

SIMILARITIES AND DIFFERENCES BETWEEN LABOR CONTRACTS AND CIVIL AND COMMERCIAL CONTRACTS: JAPAN REPORT

JAPAN

HIROYA NAKAKUBO

This paper examines labor contracts in Japan in comparison with other contracts. Japanese law of labor contracts will be outlined first. Then a couple of other civil and commercial contracts, with emphasis on house lease contracts and consumer contracts, will be explored and compared with labor contracts. #1

1. Law of Labor Contracts in Japan

(1) Civil Code and Labor Standards Law

There are two major sources of legal regulation for labor contracts in Japan. One is the Civil Code of 1896 and the other is the Labor Standards Law of 1947.

The Civil Code (CC) formulates general rules of contract at large and then provides specific rules for thirteen typical contracts (gift, sale, exchange, loan for consumption, loan for use, lease, employment, contract for work, mandate, bailment, association, life annuity, compromise). Included among them is the contract of "*koyo*" or employment. The employment provisions of the Civil Code are rather old-fashioned, representing the thoughts of the late-19th century. In fact, the Labor Standards Law and other labor statutes have superseded them in many respects. Still, the Civil Code offers the basic rules of employment contract. They are applicable unless precluded or modified by later laws. For example, Article 627(1) of the Civil Code says that when an employment contract is not for a definite period, either party may terminate it with two weeks' notice. So far as termination by the employer is concerned, this provision has been superseded by Article 20 of the Labor Standards Law, which mandates the employer either to give 30 days' notice of dismissal or to offer the payment in lieu of notice. However, the employee may quit employment with two weeks' notice according to the Civil Code, because there is no other legal provision to modify it.

The Labor Standards Law (LSL) is a comprehensive statute dealing with employment conditions, which include the payment of wages, working hours, day of rest, and annual paid leave. Chapter 2 of the Law bears the title of "*rodo*" contract, or contract of labor. Some scholars, somewhat ideologically, contend that a labor contract should be distinguished strictly from an employment contract of the Civil Code, but most Japanese courts use these two words interchangeably. Labor contracts are no different from employment contracts in reality. Suffice it to say that when the Labor Standards Law regulates employment contracts it uses the name of "labor contract" to express its standpoint as labor legislation.

(2) Conclusion of Labor Contracts

In concluding a labor contract, the employer must clarify a broad range of working conditions to the employee (LSL Art.15(1)). As for matters regarding wages, working hours, the contents and the place of work, and the duration of the labor contract, the employer is specifically required to clarify them in writing. Although the labor contract itself does not have to be in writing, which is also the case with many other contracts in Japan, the employer must give a written document specifying such conditions to the employee at the time of hiring. For the convenience of employers, the Ministry of Labor has prepared several model forms. Written clarification used to be required concerning wages only, but the Labor Standards Law was revised in 1998 (effective as of April 1, 1999) to strengthen the mandate so that there would be fewer disputes between the parties about the contents of their labor contract. In fact, the issue of labor contract was one of the most important targets of the 1998 revision of the Law and a couple of other provisions were added. #2

Japanese regular employees are usually hired by a labor contract without a definite period. They are interviewed by the prospective employer and, if successful, receive a written notice of "*saiyo-naitei*" or a preliminary decision to hire. This notice is typically given in October, or in the middle of their final year in school. They graduate from school the next spring and then start to work for the employer from April 1, the beginning of the fiscal/academic year in Japan. There was a question as to when the labor contract comes to exist in the process, but the Supreme Court took a position that the employer's "*saiyo-naitei*" notice gives

rise to a labor contract.^{#3} Although it does not start to operate until next April, the employer cannot "cancel" the notice, or terminate the contract, without a good reason.

(3) Termination and the Doctrine of Abusive Dismissal

There is no statutory provision in Japan that requires just cause for dismissal. When a labor contract is without a definite period, the employer theoretically retains its right under the Civil Code (CC Art.627(1)) to terminate the contract "at any time," so long as a notice is given 30 days, instead of two weeks, before the termination (LSL Art.20).

