

INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW

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VOLUME I

NATIONAL REPORTS

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MOUTON · THE HAGUE · PARIS
OCEANA PUBLICATIONS INC. · NEW YORK

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Jamaica

R. A. Mahfood*

On 6 August 1962 Jamaica ceased to be a British Colony and became an independent unitary state

and a full member of the British Commonwealth of Nations. The official language is English.

I. CONSTITUTIONAL SYSTEM

1. Nationality

Nationality is *acquired* by birth in Jamaica, birth outside Jamaica to a father who is a Jamaican citizen, or marriage to a male Jamaican citizen. It may be *lost* by the acquisition or exercise of the rights of citizenship of another country (Const. Ch. II).

2. Territorial Division

Since 1 May 1867 the country has been *divided territorially* into three counties and fourteen parishes (The Counties and Parishes Law, ch. 80).

3. State Organs

a. *General structure.* – Parliament consists of the Queen, a Senate and a House of Representatives. There is a strong two-party system. The senate comprises 21 persons appointed by the Governor-General, 13 on the advice of the Prime Minister, and 8 on the advice of the Leader of the Opposition. The members of the House of Representatives are elected on the basis of universal adult suffrage, single-member constituencies and the first-past-the-post system. There is a Cabinet which consists of the Prime Minister (who is the person best able to command the confidence of a majority of the House of Representatives) and not less than 11 other ministers appointed from among the members of the two Houses by the Governor-General on the advice of the Prime Minister (Const. Ch. V, VI). There is a permanent Public Service. The powers of appointment and removal as well as of disciplinary control of public officers and members of the Police Force are vested by the Constitution in independent commissions (Const. Ch. IX).

b. *The Head of State* is Her Majesty the Queen.

She appoints the Governor-General as her representative in Jamaica. In law, as well as in practice, however, the real controlling power over the administration is exercised by the Prime Minister and Cabinet (Const. Ch. VI).

c. *Parliament.* – Subject to the Constitution, Parliament is supreme and may make laws for the peace, order and good government of the country. Ordinary Bills may be passed by a single majority of both Houses; but the most important constitutional provisions can only be amended by special majorities in both Houses. The Senate has certain limited powers of delaying Bills (other than Money Bills) for a short period of time but the House may eventually override the Senate. In the case of a constitutional amendment, however, if the Senate does not concur, it can only be passed with the approval of a special majority of the electorate (Const. Ch. V).

d. *The Cabinet* is the principal instrument of policy being charged with the general direction and control of the government and is collectively responsible therefor to Parliament. In practice, both Chambers have been greatly over-shadowed by the Executive (Barnett 114, 425).

e. *The Parish Councils* administer local affairs in the parishes. Effective control over Parish Councils is exercised by central government as by-laws and financial estimates must be approved by the minister in charge of local government affairs (the Parish Councils Law, ch. 271; the Parochial Rates and Finance Law, ch. 276).

4. Judiciary

a. *The courts* include the Supreme Court, which is primarily a court of first instance with unlimited jurisdiction, the Court of Appeal, the Judicial

* Queen's Counsel, Kingston.

Committee of the Privy Council, as well as inferior courts of first instance with limited jurisdictions, namely Petty Sessions Courts, where lay magistrates preside and Resident Magistrates Courts, where qualified stipendiary magistrates preside. The Chief Justice and the President of the Court of Appeal are appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition; and the other judges are appointed by an independent Judicial Service Commission. The judges are independent and accorded security of tenure and remuneration. All civil and criminal matters are dealt with in the ordinary courts and

there is no defined system of specialisation. There are, however, a number of statutory bodies which exercise quasi-judicial functions in specific areas.

b. *The Director of Public Prosecutions* is a public officer but is not subject to the direction or control of any other person or authority. He has power to institute and undertake criminal proceedings, to take over and continue any criminal proceedings that may have been instituted by any other person or authority; and to discontinue any such proceedings before judgment is delivered (Const. Ch. VI s. 94).

II. SOURCES OF LAW

The Constitution (Const.) is contained in the Jamaica (Constitution) Order in Council of 23 July 1962 (S.I. 1962 no. 1550), which was made by the Queen of the United Kingdom under the West Indies Act, 1962 (10 & 11 Eliz. 2, c. 19), an Act of the United Kingdom Parliament. It came into effect on 6 Aug. 1962. The 1962 Order in Council (s.4) expressly preserves all laws which were in force in Jamaica immediately before independence. This includes the United Kingdom statutes which were expressly extended to Jamaica; certain English statute which have been adopted on

the settlement of Jamaica; and laws enacted by the Jamaican legislature. In exercise of its legislative power, Parliament enacts laws from time to time. The most important laws are contained in the 1953 Revised Edition of the Laws of Jamaica. Statutes enacted in Jamaica are published in annual volumes known as Laws/Acts of Jamaica. English case law and works of reference are an important source of law. Decisions of the Jamaican courts are reported in the Jamaican Law Reports and the West Indian Reports.

III./IX. EVOLUTION AND CONTENTS OF LAW

The concepts and content of Jamaican civil law are basically the same as those of England. The English Common Law principles relating to capacity, legal entities, family, ownership, contracts, damage and torts, and inheritance have been adopted in Jamaica. Jamaican legislation has also followed the pattern of English statutory developments although, as indicated below, some of the more recent of these developments have not yet been introduced into Jamaica. Accordingly, the United Kingdom statutes cited below are not necessarily the statutory provisions currently in force in that country.

1. Family Law

There are a number of statutes regulating family law. These include the Adoption of Children Law (no. 75 of 1956), the Guardianship and Custody

of Children Law (no. 69 of 1956), the Legitimation Law of 1909 (ch. 217) as amended by the Legitimation Amendment Law of 1961 (no. 18) and the Divorce Law of 1879 (ch. 102) as amended by the Divorce (Amendment) Act, 1969 (no. 30). These Jamaican statutes are based on the following United Kingdom statutes: The Adoption Act, 1950 (14 Geo. 6, c. 26), the Guardianship of Infants Act, 1925 (15 & 16 Geo. 5, c. 35), the Legitimacy Act, 1926 (16 & 17 Geo. 5, c. 60), the Legitimacy Act, 1959 (7 & 8 Eliz. 2, c. 73) and the Matrimonial Causes Act, 1857 (20 & 21 Vict., c. 85).

