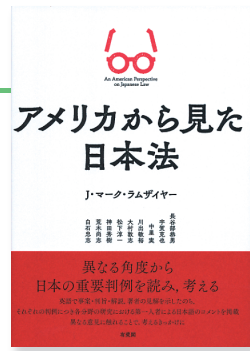


アメリカから見た日本法

J. マーク・ラムザイヤー = 長谷部恭男 =
宇賀克也 = 中里 実 = 川出敏裕 = 大村敦志 =
神田秀樹 = 松下淳一 = 荒木尚志 = 白石忠志

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編集
担当者
から

憲法、行政法、租税法など、8つの分野の著名かつ学習上重要な日本の判例を24件取り上げ、まずラムザイヤー先生に事件の背景や裁判所の判断を英語で紹介・考察していただきました。そして、それらの考察につきそれぞれの分野の第一人者の先生方に日本語で解説していただき、1冊の本ができあがりました。英語での判例紹介・考察には日本語訳がついていませんので、そういった点でも読みごたえのある本となりました。

ラムザイヤー先生の考察に触れ、なるほど、と思うこともあれば、それはどうだろう、と疑問を持つこともあるかもしれません。この本は、そのどちらの発見も楽しんでほしいと考えてつくりました。

各分野の重要判例についてラムザイヤー先生の分析を読むことで、視点が違えばこのような捉え方もあるのか、という驚きを味わっていただくとともに、みなさんが再度それぞれの判例につき考えてみるきっかけとなれば幸いです。(NS)

Point!



異なる考え方に触れ、新たに考えるきっかけに。

CASE 1

Sakata v. Kuni
13 Saphan Keshu 3225 (Sup. Ct. Dec. 16, 1959).

砂川事件
(裁判所) 34年12月16日(最高裁) 13巻13号3225頁

1 The facts

a. Introduction For several decades after World War II, the U.S. Air Force operated a base at the site of what is now Showa Kinen Koen in Tachikawa. From 1950 to 1953, it used the base to fight the Korean War. During the 1960s, it would use it to fight the war in Vietnam.

In 1957, the U.S. Air Force decided to expand its Tachikawa runway, and supporters of the Japanese left moved to oppose its plans. For those on left, the time was still one of hope. The Liberal Democratic Party (LDP) that would dominate the government for the next half-century had only formed itself two years earlier. Its opponents on the left could reasonably hope to take control of the government and restructure the country along socialist lines. After all, Khrushchev had only disclosed Stalin's atrocities a year before; the mass murder and starvation under Mao's Great Leap Forward and Cultural Revolution were yet to come.

In these years of eager anticipation, left-leaning law graduates joined the courts in large numbers. Many who did so also joined the judge's division of the Young Jurists League (YJL; the *Seinen horitsuka kyokai*) loosely affiliated with the Japan Communist Party (JCP). Of the

judges hired from 1958 to 1969, 28 percent joined the League.

Among the judges on the left, Akio Date would in time become something of a folk hero. During the 1930s, as a judge in Manchuria he was said to have released a large number of Chinese prisoners. By the late 1960s, he had joined the private bar and would file at least one high-profile suit to let Japanese firms sell militarily sensitive equipment to mainland China.¹

b. The District Court² In 1957, Date sat on the Tokyo District Court. There, he heard the case against several rioters arrested for trying to block the expansion of the Tachikawa runway. The government prosecuted them for criminal trespass under a special statute applicable to U.S. military bases. The statute exposed the protesters to a higher penalty than did the standard trespass statute.

Date acquitted the defendants. Article 9 of the Constitution banned military weapons, and the Tachikawa base was nothing if not military. If the government could not maintain its own military, neither could it rent military services from the U.S. by contract. After all, any such contract made Japan complicit in American military adventures — of which the Korean War was but the first example. Vietnam would soon become the second. Accordingly, the security agreement with the U.S. was unconstitutional, and if the agreement violated Article 9 so did any statute designed to facilitate the U.S. presence under the agreement. Prosecuted under an unconstitutional statute, the rioters were not guilty.

¹ 1969 Beijing-Shanghai-Japan Industrial Exposition v. Japan, 560 Hanzei jho 6 (Tokyo D. Ct. July 6, 1969).

² Sakata v. Kuni, 180 Hanzei jho 2 (Tokyo D. Ct. Mar. 30, 1959).