However, Japanese courts have curtailed this right drastically through the doctrine of "abusive dismissal." It is based on a very abstract provision of the Civil Code (CC Art.1(3)), which says that any right should not be abused. When dismissal lacks objectively reasonable grounds, the courts hold rather categorically that the employer abused its right to terminate. The dismissal is thus declared to be null and void, enabling the employee to return to the job and collect the lost wages. This doctrine is of course designed to restrict the employer's right of dismissal, and the employee can terminate the contract freely with two weeks' notice.

The doctrine of abusive dismissal has been endorsed by the Supreme Court.^{#4} It may well be the most significant rule of labor contracts in Japan. This doctrine even applies to mass dismissal for economic reasons. The courts have developed a special four-prong test to scrutinize whether the reduction in force was truly unavoidable and the employer dismissed the employees in a fair manner.

When the employer pronounces dismissal, basically it is not required to specify the reason to the employee. However, the 1998 amendment to the Labor Standards Law gave the employee a right to ask for a written certificate stating the grounds for termination (LSL Art.22(1)).

Apart from dismissal, it should be noted that Japanese employers usually set a mandatory retirement age. Such an arrangement is legal and enforceable so long as the retirement age is 60 or higher (Law Concerning Stabilization of Older Persons Art.4).

(4) Fixed-term Contracts

When a labor contract is concluded for a definite period, it must be, in principle, for one year or shorter (LSL Art.14). This limit was designed to prevent employees from being tied to a long labor contract, for a compelling reason is required for terminating a fixed-term contract in the midway (CC Art.628). Thus, with limited exceptions prescribed in the law, employees must be hired either by a relatively short-term contract up to one year or for an indefinite period. In reality, regular employees are usually hired by a labor contract without a definite period, as mentioned above, and fixed-term contracts are used mostly for such "atypical" employees as part-timers and temporary workers.

Unlike some European countries, there is no requirement in Japan that the employer should have a good reason for hiring an employee by a fixed-term contract. The employer is free to hire somebody by a fixed-term contract so long as its term does not exceed one year. The employer is also free, at the end of the term, to renew the contract or not. The contract expires by itself and the employer does not have to terminate it to oust the employee. The Labor Standards Law does not address such insecurity of employees under a fixed-term contract. The courts, on the other hand, have developed a theory that when a fixed-term contract has been renewed many times without serious consideration on each occasion and it is quite natural for the employee to expect another renewal, the employer's refusal to renew the contract at a particular time is regarded as dismissal in effect and the employer must have a good reason for it.^{#5} Although its reach is limited to the more egregious cases, this theory gives some protection to fixed-term employees from arbitrary discontinuance of their employment.

Returning to the limit of the contract period, Article 14 of the Labor Standards Law was amended in 1998 to allow labor contracts for a period up to three years for (a) some newly-hired professional employees who have such highly specialized knowledge, skill or experience in the field of research and development, opening up or closing a business, etc., or (b) employees who are 60 year or older. While this exception was meant to be a measure of deregulation, the affected employees are not very large in number. On the other hand, the legal provision has become quite complex and lengthy, accompanied by a set of regulations defining the extent of the professional employees.

(5) Work Rules and Collective Bargaining Agreements

As for the contents of labor contracts, work rules of the establishment play an important role in determining

employment conditions. The Labor Standards Law says that an employer with more than ten employees must draw up written work rules and make them known to the employees (LSL Arts.89 & 106). In establishing or changing work rules, the employer must ask for an opinion (not a consent) of the majority union of the establishment or, if such a union does not exist, of the person representing a majority of the employees (LSL Art.90). Work rules should cover a wide range of matters, including working hours, days of rest, leaves, wages, and termination. Those parts of individual labor contracts which do not come up to the conditions contained in work rules are invalidated and replaced by them (LSL Art.93). Work rules thus function as special minimum standards above the law, applicable to all the employees of that particular establishment.

However, work rules are something more than minimum standards. They in fact constitute the contents of individual labor contracts in most cases. Although the Labor Standards Law does not provide for such an effect, the Supreme Court made it clear in its 1968 decision that employees become legally bound by work rules at the time of hiring, regardless of their actual knowledge of or individual consent to the rules.#6 Thus, because employers of any practical relevance have work rules as required by law, the contents of labor contracts are almost always determined by such rules.