2. Property

The transfer of movable property is regulated by the Sale of Goods Law of 1895 (ch. 349) which is based on the United Kingdom Sale of Goods Act,

1893 (56 & 57 Vict., c. 71). Although the ownership of interest in land is determined in accordance with the principles of English Common Law, Jamaica adopted a system of registration of titles to land by the Registration of Titles Law of 1889 (ch. 340).

3. Succession

The testamentary disposition of property is governed by the Wills Law of 1840 (ch. 414) which is based on the United Kingdom Wills Act, 1837 (7 Will. 4 & 1 Vict., c. 26). Intestate succession is regulated by the Intestates' Estates and Property Charges Law of 1936 (ch. 166) patterned on the United Kingdom Administration of Estates Act, 1925 (15 Geo. 5, c. 23).

4. Commercial Law

The law regulating the incorporation and operation of corporate bodies is the Companies Act,

1965 (no. 7 of 1965) based on the United Kingdom Companies Act, 1948 (11 & 12 Geo. 6, c. 38). Bankruptcy is governed by the Bankruptcy Law of 1880 (ch. 32), based on the United Kingdom Bankruptcy Act, 1869 (32 & 33 Vict., c. 71). The Jamaican Trades Marks Law of 1957 is based on the United Kingdom Trades Marks Act, 1938 (1 & 2 Geo. 6, c. 22). The United Kingdom Copyright Act, 1911 (1 & 2 Geo. 5, c. 46) is one of the pre-independence United Kingdom statutes which continue in operation in Jamaica. The Patent Law of 1857 (ch. 283) is based on the Patent Amendment Act, 1852 (15 & 16 Vict., c. 83).

5. Civil Procedure

The procedure in civil matters in the Supreme Court is regulated by the Judicature (Civil Procedure Code) Law of 1889 (ch. 177) which follows the Rules of the Supreme Court of Judicature of England.

X. SELECTIVE BIBLIOGRAPHY

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(Completed in October 1971)

Japan

Yosiyuki Noda*

Japan is a monarchy with strong republican tendencies. Its Japanese name, *Nippon-koku*, means the State of Japan; but in official documents drawn

up in French or English, the short name *Japon* or *Japan* is used alone.

I. CONSTITUTIONAL SYSTEM

1. Nationality

A child is Japanese by birth: (a) if its father is Japanese at the time of the birth of the child or if the father died before the birth and was a Japanese at that time; (b) if its mother is Japanese, when the father is unknown or has no nationality; (c) if the child has been born in Japan, when both its parents are unknown or have no nationality (Nationality Law no. 147 of 4 May 1950, art. 2). – One can become Japanese by naturalisation under the conditions set out by the aforesaid law (art. 4–7).

Causes of loss of nationality: (a) voluntary acquisition of a foreign nationality (art. 8); (b) acquisition of a foreign nationality by birth, unless Japanese nationality is reserved within a period laid down by law (*ibid.*).

2. Territorial Division

The local Autonomy Law (no. 67 of 17 April 1947) is the most important source in this matter. Japan is divided into one *to*, one *dô*, two *fu* and 42 *ken*. They are known by the combined term: *to-dô-fu-ken*. *Ken* more or less corresponds to a French department; between *ken* and *fu* there is only a difference of name. The title of *to* is at present given to a territorial unit which includes the former department of Tokyo and the former city of Tokyo. But this title is not legally limited to Tokyo. There is only one *dô*, namely Hokkaidô, the most northerly island in Japan, the area of which is very much greater than that of an average *ken*. *Dô* is nowadays assimilated to *ken*. The difference in their names is entirely historical.

In the area of each of these territorial units are communes called in Japanese by the combined term of *shi-chô-son* (art. 5). *Shi* is a commune equivalent to a city provided its population exceeds 50000 (art. 8 par. 1). The conditions under

which a place can be a *chô* or *machi* (town) are laid down by ordinance of the local assembly of the particular *to*, *dô*, *fu*, or *ken* which includes it (art. 8 par. 2). Usually a commune with more than 5000 inhabitants is *chô*. The other communes are *son* or *mura* (village).

The communes are not secondary collectivities subjected to the authority of the *to-dô-fu-ken*. It is only that their territory is enclosed within the area of these. Nevertheless, the provisions of an ordinance of a collectivity may not derogate from those of an ordinance of the territorial units in which it is situated, if that deals with the same subject.

3. State Organs

a. *General structure.* – Under the present Constitution of 3 November 1946 (Const.), the principle of the separation of powers is quite well observed. The legislative power belongs to Parliament (*kokkai*). The judicial power belongs to the Supreme Court and lower courts. The executive power is exercised by the Cabinet of ministers (*naikaku*). There are various bodies under the *naikaku*, notably the ministerial departments, which are 13 in number. Each of them is assisted by various auxiliary bodies: agency, administrative board, consultative councils. Although auxiliary organs, the following two are under the direct authority of the Cabinet: Bureau of Legislation, which has the job of drafting government bills, and the National Personnel Authority which is entrusted with safeguarding the position of civil servants. Besides this, the Constitution itself creates a very important body: the Board of Audit which has the task of ensuring that the budget is complied with (Const. art. 90). The Law no. 73 of 19 April 1947 relating to the Board of Audit assures this body of independence in relation to the govern-

* Professor, Faculty of Law, University of Tokyo, Tokyo.

ment (art. 1). The independence of the National Personnel Authority is not declared by statute, but it also enjoys a fairly wide degree of independence.

b. *The Head of State.* – Before 1945 there was no doubt that the Emperor (*tennō*)¹ was Head of State, because he was a real sovereign. But under the present Constitution, which declares national sovereignty, the *tennō* is deprived of all political powers. He is at present an organ which has no other function than that of symbolising the state; he may only carry out the acts laid down in the Constitution (art. 6–7), acts which are purely ritual. It is thus difficult to say that the *tennō* is the Head of State in a normal sense of the word. Having said that, it is not impossible to qualify him as Head of State in a very wide sense, since he attests diplomatic documents and receives foreign ambassadors. Strictly speaking, it ought to be said that the Prime Minister or the Cabinet itself legally represents Japan.

c. *Legislative body.* – The Parliament is the only national legislative body (Const. art. 41). It is composed of two chambers: House of Representatives (*shūgi-in*) and House of Councillors (*sangi-in*) (art. 42). Both are elected by universal direct suffrage. The only difference in elections to them is in the constituencies. The methods of election are laid down by statute (art. 47). The Public Officials Election Law (no. 100 of 15 April 1950) was enacted for this purpose.

