Chapter Three

The Legislative Process of the Product Liability Law of Japan

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Introduction

This article traces the legislative process of the Product Liability Law (PL Law) of Japan. In the Diet, both the House of Representatives and the House of Councilors unanimously passed the bill signing it into law. In the Diet, discussion about the bill of PL law was very smooth, but the road to the legislation of the PL Law was not smooth. First, Japanese society could not realize the product liability although the incident about product liability occurred. After Japanese society clearly realized the importance of PL Law, it took much time to legislate the Law because of opposition from the business world. To trace the legislative process of PL Law is very important in understanding the characteristics of the PL Law of Japan and a transition of consciousness in Japanese society towards a law for product liability.

II. The History of the Legislation of PL Law of Japan

The history of theories about product liability and the legislation of the PL law are divided into 4 periods (Kato[1994]: p.65)[1]:

First Period: "Predawn period" (before 30 in Showa Era[2])
Second Period: "Import Theory Law Period" (From 31t to 42 in Showa Era)
Third Period: "Case Law Period" (From 44 to the end in Showa Era)
Fourth Period: "Legislation Period" (After Heisei Era[3])

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1 This chapter depends on Kato (1994).

2 Showa era started from 1925 to 1989.

II. First Period: "Predawn period" (before 30 in the Showa Era)

The Morinaga arsenic-laced milk powder case as a typical PL case was occurred in this period. There were 12,000 patients and the number of deaths totaled 693. The victims of the Morinaga case formed victims' groups in various regions and a confederation of victims' groups, and required compensation from the Morinaga Company Limited. However, the victims could not acquire compensation. At a stage of stalemated negotiations between the Morinaga Co Ltd. and the victims, a third party panel was established to write comments concerning compensation. The members of the panel were selected by the Ministry of Health and Welfare and the expense of this panel was covered by an industry group of daily products. This panel considered a panel of business and public administration. The panel made a comment on December 15, 1955, and offered counsel to the Morinaga Co Ltd. to make consolation payment based on moral and folkway liability. The comment didn't describe the responsibility of the Morinaga Co Ltd. because of the pending criminal trial.

When the Morinaga Co Ltd. made consolation payments to the victims, it stipulated a special clause about releasing the claim in a certificate of receipt. As a result of this special clause, the victims who got money from the Morinaga Co Ltd. could not file suits against the company.

However, victims lived in Okayama prefecture filed a suit against the Morinaga Co Ltd. to ask for damages for pain and suffering. Eventually, the plaintiffs dropped the case in 1964. In a related criminal case, Tokushima District Court brought in a verdict of not guilty of the factory director and the manufacturing department chief of the Morinaga Co Ltd.

During this period, there was no social norm related to issues of product liability, and it was difficult to pursue civil liability based on general tort principle.

III. Second Period: "Import Theory Law Period" (From 31 to 42 in Showa Era)

During the Second Period, there were three kinds of research on PL Law. First, there were works to introduce Anglo-American PL Law to Japan. After 1956, many

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[3] Heisei era started from 1989.

articles about cases and case law in Britain and the U.S. were published.

Secondly, there were works to create domestic rules of product liability by interpreting special substantial rules referring to US Law. These works treated the matters of negligence and warranty in the field of tort law. About these matters, Prof. Ichiro Kato made pioneering works. About the matter of negligence, he insisted on near liability without negligence by changing the way of recognizing negligence (Kato 1957). Regarding warranty, he insisted that manufacturers should take warranty to not only the direct buyers of their products, but also the general population of customers buying products because manufacturers had established relations to the customer to guarantee quality and performance of their products (Kato 1959).

Thirdly, information about how to create domestic rules in an integrated and systematic manner beyond the requirements of substantial laws based on the above two periods.. Ariizumi [1963] was the first one to describe problems of product liability systematically. In this article, he first used the word, “Seizobutsu Sekinin” translated as “product liability” in Japanese. Furthermore, Kato [1965] proposed that the Japanese should break down tort into patterns and refer to U.S. law about how to breaking downtort cases in Japan into patterns.

During this period, most researches were affected by U.S. law. These researches tended to introduce exciting foreign laws more than to make rules for solving practical problems. So these works covered Anglo-American case law more than cases occurring in Japan when they argued PL Law as a substantial law in Japan. The central issue in this period was to include Anglo-American substantiality to Japanese substantial law.

IV. Third Period: "Case Law Period" (From 44 to the end in Showa Era)

During this period, four characteristics of researches and activities about PL Law stood out: first, several PL matters attracting social attention occurred and victims filed suits. Contents of PL rules which were discussed in the academic sector became more and more specific and closer to solving actual PL cases. One PL case, about a defective car problem in 1969 was the pioneering figure problem. Victims brought large PL actions to courts as newspaper publishers ran campaigns about the defective car problem. In 1969, Kanemi-yusho disease case was filed to court. In 1971, the subacute myelo-optico-neuropathy case, the streptomycin case and the coralgil case were filed. In 1973, he Morinaga arsenic-laced milk powder case was filed again. After 1970, several

kinds of PL cases increased dramatically. Many PL cases encouraged legal scholars to give specifies and actualities in discussing about PL Law. For example, Morishima [1969] and Tsubaki [1969] covered defective car problem.

Second, because product liability was seen as a social problem, legal scholars started to discuss concrete problems about insurance and the burden of proof as well as the substantial rules of the PL. As the PL became actual social problems, manufacture, consumers, courts and lawyers were urged to do something about social problems. PL insurance became common in this period and articles about PL insurance increased. Also, in civil procedural practice, the burden of proof became very important. Prof. Hamagami argued about the burden of proof. In this period, articles about PL law extended over commercial law, civil procedural law, and international private law in the study of the issue of insurance and burden of proof.