Moreover, the same Supreme Court decision advocated an even more ambitious rationale. It held that when the employer has changed the work rules unfavorably the preexisting employees are bound by the new rules without their consent if such rules are "reasonable" enough. This doctrine of "unfavorable change of work rules" was extremely controversial because there was no theoretical justification for it. However, the Supreme Court has since endorsed the doctrine repeatedly and it is regarded today as a firmly-established rule.#7

When there is a labor union and it has a collective bargaining agreement with the employer, labor contracts of covered employees are affected by the agreement. According to Article 16 of the Trade Union Law (TUL), any portion of individual labor contracts contravening the standard of an applicable collective bargaining agreement shall be nullified and replaced by the standard of the agreement (so-called "normative effect"). Work rules are also superseded because they may not contravene applicable collective bargaining agreements (LSL Art.92(1)). It is generally understood that the normative effect should apply even when the individual labor contract provides for better conditions than those contained in the collective agreement. Similarly, when the labor union concludes a new agreement which cut down the previous conditions, the agreement is, in principle, binding on all the members because their union has agreed to it.#8

Those employees who do not belong to the signatory union are basically outside the reach of the collective bargaining agreement. However, if the union organizes 75 percent or more of the employees within the establishment, its agreements will be "extended" to the remaining employees, according to Article 17 of the Trade Union Law. It is not settled yet whether those employees who belong to other (minority) unions should be bound by such a super-majority agreement in the same manner as non-union employees.

(6) Contractual Obligations of the Parties

The two major components of labor contracts are the employee's obligation to furnish labor and the employer's obligation to pay wages. In addition, it is recognized that there are some fringe obligations of the parties to labor contracts. They are grounded upon the general clause of the Civil Code, dictating the principle of good faith and fair dealing (CC Art.1(2)). The employee is thus obligated to maintain discipline and order of the workplace, to keep secrets, and to refrain from competing with the employer. The employer's most important fringe obligation is to care for safety of its employees at their workplace. When an employee suffers an industrial accident because the employer has neglected this obligation, damages may be awarded as a breach of contractual obligation.#9

2. Comparison with Some Other Contracts

(1) Mandate and Contract for Work

Among the thirteen typical contracts enumerated in the Civil Code, employment is sometimes associated with "mandate" and "contract for work" because they involve the common element of human labor. However, while the employee works under the direction and supervision of the employer in case of employment, the other two contracts feature autonomous labor on the part of the mandatary or contractor.

A mandate is a contract by which one party (mandator) commissions the other party (mandatary) to do

juristic acts (CC Art. 643). When the commission is to do matters other than juristic acts, the contract is called quasi-mandate and the same rules apply basically (CC Art. 656). In either case, the mandatary is entrusted to manage certain affairs for the mandator. The Civil Code imposes on the mandatary a "duty of care of a good manager" in accordance with the tenor of the mandate (CC Art. 644), as well as a duty to make reports to the mandator upon request (CC Art. 645).

According to the Civil Code, the mandatary cannot demand remuneration unless there is a special agreement regarding it (CC Art. 648(1)). Although mandates without remuneration are in fact uncommon today, this rule symbolizes the traditional understanding that the mandatary performs a task of intellectual and noble nature. In a similar vein, a mandate may be rescinded by either party at any time (CC Art. 651(1)), because it is grounded on the mutual trust of the parties. The courts sometimes find a contractual waiver of such right, but freedom of termination is still the principle of mandates.

Under a contract for work, on the other hand, one party (contractor) promises to accomplish certain work and the other party (orderer) pays remuneration for the result of such work (CC Art. 632). While it is possible for the orderer to give specific directions about the contents of the work, the contractor's duty is to "accomplish" it on its own. This is distinct from the employee's duty to "render service" to the employer under an employment contract. In reality, however, it is sometimes not easy to tell them apart.

The contractor may have subcontractors or other persons do the work unless it is prohibited explicitly or implicitly by the contract. This forms a contrast to employment and mandate, which are inherently particular about the person who performs the work. In addition, a contract for work, unlike employment or mandate, is not necessarily a "continuous" contract. If anything, it is understood in principle to end when the work is accomplished. The orderer may rescind the contract before such accomplishment by paying damages (CC Art. 641).