(1) The House of Representatives consists of 491 members (additional provisions of the Law no. 49 of 7 May 1970 concerning provisional measures for the participation of the inhabitants of Okinawa in the government, par. 2) who are elected for four years (Const. art. 45). Election is carried out by a ballot in which one may vote for only one of the candidates, and a candidate may be elected without gaining an absolute majority of votes. Candidates who have obtained a certain number of votes laid down by statute are elected according to the size of the vote obtained up to the limit of the number of seats belonging to each constituency.

(2) The House of Councillors has 252 members (additional provisions of the Law no. 49 of 7 May 1970, art. 4 par. 4) who are elected for six years, half of them being replaced every three years (Const. art. 46). The election is likewise carried out by a ballot in which one may vote for

only one of the candidates, and a candidate may be elected without gaining an absolute majority of votes. In each election, 50 members are elected in a single national constituency which covers the whole of Japan and 75 members are elected in each of the local constituencies, each department constituting a local constituency. An elector votes at the same time for a candidate in the national constituency and for another one in the local constituency.

All nationals of both sexes aged at least 20, except those excluded by statute, such as those lacking legal capacity or persons sentenced to punishments of a certain degree, are electors (Public Officials Election Law (*supra* c) art. 9, 11). Persons aged at least 25 may be elected as representatives, and those aged at least 30 as councillors (art. 10).

The organisation and functions of Parliament are dealt with by the Parliament Law no. 79 of 30 April 1947. The chief function of Parliament consists of making laws. It can legislate on all matters. It is unanimously admitted that draft laws can be introduced both by the government and by private members, although the Constitution does not mention it explicitly (*cf.* Const. art. 72, Parliament Law art. 56). In principle, a law comes into being when both chambers pass a draft law in the same terms (Const. art. 59 par. 1). But in case of disagreement, a draft law becomes law, when the House of Representatives passes the draft which the other chamber has rejected by a majority of two-thirds of the members present (*ibid.* par. 2). When the House of Councillors has not voted within 60 days of receiving the draft voted by the House of Representatives, the latter can deem the former to have rejected it (*ibid.* par. 3). In principle, every matter is passed by a majority of the members present, the quorum being a third of all the members in each of the chambers (Const. art. 56). In exceptional cases, a special majority is required (*e.g.*, art. 55, 57, 58, 59 par. 2 *etc.*). The draft law is usually submitted to a permanent or *ad hoc* committee, before it is considered in public session (Parliament Law art. 40 *ss.*). There are 16 permanent committees in each assembly (*ibid.* art. 41). The rules relating to debates, internal discipline *etc.* are laid down in the regulation of each of the chambers (Const. art. 58 par. 2).

Its second important function is to vote the budget. This must first be laid before the House of Representatives (Const. art. 60 par. 1). It is passed by the agreement of both chambers. But in the case of irreconcilable disagreement, or where the

¹ *Tennō* is translated by Emperor. But this is not strictly correct, for Japan has abandoned the name of Empire of Japan (*Nippon Teikoku* – a literal translation

of which is: Imperial State of Japan). See *Noda*, Introduction 73–78.

House of Councillors has not passed the budget within a period of 30 days after receiving the draft adopted by the House of Representatives, the vote of the latter is taken to be that of Parliament (*ibid.* art. 60 par. 2). The budget is distinguished from a statute, but it is considered as constituting one of the categories of legal rules of the state. "Final accounts of all the income and expenditure of the state are submitted every budgetary year to the inspection of the Board of Audit. The Cabinet must lay it before Parliament the next budgetary year together with the reports of the inspection of this board" (Const. art. 90).

Parliament fulfils other functions: approval of diplomatic treaties which have been concluded (Const. art. 61), control over government actions (art. 62), and the role of Judge Impeachment Court (art. 64).

d. *Government.* – Japanese law uses the word "government" (*seifu*) very rarely in legal texts. What substantially corresponds to it is the Cabinet of Ministers (*naikaku*). The Constitution states that executive power is vested in the *naikaku* (art. 65). The *naikaku* consists of the Prime Minister (*naikaku-sōridaijin*) and the ministers (*kokumudaijin*) (art. 66).² The Council of Ministers is called *kaigi* in Japanese. The Prime Minister is chosen by Parliament from amongst its members (art. 67). Usually he is the leader of a political party which controls the majority in Parliament. He appoints and dismisses all ministers (art. 68). He lays all draft laws before Parliament in the name of the Cabinet, he informs it about all the affairs of state at home and abroad and directs and controls all the administrative services (art. 72). He presides over the Council of Ministers. He signs laws and ordinances. Each minister is vested with powers which are not so great. In principle he is the head of a ministerial department, but there are ministers without portfolio.

The powers of the *naikaku* as a whole are laid down in art. 73 of the Constitution: (1) putting into effect of statutes and management of affairs of state; (2) control of foreign affairs; (3) conclusion of treaties; (4) control of matters concerning civil servants; (5) preparation and presentation of the budget; (6) making decrees; (7) giving decisions in matters of pardon. As one can see, the *naikaku* as a whole has the power to issue regulations. The government can only use it for putting statutes into effect or by delegation under a statute.

The Constitution fairly clearly adopts the English style of Parliamentary regime. The majority of

the members of the Cabinet must have a seat in one or other of the chambers (art. 68). The *naikaku* is collectively responsible before Parliament (art. 66 par. 3). When a vote of censure is passed in the House of Representatives or a vote of confidence is defeated there, the *naikaku* must resign, unless the House of Representatives is dissolved (art. 69). The government's right of dissolution is not limited to this case. According to practice, supported by theory, dissolution is possible in cases where the government wishes to invoke the vote of the nation on important matters. So the principle of *checks and balances* governs relations between Parliament and government.

e. *Local authorities.* – A large degree of autonomy for local units is recognised by the Constitution (art. 92). Each unit has its local assembly (art. 93 par. 1) as an organ for deliberation. As an executive body, there is the head of the unit and his agents, who help him. The head of the *to-dō-fuken* is the prefect (*chiji*), and that of the communes the mayor (*shi-chō*, *chō-chō* or *son-chō*).³ The prefects, mayors, and members of the local assembly are elected for four years by the inhabitants of each unit concerned (art. 93 par. 2). The area which used to be part of the city of Tokyo before the introduction of the *to* regime is at present divided into 23 constituencies called *ku* which resemble the *arrondissements* (local government areas) of the city of Paris. Each of these *ku* is assimilated to a town; its head (*ku-chō*) is not, however, elected by its inhabitants, but chosen by the assembly of the *ku* in agreement with the prefect (Local Autonomy Law art. 281–283). Every territorial unit is competent to deal with its property and to manage its affairs (Const. art. 94). The details of local autonomy are set out by the Local Autonomy Law, a veritable code comprising more than 320 articles. The matters about which the local assembly can take decisions are very numerous. They are set out in art. 95 of the Local Autonomy Law, but this list is not exhaustive. The legislative rules adopted by a local assembly are called ordinances (*jōrei*). They may not derogate from statutes or decrees. Following the American example, the Local Autonomy Law adopts several means of guaranteeing the freedom of the inhabitants: e.g., direct demands leading to the making or repeal of ordinances, for the dissolution of the local assembly, for the dismissal of agents such as the head or the members of the assembly, etc., or for a referendum. These methods are, however, seldom used.

