

Chuo's New Research Project on
Dispute Resolution financially
supported by the Ministry of
Education, Japan

Nobuyuki Sato, Ph.D. in Law
Chuo Law School, Chuo University

Government's New Policy

- In 2016, Government of Japan and its Ministry of Education, Culture, Sports Science and Technology (MEXT) introduced new policy for enhancing private universities in Japan.
- “Private University Research Branding” is a part of the new policy.
- 23 private universities including Chuo is awarded new government financial support for Type B (worldwide research) of PURB.

Purpose of Chuo's New Research Project

- “Understanding of Diversity of Legal Systems in Asia-Pacific Region and Convergence towards Establishment of Rule of Law”
- The purpose of this Project is to **understand the diversity of legal systems in Asia-Pacific region, to enable them to co-exist in a coordinated manner and to propose a way to achieve convergence thereof**, taking particular note of the fact that Asia-Pacific region involves different legal cultures and traditions, where at the same time the region is one of the biggest economic development sectors in the world. We aim to contribute to this research area as a legal information center of laws of Japan, Asia and the world utilizing the comparative law database produced from this Project.

Outline of New Research Project

- 6 jurisdictions
 - Korea
 - Hong Kong
 - Singapore
 - Australia
 - Thailand and
 - Japan
- 3 fields
 - International transactions (contract)
 - Data Privacy
 - Dispute Resolution

Why Diversity and Convergence?

- Hints from the Supreme Court Case in Japan

- Supreme Court Case
 - Mansei Kogyo Case (1997)
 - 1993 (O) 1762, decided on 1997.07.11
 - Judgment upon case of the possibility of rendering an enforcement judgment for a foreign judgment which ordered payment of the so-called punitive damages.
 - Enforcement judgment cannot be rendered on the part of the foreign judgment which, in addition to the compensatory damages, ordered payment of punitive damages for the purpose of deterrence and sanction.

Background of the Case

- On May 1982, the Superior Court of California ordered the appellees, Mansei Kogyo Inc. and its subsidiary Marman Integrated Circuit Inc. (both are Japanese corporations), to pay
 - (1) compensatory damages of US\$ 425,251 and
 - (2) cost of US\$ 40,104.71, and in addition,
 - (3) punitive damages of US\$ 1,125,000
- The appellees effected fraudulent acts against the appellants in relation to the conclusion of a lease agreement between the appellant and Marman Integrated Circuit Inc.

Background of the Case

- Both the appellants and appellees appealed against this judgment to the Appellate Court of California, but the Court dismissed the appeal on May 12, 1987, and the foreign judgment in the present case came into effect.
- Mansei and Marman did not have enough assets in the U.S.
- Appellants brought a new suit claiming for an enforcement judgment in Japan.

Legal Issue

- The Civil Code of the State of California, USA, has a provision which allows the plaintiff to receive punitive damages for the purpose of deterrence and sanction on the defendant in addition to damages for the actual loss in litigation on the ground of breach of non-contractual duties, if there was an fraudulent act or similar acts on the part of the defendant (Article 3294).
- Japanese law permits only compensatory damages.

Legal Issue

- Article 200, subpara.3, Code of Civil Procedure [replaced by the new Code in 1998]

Judgments of foreign courts which have taken effect are valid only when they meet the following requirements:

[snip]

(3) judgment of the foreign court is **not against public order and good morals of Japan**

Decision of the Court

- It is evident that the system of punitive damages as provided by the Civil Code of the State of California is **designed to impose sanctions on the culprit and prevent similar acts** in the future by ordering the culprit who had effected malicious acts to pay additional damages on top of the damages for the actual loss, and judging from the purposes, is similar to criminal sanctions such as fines in Japan.
- In contrast, **the system of damages based upon tort in Japan assesses the actual loss** in a pecuniary manner, forces the culprit to compensate this amount, and thus enables the recovery of the disadvantage suffered by the victim and restores the status quo ante, and is not intended for sanctions on the culprit or prevention of similar acts in the future, i.e. general prevention.

Decision of the Court

- Admittedly, there may be an effect of sanctions on the culprit or prevention of similar acts in the future by imposing a duty of compensation on the culprit, but this is a reflective and secondary effect of imposing the duty of compensation on the culprit, and **the system is fundamentally different from the system of punitive damages** whose goals are the sanctioning of the culprit and general deterrence. **In Japan, sanctioning of the culprit and general deterrence is left to criminal or administrative sanctions.**

Decision of the Court

- Thus, the system in which in tort cases, the victim is paid damages for the purpose of imposing sanction on the culprit and general deterrence in addition to damages for the actual loss should be regarded as against the basic principles or basic ideas of the system of compensation based upon tort in Japan.
- Therefore, part of the foreign judgment in the present case which ordered the appellee company to pay punitive damages for the purpose of deterrence and sanction in addition to compensatory damages and the cost is against public order of Japan and therefore, has no effect.

Diversity and Convergence ?

- In this case, the SC of Japan rejected U.S. system of the punitive damages.

Diversity

- It is one “resolution,” however it is a starting point of new legal/economic/political issue.

Is it a non-tariff barrier?

Failing or failed Convergence?

Convergence: How? Statutory Damages?

Korean Example

- FTA between Korea and U.S.
- Requiring *Pre-established damages* for infringement of copyright
- 2011 amendment of Korean Copyright Act inserting Article 125-2

Convergence: How? Statutory Damages?

Korean Copyright Act (with amendment in 2011)

Article 125-2 (Claim of Statutory Damages)

(1) A holder of author's property right, etc. may claim considerable damages within the scope of up to ten million won (50 million won in cases of intentionally infringing rights for profit) for each work, etc. whose right is infringed in lieu of the actual amount of damages or the amount of damages determined pursuant to Article 125 or 126 against a person who has infringed on rights intentionally or by negligence before the defense in a trial is concluded.

(4) In receipt of a request under paragraph (1), the court may acknowledge a considerable amount of damages within the scope under paragraph (1) in consideration of the purport of defense and the results of evidence investigation.

Conclusion

- We have to
 - Find and understand Diversity with respect
 - Think Convergence : How, When, Who ...
- Chuo starts new research project in three fields
 - International Transaction
 - Dispute Resolution
 - Data Privacy