It is one of the important tasks of labor law to extend its regulation to *de facto* labor contracts even when they are labeled as a mandate or contract for work. Moreover, the definition of "workers" by Article 3 of the Trade Union Law ("those who live on their wages, salaries or other remuneration assimilable thereto, regardless of the kind of occupation") may go beyond labor contracts. In a well-known case, a union of industrial homeworkers, who were under the dominant control of the orderer, was recognized as a labor union under the Trade Union Law.^{#10} Meanwhile, so long as they are authentic homeworkers, the Labor Standards Law does not cover them because their contracts are not labor contracts but contracts for work. Instead, there is a special statute (Industrial Homework Law) which provides some protection regarding their remuneration, working hours, termination of contracts, and some other matters. They also may participate in the Workmen's Accident Compensation Insurance Law on a voluntary basis. They are covered by the insurance not as rightful employees under labor contracts but as beneficiaries of its special extension program.

(2) House Lease Contracts

House lease contracts are often compared to labor contracts. They are both representative "continuous" contracts and they both have special statutes to protect the interests of the weaker party. Of course, there are considerable differences between them as well.

Lease is one of the thirteen typical contracts contained in the Civil Code. Concerning lease of a house or building, however, the House Lease Law was made in 1921 to modify the rules of the Civil Code.^{#11} This law bolstered the rights of the tenant (lessee) vis-a-vis the lord (lessor), given the shortage of houses in the post-WWI boom. It was amended in 1941 to strengthen the tenant's rights further in order to deal with extraordinary conditions of the WWII period.

The same law continued to govern Japanese house lease contracts even after the war, as the housing shortage remained or rather aggravated in urban areas. It was as late as in 1991, a half century after the 1941 amendment, that the Land and House Lease Law (LHLL) was adopted in its place as a measure of modest deregulation.

In addition to the House Lease Law, the Rent Control Ordinance of 1946 regulated the amount of house rent in the post-war period. It became rather lax in the 1950s, however, and was abolished totally in 1986.

As suggested above, most notable about house lease contracts is the fact that their continuance is heavily protected by law in order to secure the lives of tenants. First, the period of house lease contracts may not

be shorter than one year. When the parties conclude a contract for a period of several months, it shall be regarded as a contract without a definite period (LHLL Art.29). This forms a contrast to Article 14 of the Labor Standards Law, which places the maximum limit of one year on the period of labor contracts to secure the employees' freedom to leave.

Second, the law mandates lessors to give a notice of 6 months or longer when they want to discontinue house lease contracts. If the contract does not provide for a definite period, the lessor may terminate it only with a 6 months' notice (LHLL Art.26(2)). If the contract is for a definite period, the lessor must notify its intention not to renew the contract at least 6 months before the expiration date (LHLL Art.26(1)). Otherwise, the contract will be renewed automatically with the same conditions as before, except that it will be for an indefinite period after the renewal. The notice period of 6 months is remarkably longer than that of 30 days for dismissal. In addition, the Labor Standards Law does not require a notice of non-renewal for fixed-term contracts. A 30 days' notice is needed only when the contract has been renewed repeatedly and the employer's refusal to do so should be regarded as dismissal in effect.

Third, the law clearly states that the lessor may not terminate or refuse to renew a house lease contract without just cause (LHLL Art.28). The House Lease Law after the 1941 amendment contained a similar provision. This prompted an argument in the early days of the post-war period that there should be a just cause provision for dismissal as well, but it eventually subsided as the courts established the doctrine of abusive dismissal as a sort of substitution. It is also noteworthy that the lessor's refusal to renew a fixed-term contract is regulated the same way as termination, which is not the case with labor contracts. Anyway, the courts took a strict position in applying the just cause provision of the House Lease Law. Although the law provided as if the lessor always had just cause when it needed to use the house for itself, the courts often denied it, balancing the conditions of the lessor against those of the lessee. Even when the lessee has neglected to pay the rent or breached its other contractual duties, the courts prohibited the lessor from terminating the contract unless the violation was so serious as to disrupt the mutual confidence totally between the parties. All the other circumstances were also taken into consideration, including whether the lessor has offered to the lessee compensation for vacating the house. It is believed that the just cause provision of the current Land and House Lease Law embodied such judicial interpretation of the House Lease Law.