² *Daijin* literally means a great dignitary. *Sōri* means general direction. *Kokumu* means affairs of state.

³ *Chō* means chief (head).

4. Judiciary

a. *Organisation.* – The organisation of the courts is laid down by the Court Law no. 59 of 16 April 1947. All judicial power is exercised by the Supreme Court and the lower courts (Const. art. 76).

The lower courts are divided into two instances. Those of first instance are divided in their turn into three categories.

(1) The District Court is the common law jurisdiction of first instance. One District Court exists in each *to-fu-ken* (*supra* I 2) and four in *Hokkaido*, making 49 in all. Besides this, local branches of the court can be created by the Supreme Court in the area where each of these courts has jurisdiction, if there is need (Court Law art. 31). The District Court acts as a court of appeal, in civil matters only, in relation to decisions given by the Summary Court (see *infra* (3)), appeals against decisions in criminal matters always being brought before the High Court (art. 16 no. 1, art. 24 no. 2). In principle, cases are heard in the District Court by a single judge (art. 26 par. 1). Only in the cases laid down by art. 26 par. 2–4 must three judges sit.

(2) The Family Court is placed on the same level as the above, but its competence is limited to family affairs and juvenile delinquency (art. 31–33). In every place where there is a District Court, a Family Court has been set up. Thus there are 49 of them. The Supreme Court can set up local branches of the Family Court. Except in the cases laid down by statute, the principle of a single judge operates here (art. 31–34). It is rather an organ of non-contentious jurisdiction and conciliation (*infra* VIII 2).

(3) The Summary Court is competent only in the case of small civil matters where the value of the demand does not exceed a sum of 100 000 yen (US \$ 300) and in the case of misdemeanors punishable by a fine or lesser penalties (art. 33).⁴ A single judge hears all cases without any exception (art. 35). The total number of these courts is 570. The High Court is in principle a court of appeal, but its function is not limited to that. With respect to certain cases, it acts as a final court of appeal hearing only questions of law (art. 16 no. 3). Here the principle of collegiality prevails. The bench consists basically of three judges, but in certain serious crimes (PC art. 77–79) it consists of five (Court Law art. 18). The number of High Courts is eight. The Supreme Court can create local branches in the area of each of them (art. 22). At present, four High Courts each have one local

branch, and one High Court has two.

The district courts and high courts must be divided into chambers. This is optional in local branches and in the family courts. The Summary Court is never divided into chambers. The Supreme Court is at the pinnacle of the judicial hierarchy. It consists of 15 members: a president and 14 judges (art. 5). The President of the Supreme Court is not only the head of that Court, but also of the judicial power. He ranks on the same level as the Prime Minister in the hierarchy of organs of state (Const. art. 6). All judges are subjected to the authority of the President of the Supreme Court. Before the judicial reform of 1947, all members of the state legal service, whether judges or public prosecutors, were under the authority of the Minister of Justice (see *infra* e). According to the Constitution, no administrative organ is allowed to give a final decision in a case (art. 76 par. 2). This means that no action of a judicial nature can escape the ultimate control of the Supreme Court. The Constitution strictly forbids the creation of a court or tribunal which is outside the authority of the Supreme Court (*ibid.*). The only exception to this rule is the Judge Impeachment Court created by the Constitution itself (art. 64).⁵

The Supreme Court is vested with power to make rules. It can issue rules concerning procedure, attorneys, the internal organisation of the courts and judicial administration (Const. art. 77). The authority of these rules is less than that of statutes.

The Supreme Court constitutes, according to the Japanese conception, a third instance. However, it is limited to hearing questions of law. This court has the very important function of exercising control over the constitutionality of laws, *etc.* It sits sometimes as a grand bench, comprising all the 15 judges, sometimes as a petty bench, consisting of five (Court Law art. 9). And in those cases in which the constitutionality of laws *etc.*, is at issue, and in those in which the Supreme Court thinks it will be necessary to reverse its previous decisions, the court must sit with the grand bench (art. 10). In other cases, the Supreme Court Ordinance (no. 6 of 1 Nov. 1947) lays down which of the two will be available. Each case is subjected first to the consideration of the petty bench and then referred to the grand bench if necessary (*ibid.* art. 9).

b. *The constitutional judiciary.* – Japanese law does not adopt the system of a special court in constitutional matters. The Constitution states

⁴ The Penal Code (PC) sets out the following penalties according to their gravity: death, imprisonment at forced labour, imprisonment without forced labour,

fine, penal detention, minor fine, confiscation (art. 9).

⁵ The details are fixed by the Judge Impeachment Law no. 137 of 20 Nov. 1947.

that the Supreme Court is the competent court to give a final judgment on the constitutionality of all the statutes, ordinances or individual measures taken by organs of state (art. 81). That does not mean that the Supreme Court alone exercises control over the constitutionality of statutes, *etc.* All the courts are competent to do this, but in practice the role of the Supreme Court is extremely important in this matter. According to decisions of the Supreme Court, a request for the control of the constitutionality of laws is only allowed by way of demurrer (Supreme Court Grand Bench, 8 Aug. 1952, *Minshu* 6, 783). In the case of a law being declared unconstitutional, does it become void *erga omnes* or is it merely inapplicable in the case concerned? This is a controversial point, but practice and theory seem to approve the latter thesis. To date, however, there has been no case where the Supreme Court had declared a law unconstitutional. In matters which have political complications, the Supreme Court tries to move as far as possible away from control of constitutionality, relying, for example, on the theory of acts of state (Supreme Court Grand Bench 16 Dec. 1959, *Keishu* 13, 3225).

c. *Specialisation of courts.* – All courts are competent in all cases, without regard to their legal nature. No specialisation of the courts according to the nature of the case exists. Thus each court can hear cases whether they be civil, commercial, criminal, industrial or administrative. The only exception is the Family Court (*supra* a (2)). This, however, does not prevent a specialisation of judges or chambers from existing. Judges begin to appear specialising in a particular kind of question, *e.g.*, motor accidents. Civil and criminal chambers are distinguished from the start, if a court has more than two chambers.

