filed in writing directed to a public prosecutor or judicial police officer, but an oral complaint/accusation is also permitted (art. 241 I). When made orally the person receiving such complaint/accusation must prepare a written statement (art. 241 II). Once prosecuted, the complainant may not withdraw the complaint. When a complaint is withdrawn before the institution of prosecution, the complainant cannot file a complaint again (art. 237 I II. Under the former CCP, the complainant was able to withdraw a complaint until the judgment of the appellate court).

Furthermore, when reporting facts on damages, submitting a claim without showing any wish to punish the offender may lead to the start of an investigation, but no legal effects of the complaint or accusation shall be given (art. 242, 246, 260,

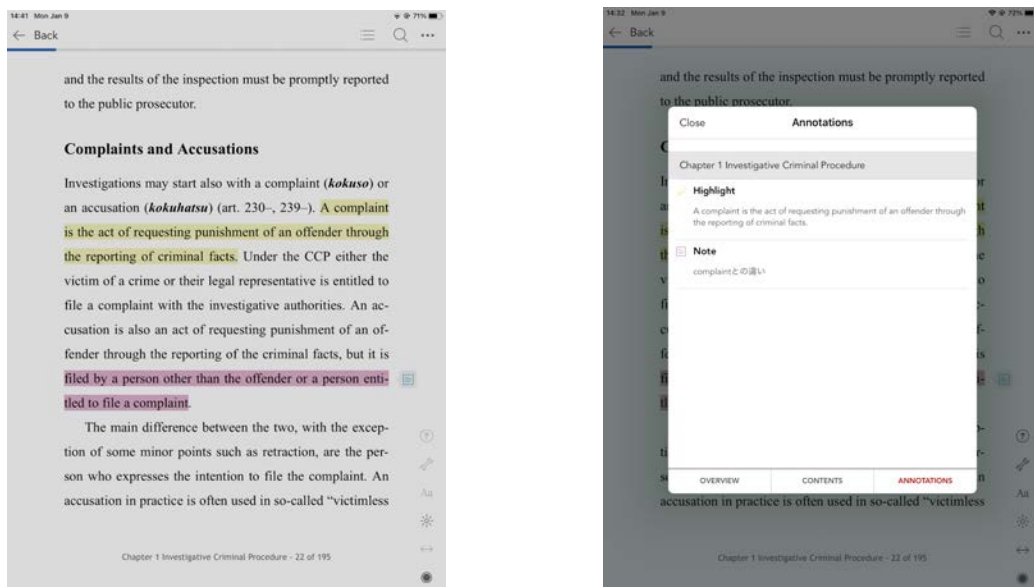
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