The Land and House Lease Law created exceptions to the foregoing principles in some cases, for example, when the owner of the house has to live away from it for certain temporary reasons or when the house is to be demolished in the near future (LHLL Art.38-40). Many economists demanded more drastic reform, however, arguing that excessive regulation had discouraged Japanese house owners from letting their houses. Consequently, a new law was enacted in December 1999 (effective as of March 1, 2000) to allow "non-renewable" definite-term house lease contracts. The parties may stipulate explicitly that the contract will not be renewed at its expiration date, which used to be null and void as curtailment of legal protection for the lessee. This trend of deregulation is somewhat reminiscent of Article 14 of the Labor Standards Law regarding the duration of labor contracts.

In the course of house lease contracts it becomes necessary to adjust the amount of the rent in accordance with ever-changing conditions. This is especially true when their continuity is secured by law. The Land and House Lease Law has provisions to deal with this problem, under which either party is allowed to demand an increase or decrease of the rent if the current rent has become unjust because of the changes in (a) taxes and other duties on the land and/or the house, (b) market value of the land and/or the house, or (c) rents of equivalent houses in the same area (LHLL Art.32). When the parties cannot agree on the new rent, the lessee may tender tentatively an amount which it regards as proper. The dispute goes through the mandatory conciliation procedure before the court (Civil Conciliation Law Art.24-2). If the conciliation fails, the court eventually makes a final decision on the rent, considering all the circumstances. Then the lessee must pay the balance, if any, with interest.

Such direct involvement of the courts in determining a substantive term is characteristic of house lease contracts. The rent is clearly the most important element of house lease and the courts are usually able to decide it one way or other with the help of expert opinions. By contrast, there are too many variants for the courts to dispose of in labor contracts. The courts do play a crucial role in forming employment conditions when they tell whether the employer's new work rules are "reasonable" enough to bind the employees, but they do not impose certain conditions of their own making upon the parties.

Local custom and practice have considerable influence upon house lease contracts. While most tenants are required to make a certain amount of deposit for the duration of the lease, its purpose and nature may vary in different areas. Tenants are also supposed in some places to pay extra money at the time the lease is renewed, but not so in other places. Needless to say, custom and practices are not binding and the

parties are free to stipulate otherwise.

As for labor contracts, it is not the customs and practices of the area but those of that particular enterprise that usually count. Although there may be customs and practices of the industry, their importance is limited in Japan where the turnover rate is low and labor unions are organized on an enterprise basis.

One of the problems regarding house lease contracts is discrimination. There are many house owners who exclude certain groups such as foreigners or elderly people from their lease contracts, and the current laws are not effective in rectifying the situation. Once a contract has been concluded, it is relatively easy to negate the lessor's discriminatory termination by invoking Article 14 of the Constitution, which prohibits unreasonable discrimination, and the "public order or good morals" standard of the Civil Code (CC Art. 90). When it comes to refusal to conclude a contract in the first place, however, the traditional notion of "freedom of contract" dies hard. Neither the courts nor the national and local legislators have been aggressive concerning this matter.

Labor contracts have a similar problem. Although the Labor Standards Law prohibits discrimination because of nationality, creed, or social status of the employee (LSL Art.3), the Supreme Court held that this provision does not cover refusal to hire, emphasizing the employer's freedom of contract.^{#12} Hiring discrimination has not been addressed since then, with the notable exception of sex discrimination. The Equal Employment Opportunity Law of 1985 obligated the employer to "endeavor" to give equal opportunity to women regarding recruitment and hiring, and this law was strengthened as of April 1999 to provide squarely that the employer must treat women equally with men at the stage of hiring.

(3) Consumer Contracts

Consumer contracts include a wide variety of contracts by which individuals purchase products or services from business entities for their consumption or enjoyment. Some of them are continuous while others are one-shot transactions, but consumer contracts generally share with labor contracts the attribute of unequal economic power and resources between the parties.

Thus far, there has not been a comprehensive law to deal with consumer contracts as such. Consumer contracts are governed basically by the Civil Code according to their respective contents, under such separate names as sale, lease, loan for use, loan for consumption, contract for work, etc. Some provisions of the Commercial Code apply as well, because consumer contracts are usually classified as commercial transactions involving business enterprises. Some contracts are covered by such special statutes as the Installment Sales Law and the Visiting Sales Law because they include particular types of sales methods envisioned therein. There are also a number of individual "industry" regulations, such as trucking, gas supply, insurance, banking, and construction, which have some bearing on the enterprises' contracts with their customers. In addition, fair trade statutes such as the Anti-Monopoly Law (Law Concerning Prohibition of Monopolization and Maintenance of Fair Trade) and the Premiums and Representation Law (Law Against Unjustifiable Premiums and Misleading Representation) protect consumers from exploitative sales tactics, although they are primarily business regulations and their effect upon consumer contracts are indirect.