d. *Administrative cases* are counted as civil cases and subjected to the competence of the ordinary courts. The meaning of civil cases is in this instance quite specific: cases which are not criminal are civil. Before 1947 there was a court specialising in administrative cases, but it was abolished. Accepting, however, that these cases are of a somewhat different nature from other civil cases, they are judged according to a special procedure for administrative matters. To this end, there exists the Administrative Cases Litigation Law (no. 139 of 16 May 1962). The District Court has exclusive competence at first instance in this matter. This

law has introduced many exceptional rules concerning the period for bringing an action, the effects of bringing an action, the effects of a judgment avoiding administrative acts, methods of levying execution, *etc.*⁶ In the absence of exceptional rules, those used in civil procedure are applicable.

e. *Prosecution.* – The public prosecution has the job of investigating and prosecuting crimes, bringing an action in the name of the public and supervising the carrying out of punishments, as well as representing the public interest in civil cases. Its members were assimilated to judges in status before the judicial reform of 1947; but the judicial power being strictly distinguished from the executive power under the present Constitution, the status of these two sorts of members of the state legal service is at present completely different. The public prosecutors belong to the executive body; they are under the authority of the Minister of Legal Affairs, who has no judicial competence.

However, the organisation of the public prosecution is so conceived as to correspond with that of the courts. According to the Prosecutor's Office Law (no. 61 of 16 April 1947), the hierarchy of the public prosecution's reflects that of the courts. Thus, the Supreme Public Prosecutor's Office is parallel to the Supreme Court, and corresponding to the levels of the courts are: high public prosecution's office, district public prosecution's office, and local public prosecution's office (art. 2). The head of the Supreme Public Prosecutor's Office is called Attorney General (*Kenji-sôchô*). Unlike judges, all the members of the prosecution are subjected to the authority of their superiors in the hierarchy. Even the Attorney General must follow the orders of the Minister of Legal Affairs. But the latter is strictly forbidden by the said law to intervene directly in prosecutions or in measures taken by the public prosecutor: he can send directives of a general nature to the public prosecutors, but he may not give specific orders except to the Attorney General (art. 14). In the case where the public prosecutor seems to have unduly refrained from bringing an action in the name of the public, an inquest consisting of 11 citizens chosen by lot can ask him to re-examine the case in question. At least one inquest must exist in the area of each District Court (Inquest of Prosecution Law no. 147 of 12 July 1948).

⁶ For details, see *Noda*, Introduction 122–126.

II. SOURCES OF LAW⁷

1. Constitution

The Constitution is the supreme source of law. It states itself in its art. 98: The present Constitution constitutes the supreme legal rules of the state. Statutes, regulations, decrees and other acts relating to affairs of state have no legal validity when they are contrary to its provisions. The present Constitution was enacted on 3 November 1946 and came into effect as from 3 May 1947. The principal laws accessory to the Constitution are: Parliament Law and Public Officials Election Law, of which we have spoken (*supra* I 3 (c)).

2. Other Important Legislative Sources

a. *Civil law*. – The Civil Code (CC), Law no. 89 of 27 April 1898, is the most important. It is divided into five books; (1) general part; (2) rights in property; (3) obligations; (4) family law; (5) succession. The last two books were completely revised in 1947 (Law no. 222). The chief ancillary laws are: Family Registration Law (no. 224 of 22 Dec. 1947); Immovable Property Recording Law (no. 24 of 24 Feb. 1899); Leased Land Law (no. 49 of 8 April 1921); Leased House Law (no. 50 of 8 April 1921).

b. *Commercial law*. – The Commercial Code (Comm. C), Law no. 48 of 9 March 1899, consists of four books: (1) general part; (2) commercial companies; (3) commercial acts (acts which by their nature are governed by commercial law); (4) maritime trade. This code has been revised several times. The important ancillary laws are: Limited Liability Company Law (no. 74 of 5 April 1938); Bills of Exchange Law (no. 20 of 15 July 1932); Cheques Law (no. 57 of 29 July 1932); Law Concerning International Carriage of Goods by Sea (no. 172 of 13 June 1957); Commercial Registration Law (no. 125 of 9 July 1963).

c. *Criminal law*. – The Penal Code (PC), Law no. 45 of 24 April 1907, completely revised in 1947 (Law no. 124), and the Code of Criminal Procedure (CCrim. Proc.), Law no. 131 of 10 July 1948, are the most important. The ancillary laws are: Minor Offences Law (no. 39 of 1 May 1948); Juvenile Law (no. 168 of 15 July 1948); Prison Law (no. 28 of 28 March 1908).

d. *Procedure*. – Court Law and the Code of Civil Procedure (CCProc.), Law no. 29 of 21 April 1890, are the most important. Also can be listed: Bankruptcy Law (no. 71 of 25 April 1922); Personal Affairs Litigation Law (no. 13 of 21 June 1898); Non-Contentious Affairs Law (no. 14 of 21 June 1898); Family Affairs Determination Law (no. 152 of 6 Dec. 1947), and Civil Affairs Mediation Law (no. 222 of 9 June 1951).

e. *Administrative law*. – There is no Administrative Code. The important laws are: Cabinet Law (no. 5 of 16 Jan. 1947); National Administrative Organisation Law (no. 120 of 10 July 1948); National Public Servants Law (no. 120 of 21 Oct. 1947); Local Autonomy Law (*supra* I 2); Local Public Servants Law (no. 261 of 13 Dec. 1950).

f. *Financial and revenue law*. – Public Finance Law (no. 34 of 31 March 1946; no. 35 of 31 March 1946 on public accounts (control of expenditure of public funds)); Law concerning the General Rules of National Tax (no. 66 of 2 April 1962); National Tax Collection Law (no. 147 of 20 April 1959); Income Tax Law (no. 33 of 31 March 1965).

g. *Labour law*. – Labour Union Law (no. 174 of 1 June 1949); Labour Relations Adjustment Law (no. 25 of 27 Sept. 1946) and Labour Standards Law (no. 49 of 7 April 1947) constitute something called the "Three Labour Laws" (*rôddô-sanpô*).