Thirdly, the study and the introduction of the U.S. law became more detailed and substantial than before. And in a comparative legal study of PL law, scholars started to study German and French Law.

Fourthly, there was lead activity to legislate PL law. In the government sector, the Consumer Relief Special Committee was established under the Consumer Protection Section of the Social Policy Council in September 48 Showa (1973). The Committee published an interim report in July 49 Showa (1974) which offered an opinion to strengthen business operator liability. The Consumer Protection Section also published an interim report in October 51 Showa (1976) which discussed matters of no-fault liability of the business operator, easing a causative relationship, and class action.

In academic sector, the Product Liability Study Group published the “Product Liability Draft Outline” in October 50 Showa (1975) which was the first draft of Product Liability Law in Japan. This draft stipulated the following points.

1. Liability without negligence of manufacturers and distributors who distribute manufactures with brand
2. Relief of burden of proof about the existence of default and causal connection
3. Joint and several liabilities in the case of a number of persons with liability
4. Liability of spellers, rental business operators, certain carriers, certain warehouses and certain repair shops, and so on.

However, since the Showa 40’s, the legislative activity of PL law was discontinued due to domestic and international factors.

Domestically courts awarded damages less than before. After the mid-Showa 40's, the issue of damage compensation including the PL developed the social issue with social trend. In early 50 Showa, this social trend was criticized. In the late Showa 50's, courts changed the previous stance of admitting damage compensation broadly. Kato [1987] said "From Victim Protection to Fair Compensation". This phrase described the change in social atmosphere for tort law.

In the international sphere, the problem of "the PL crisis" got attention in American society. PL litigation occurred at high level and amounts of compensation for companies often increased. As a result, the insurance market in the U.S. fell apart. Extreme litigation in the U.S. made Japanese industries worry about the PL.

The change of social atmosphere disturbed the legislation of PL law. At that time, Japanese society had yet to have common sense to make PL law.

V. Fourth Period: "Legislation Period" (After Heisei Era)

Legislation of PL Law got momentum again because of the Council Directive of 25 July 60 Showa (1985) of the Council of European Communities. There were two main reasons for the Council Directive to affect Japan. One was that if European countries enacted PL Law based on the Council Directive of the EC, Japan would be the only country in the developed countries that had not had the PL Law. The other was that the Council of Directive stipulated more moderate product liability than that of the U.S. law.

Getting inspiration from the Council Directive, some groups and political parties made drafts of PL law. The drafts by non-governmental sectors are as follows:

(1) Draft by a Reporter Group at the Japanese Association of Private Law (2 Heisei (1990))
(2) Draft by the Tokyo Bar Association (3 Heisei (1991))
(3) Draft by the Japan Federation of the Bar Association (3 Heisei (1991))
(4) Draft by the Komeito (4 Heisei (1992))
(5) Draft by the Japan Socialist Party (4 Heisei (1992))
(6) Draft by Research Group of PL Legislation (5 Heisei (1993))
(7) Draft by Japanese Communist Party (6 Heisei (1994))

Uchida [1992] criticized how most drafts didn't consider the specific Japanese

situation, drafts were copies of Council Directive.

In the governmental sector, the 13th Social Policy Council announced opinions about both promoting the legislation of the PL Law and premature legislation on October 3 Heisei (1991).

On October 4 Heisei (1992), the Council announced an opinion that would require further consideration. Because industries strongly opposed legislating the PL law. The legislation of the PL Law didn't go smoothly, but Prime Minister Miyazawa stated the policy of legislation of the PL Law on January 5 Heisei. After that, the speed of legislation was accelerated.

In the process of legislation of PL Law in the Japanese government, there were many concerned ministries such as the Ministry of Justice, the Ministry of Health and Welfare, the Ministry of Works, the Ministry of International Trade and Industry, the Ministry of Agriculture, Forestry and Fisheries. In each ministry, the issue of PL Law was entertained. After receiving results of study by ministries, the Consumer Policy Section under the Social Policy Council reported that the Council would introduce the concept of defect based on properties as a requirement of civil liability in December 1993. After receiving the above report, the Social Policy Council submitted a report of introducing PL Law to Prime Minister in same month

Separate from the above activity in the government sector, the ruling Coalition Project established on December 5 Heisei (1993) reported the result to the Ruling Coalition Parities Executive Meeting on 4th April 6 Heisei (1994). After receiving the report, the government made final draft of PL Law on the 5th of April. The draft was approved in a cabinet meeting and submitted to Diet on 12th April.

The draft bill was adopted unanimously in its original form in the House of Representatives on the 16th June 1994. The draft bill was adopted unanimously in original form in the House of Councilors on the 22nd of June, 1994. The Product Liability Law of Japan was on 1st July 6 Heisei (1994) and carried out on 1st July 7 Heisei (1995).

Conclusion

At first, Japanese society did not want to accept the idea of product liability although a famous incident about product liability occurred. After Japanese society realized the importance of PL Law, the Law took much time to be legislated because of opposition from the business world. During the process of legislation, many actors,

including political parties, had roles in legislative process of PL Law. It is striking that a major political party proposed the draft of PL Law. This activity of political party indicates that the legislation of PL law was a very important issue for political parties. The political parties could not ignore the benefit of the people even if the business world opposed the legislation. Japanese society had already required PL law. This result indicates that social norm of PL has been developed in Japan.

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