3. Custom

In the absence of written law, the court must apply custom, if any. A Law of 8 June 1875, called the Decree of *Dajôkan* no. 103⁸ states: "In civil cases, the judge must decide according to custom in the absence of written law; in the absence of custom, he must give a decision taking account of *jôri*" (art. 3). *Jôri* literally means *recta ratio*. Although there is controversy over the validity of this law, everyone admits that the idea behind it applies even outside the realm of private law (see *infra* 6). According to CC art. 92, customs which are not contrary to mandatory rules have a greater value than directory rules. But custom is not always a secondary source. Case law often recognises the validity even of customs *contra legem*. Besides this, the Commercial Code provides: "In commercial

⁷ For details, see *Noda*, Introduction 203–249.

⁸ At that time, there was not yet a Parliament. The *Dajôkan* is a government body consisting of three

Councils, whose name derives from a very ancient institution. One of these three, Council of the left (*Sa-in*), exercised legislative power.

cases, commercial customs apply in the absence of provisions in the present Code, and in the absence of commercial custom, the provisions of the Civil Code apply" (art. 1). In Japanese legal life, recourse is very rarely had to the courts to obtain a solution of social conflicts. This is most often given outside the state law. For this reason, custom is a very important source in knowing the living law of Japan.

4. Case Law

Japanese law does not recognise the principle of *stare decisis*. Every court is theoretically free not to follow the judicial decisions even of courts superior to it. But in practice, precedents have a very strong authority, especially as concerns the decisions of the Supreme Court. The judge who does not follow them must expect that his judgment will be reversed. The judge is not legally bound by a judgment of a superior court except within the limits of the case with which he is concerned (Court Law art. 4). Thus, case law is not a formal source of law, but in reality it plays an extremely important role as a material source. By means of interpretation which in fact is nothing but a veiled form of legislation, judges make many legal rules. So it could be said that in Japanese law judge-made law is a very important source.

5. Legal Writing

There can be no doubt that academic legal writing opinion fulfils an essential function in creating and interpreting legal rules. It does not, for all that, amount to a source of law. No jurist is vested with the *ius respondendi*. His influence is always indirect, both on the legislature and on the judges.

6. Jōri

Although there is no rule analogous to art. 4 of the French Civil Code (which forbids a judge to refuse to give a decision on the grounds of the silence, obscurity or insufficiency of the written law), a judge may not refrain from giving a solution to the dispute which has been brought before him, even in the absence of pre-existing rules which can be applied. In Japan, everybody recognises that in such a case the judge must give a

decision relying upon the *jōri* (*supra* 3). But as far as the author knows, there is no judgment which has decided a case invoking the *jōri* alone.

7. Collections of Laws and Reports of Cases

a. *Collections of laws.* – The Complete Collection of Laws and Ordinances (*Hōrei-zensho*), an official publication, containing all the laws and regulations enacted since 1867, is the most important and most complete. More easily accessible and more manageable are the two private collections: (1) Basic Collection of Six Codes (*Kihon-roppō*), containing the Constitution, Civil Code, Commercial Code, Code of Civil Procedure, Penal Code, and Code of Criminal Procedure, published by Iwanami Books; (2) Little Collection of Six Codes (*Shō-roppō*) published by Yuhikaku Books; both are revised annually.

b. *Reports of cases.* – (1) Before the reform of the courts in 1947, there are: The collection of judgments in civil (or criminal) cases of the Court of Cassation 1875–1894 (*Daishin-in-minji* (or *keiji-hanketsu-roku*), briefly cited as: Dai-han Minroku (or Keiroku); the collection of decisions in civil (or criminal) cases of the Court of Cassation 1895–1947 (*Daishin-in-minji* (or *keiji-hanketsu-shū*), briefly cited as: Dai-han Minshu (or Keishu). For the decisions of lower courts, there is the Legal Journal (*Hōritsu-shinbun*), a private publication from 1900–1942. – (2) After the reform, all published by the Supreme Court: (a) collection of civil (or criminal) decisions of the Supreme Court (*Saikōsaibansho-minji* (or *keiji-hanrei-shū*), briefly cited as: Minshu (or Keishu); (b) Collection of the civil (or criminal) decisions of the High Courts (*Kōtō-saibansho-minji* (or *keiji-hanrei-shū*), briefly cited as: Kōsai Minshu (or Keishu); (c) Collection of decisions in administrative cases (*Gyōseijiken-saibanrei-shū*); (d) Collection of decisions in civil cases involving labour law (*Rōdō-kankei-minji-hanrei-shū*); (e) Collection of decisions of the lower courts in civil cases (*Kakyū-saibansho-minji-saibanrei-shū*); (f) Collection of decisions of the lower courts in criminal cases (*Kakyū-saibansho-keiji-hanrei-shū*); (g) Monthly bulletin of the decisions of Family Courts (*Katei-saibansho-hanketsu-geppō*).⁹

⁹ See Noda, Introduction, Appendix II and III.

III. CONCISE HISTORICAL EVOLUTION OF PRIVATE AND COMMERCIAL LAW

1. Evolution of Private and Commercial Law

To keep the account shorter, the history of Japanese law before the 1868 revolution¹⁰ will not be considered. Since that date it has seen itself modernised along the lines of Western law. Until about 1890 (the Constitution of *Meiji* was enacted in 1889), French and English law exercised an overwhelming influence on the modernisation of Japanese law, and in the realm of private law, it was French law which was followed by Japanese law. Professor G. *Boissonade*, of the Faculty of Law of Paris University, was invited by the Japanese government to assume the post of legal draftsman and adviser; he arrived in Japan in 1873 to become engaged in making modern codes. Japan ardently desired to adapt its legal system to modern capitalism. In 1889, *Boissonade* finished his draft of a Civil Code, which was enacted in 1891 to come into force in 1894. But a very hostile movement arose to oppose its coming into effect, claiming that this Code was contrary to traditional morality. Although this claim was ill-founded, the Parliament voted for its coming into force to be adjourned, and the Code was buried. The new Civil Code, which was drafted this time by three Japanese jurists following the example of the German Civil Code in form, was enacted in 1898. It has been believed, without really thinking about it, that this Code is the image of the German code, but in reality there remain many rules which have their origin in the *Boissonade* Code. But since that time, German influence had spread through all areas of culture, and Japanese law was for a long time under the spell of German law. Legal writing and case law followed its footsteps almost like slaves. In the realm of commercial law, a code was enacted in 1890, the draft of which had been elaborated by a German jurist, H. *Roesler*, following the system of the French code. But this code shared the fate of the *Boissonade* Code. A new code, adopting the German system this time, was enacted in 1899. Of course, commercial law does not escape from the general tendencies of the cultural environment of the time. It also is a faithful disciple of German law. These two codes are still in force today, although they have suffered many modifications. After the First World War, the influence of German law began to weaken, but it did not stop being felt over the whole of

Japanese law until the end of the Second World War. The civil legal life of the Japanese people was developing little by little in the direction of modernisation, but the absolutist tendencies of the political powers slowed it down very much. The new Constitution declared the dignity of the individual and the equality of both sexes (art. 24). To conform to these principles, the last two books (Family and Successions) of the Civil Code have been entirely revised. In the realm of commercial law, the very strong influence of United States law is clearly to be seen. Above all, the book in the Commercial Code dealing with commercial companies has been modified in this direction.

2. Evolution of State Direction of Trade

From the beginning of the seventeenth century until the middle of the nineteenth century, Japan followed a very peculiar policy called *sakoku* (the closing of the country). Except for two countries, Holland and China, no foreign country was allowed to have relations with it. This policy assured it of internal security, but at the same time it slowed down its economic development very considerably. When Japan decided to reopen its doors to foreign countries, under strong pressure from outside, it found itself surrounded by Western powers which threatened it with their greatly superior economic and military strength. In order to compete with them, Japan was obliged to modernise its economic organisation at an unheard-of speed. There was no sufficient time to wait until private business had reached this level by free competition. Modern industrial enterprises were for the most part started by the government. From 1881, the government began to grant its factories to private businesses, and the principle of *laissez-faire* and the free enterprise system are seen to become dominant in industry and commerce. But, generally speaking, in Japan at that time, which was still economically under-developed, state intervention in the economy was much greater and stronger than in advanced countries. For example, the government subsidised shipbuilding, shipping, the export of silk, deep sea fishing, etc. Moreover, from the crisis of 1930 until the Second World War, state intervention was considerably accentuated. Companies were forced into cartels and were encouraged or forced

¹⁰ For history before 1868, see *Noda*, Introduction 29-48.

to merge, exchange control was introduced, as was control of the distribution of goods, and prices, and capital, *etc.*

After the Second World War, the system of free enterprise was invigorated by the Law Concerning the Prohibition of Private Monopoly and the Maintenance of Fair Trade (Law no. 54 of 14 April 1947), called the Antimonopoly Law. State intervention has been reduced to the minimum. Having said that, it must be emphasized that the role of the state in managing the economic life of the nation has not been negligible, not only in the transitory period immediately following the Second World War, but also even after that time. This is due to the characteristic structure of the Japanese economy where there are a large number

of small or medium-sized businesses which are not very up to date, and many businesses lack the capacity to face up to international competition. In other words, strong state direction is necessary to speed up the modernisation of the whole economic system, and to strengthen the ability of businesses to compete in the international market. Since the Second World War, the government has aimed to pursue the following economic plans in order to achieve this: first plan for economic recovery (1948); second plan for economic recovery (1949), plan for economic independence (1951), five-year plan for economic independence (1955), plan for doubling income (1960); plan for socio-economic development (1967).

IV. PRIVATE LAW¹¹

1. Sources

The Civil Code and the laws accessory to it are the most important legislative sources. In theory, custom is a subsidiary source, but in practice it often operates *contra legem* (against the provisions of the written law). Case law is especially important in this realm. Sociologically, as has been indicated, the private life of the Japanese people is largely governed by rules outside state law. These customary rules rooted in the traditions of thousands of years remain essential to a knowledge of Japanese private law.

2. Concept and Contents

Private law is the body of rules which govern relationships between private persons. It constitutes the common law of private law. It includes the law of persons – legal personality, family law, and succession – and the law of property – real rights and obligations.

3. Brief Outline

a. Every person has *legal personality* from the moment he is born (CC art. 1 *ter.*). A child who has been conceived is deemed to have been born for the purposes of succession (art. 886). Full capacity to act is limited to majors. Majority is reach-

ed at the age of 20 (art. 3). Legal acts carried out by a minor without the consent of his legal representative¹² are voidable, with a few exceptions (art. 4–6). As concerns majors, those who have been declared to be incompetent do not have capacity to act. Their guardian represents them in all acts. Acts carried out by them are always voidable (art. 9). Permanent lunatics can be declared incapable of acting in law on the request of persons interested (art. 7). Those who are weak-minded, deaf, dumb, blind or prodigals can be declared “quasi-incapable” (art. 11). In this case, a certain category of acts are voidable, when they are carried out by them without the consent of their guardian (art. 12). The incapacity of married women has been abolished since 1947.

Legal entities are governed by art. 33–84 of the Civil Code. Corporations created for the public benefit must receive the consent of the competent authority in order to enjoy legal personality (art. 34). Those having the aim of making a profit can be freely created by conforming to the statutory conditions (art. 35). Corporations have rights and obligations within the limits of the object laid down in the memorandum of association, and following the provisions of laws and regulations (CC art. 43). Corporations are liable for the damage caused by their agents to another in the course of their employment (art. 44 par. 1). When damage is caused to another by an act which does not

¹¹ For the Law of Persons, see *Noda*, Japon: *Juris Classeur Notarial* ch. I–VII.

¹² The legal representative of minors is the person who exercises paternal power over them (CC art. 824).

In principle, it is exercised jointly by the father and mother (art. 818). In their absence the guardian represents minors (art. 838). The legal representative of other incapables is the guardian (*ibid.*).

come within the objects of the corporation, it must be compensated for by those members who consented to the decision in that particular case (*ibid.* par. 2).

b. In the realm of *family law*, two points must be made. Marriage is legally valid by a simple declaration before the civil registrar (CC art. 739), without any ceremony. Ordinary people think themselves legally married when they have celebrated marriage according to tradition, which does not require any declaration. It is thus that many households which are socially irreproachable, but legally wrong, are seen to arise. They are called *naïen*. Case law tries with the help of academic opinion to give them the legal effects of marriage as far as possible. But it has not succeeded in legitimising the child who results from this union. The Japanese regards marriage as being only a contract and not a sacrament. It follows from this that it is as easy to dissolve the conjugal union as it is to contract it. Japanese law gives very generous recognition to freedom of divorce. Spouses may not only ask for divorce by court decree (art. 770), but they may also divorce themselves by mutual consent (art. 763). In this latter case, once the declaration of divorce has been received by the civil registrar, the conjugal union is dissolved without any other formality.

c. The right of *ownership* allows its holder to use and enjoy things freely within the bounds of laws and regulations (art. 206). Interest in property can only be created according to statutes (art. 175). Those allowed by the Civil Code are: right of possession, separate ownership of things on the land, long lease, servitude, lien, privilege, pledge, and mortgage. Ownership and other interests in property are created and transferred *solo consensu* (by simple agreement) (art. 176). But for their creation or transfer to be valid against third parties, certain formalities must be observed: in the case of movables, there must be delivery, and in the case of immovables, registration in the land register. The principle, "in the case of movables, possession is deemed to be ownership" (French CC art. 2279) applies. It must be noted that the rule: *superficies solo cedit* is not known in Japanese law. Something erected on the ground of another comes within the ownership of the person who built it. The "right to the surface" is a right to use the land of another to build or to grow things.

d. The sources of *obligations* are: contract (art. 521-696), management of another's affairs (art. 697-702), unjust enrichment (art. 703-708) and tort (art. 709-724). The formation of a contract is

completely free: contracts may be concluded, whatever their content, provided that they are not against public policy. But the Civil Code lists 13 named contracts: gift, sale, exchange, loan of fungibles, bailment for use, hire of a thing, hire of services, contract for work and materials, agency, deposit, company, annuity and compromise. Moreover, the Commercial Code provides two others: insurance and transport. - Under the head of torts, the Civil Code deals with civil liability. In principle it is based on fault (art. 709), but this and other laws allow liability without any fault being proved in certain cases. Academic opinion is trying to build up a general theory of liability without fault for business enterprises working from the basis of CC art. 717 providing for liability for damage caused by the condition of buildings. Without clearly admitting it, case law is widening the sphere of application of this provision. The most important laws providing for liability without fault are the Automobile Damage Compensation Security Law (no. 97 of 29 July 1955) and the Law Concerning Compensation of Atomic Energy Damage (no. 147 of 17 June 1961).

e. At the present time, *succession* only concerns property. Before the reform of 1947, there used to be succession to the position of head of the family (*katoku-sôzoku*): only the eldest son of the head of the family succeeded to this position and to all inheritable property. At present those capable of inheriting are divided into two categories:

(1) blood relations of the deceased. If he leaves children, they are heirs in the first order (art. 887). Grandchildren only succeed as representatives of their parents. If there is no issue, ascendants in a direct line from the deceased succeed in the second order. As between them, those nearest in degree of relationship are preferred (art. 889 no. 1). In the absence of ascendants in direct line, the brothers and sisters of the deceased are heirs in the last order (no. 2). Shares in the estate are equal between heirs of the same order (art. 900). The share of an illegitimate child is half that of a legitimate child (art. 901).

(2) The surviving spouse is always an heir together with the heirs of the first category (art. 890). His or her part is one third where the estate is shared with the children, a half where it is shared with ascendants, and two thirds in the case of brothers and sisters (art. 900). There is freedom to dispose of property by will provided the hereditary reserve is not impinged upon (art. 960 ss.).¹³

¹³ For details on succession, see *Noda*, Japon: Juris Classeur Notarial ch. VIII.

V. COMMERCIAL LAW

1. Sources

The Commercial Code and its ancillary laws (*supra* II 2b) are the most important legislative sources. Besides these, commercial custom and the internal regulations of business companies, such as the memorandum of association of companies, and international conventions as well play an important role in this realm.

2. Concept and Contents

Commercial law is the body of special rules that make an exception from the provisions of private law, which is the common law. Many criteria have been proposed to distinguish these two branches of private law, but at the present time, commercial law is generally considered as the special law of business. It is to govern in a special way the activities of merchants, *i.e.* entrepreneurs, whether they be physical or corporate persons, in view of the profit-making purpose of these activities, their collective character and their loss of individuality. A merchant is a person who professionally carries out "commercial acts" (Comm. C art. 4). The Code devotes detailed provisions to the following important commercial acts: commercial sale (art. 524-528), current account (art. 529-534), silent (sleeping) partnership (art. 534-542) (a type of secret company which does not have legal personality and whose very existence is hidden from non-members), brokerage (art. 543-550), agency (art. 551-558), transport brokers (art. 559-568), transport (art. 569-592), bailment (art. 593-628), insurance (art. 629-683). The Code includes also rules relating to businesses (merchant, commercial register, business name, commercial accounts, employees, commercial agents), to commercial companies, and to maritime trade. The rules concerning bills of exchange and cheques are in separate laws. In Japanese law, bankruptcy is not limited to merchants (*infra* VIII 1).

3. Brief Outline

a. Japanese law recognises four types of *commercial company*: partnership, limited partnership, marketable share company and limited liability company. The first three types of company are governed by the Commercial Code and the last by a special law (*supra* II 2). The limited partnership on shares was abolished in 1950 because it was so little used. The marketable share company is

the type which is most frequently used.

b. Under the head of commercial *agency*, the Code provides for two sorts of agency: agency by commission and agency by representation. In the first case a merchant carries on the business of broker in a certain category of commercial acts for some other merchant, and in the second a merchant regularly represents another in a certain category of acts. The agent must avoid entering into unfair competition with his principal (Comm. C art. 46).

c. As concerns commercial *sale*, the Commercial Code lays down several provisions which derogate from those of the Civil Code. Where the purchaser does not wish or is unable to take delivery of the object sold when he should, the Civil Code only allows the vendor to consign it, but the Commercial Code allows him to sell it on auction to the highest bidder (art. 524). In the case of a sale which has not attained its object, if it has not been performed before the agreed date, the contract is deemed to be resolved, if one party does not ask for its immediate performance, in case the other party has not carried out his obligations (art. 525). The Civil Code requires that one of the parties should always take action to rescind the contract (art. 542). However, in Japanese law it is not necessary to go to court to ask for rescission. Also, there are special rules relating to the obligation of guarantee for the thing sold (art. 526-528).

d. It is thought that *foreign trade* must in principle be free, but in practice it is fairly severely controlled. The principal laws relating to this are: Foreign Trade and Exchange Control Law (no. 228 of 1 Dec. 1949) together with several subordinate ordinances; Exports Inspection Law (no. 97 of 2 May 1957) and Export and Import Adjustment Law (no. 299 of 5 Aug. 1952). The control on exporting, which is not very strict, relatively speaking, is especially aimed at preventing excessive competition between exporters and an unreasonable lowering of the prices of exported goods. The exporter who wishes to export some category of goods listed in the table annexed to the Export Control Rule of 1 Dec. 1949 (most textile goods, some light machinery, some agricultural and marine products) and destined for the places listed in the same table must ask for the consent of the Minister of International Trade and Industry (ITI) (Foreign Trade and Exchange Control Law