Pressured by public opinion demanding new legislation, the Diet finally passed the Consumer Contracts Law (CCL) in May 2000 (to be enforced as of April 1, 2001) to protect consumers regarding their contracts with business enterprises. This law marks a new era in consumer protection in Japan, despite its relatively modest substance.

The Consumer Contracts Law has two major workings. One is to allow a consumer to cancel its offer or acceptance of a contract when the other party, a business enterprise or its agent, has resorted to certain improper conducts in soliciting the contract, that is, when it has misrepresented or concealed relevant facts to the detriment of the consumer (CCL Art.4(1)(2)) or has distressed the consumer into agreeing to the contract through unwanted lingering or detention (CCL Art.4(3)). Consumers thus may relieve themselves from contractual obligations even when the conduct in question has neither caused a mistake nor constituted a fraud or duress under the Civil Code (CC Art 95 & 96).

The other is to invalidate unscrupulous contract provisions. Specifically declared to be null and void are five types of provisions exempting the business enterprise from contract or tort obligations (CCL Art.8) and two types of provisions requiring the consumer to pay excessive damages or penalties (CCL Art.9). The law also contains a blanket clause to strike down any other contract provision which would impair the consumer's interests unfairly (CCL Art.10). Consumers will find them more useful than their current weapon, Article 90 of the Civil Code, which says juristic acts in violation of "public order or good morals" are null and void.

These are somewhat analogous to the regulation of labor contracts. Regarding the former aspect, the Labor Standards Law gives the employee a right to cancel the labor contract immediately in case the actual working conditions are different from those specified at the time of hiring (LSL Art.15(2)). There is also a provision to protect minor workers by enabling their parents to cancel their labor contracts (LSL Art.58(2)). However, it is probably more important to save employees from being forced out of, rather than into, labor contracts. The Supreme Court once awarded damages to a high school teacher who had been pressured by the employer to retire in an adamant and intensive manner.^{#13} Duress, fraud, or mistake may be invoked as well in such cases to negate the employee's resignation. As a number of employees have been forced to resign in the name of restructuring in recent years, some academics are advocating a brand new doctrine of constructive discharge.

As for the latter function, the Labor Standards Law bans several stipulations which were prevalent in the past, for example, predetermined damages for the employee's breach of contract, loan or money-advancement to be offset against future wages, and compulsory "savings" deposit with the employer (LSL Art.16-18). Given the absence of a blanket clause, however, the employees often rely on the "spirits" of the Labor Standards Law or the "public order or good morals" standard of the Civil Code to invalidate other reproachable clauses in labor contracts.

While the Consumer Contracts Law obligates business enterprises to "endeavor" to make consumer contracts clear and understandable and to provide consumers with necessary information regarding the contents of their contract (CCL Art.3(1)), there is no specific requirement of written documents. Also lacking is a provision for the "cooling-off" period during which consumers may rescind their contract for any reason.

However, when a consumer purchases certain designated goods or services outside the seller's office, the Visiting Sales Law applies. First, the seller must issue a written statement of relevant contract terms, even though the contract itself does not have to be in writing. Second, the purchaser is free to rescind the contract in writing within eight days after being informed of its rights by the seller. Similar requirements of written statement and cooling-off period are found in the Installment Sales Law and a couple of other statutes.

As mentioned before, the 1998 amendment of the Labor Standards Law drastically expanded the employer's duty to give a written document of working conditions when concluding a labor contract (LSL Art.15(1)). This applies all labor contracts, in contrast to the rather limited coverage of the written document requirement for consumer contracts. On the other hand, the notion of cooling-off period does not exist at all regarding labor contracts, probably representing the different kinds of interest to be protected between consumers and employees.

A great number of consumer contracts are molded by standard forms (*yakkan*) which business enterprises have prepared. They are offered to consumers on a take-it-or-leave-it basis (contract of adhesion). It is no secret that many people do not bother to read, or cannot understand even if they read, the contents of such forms. While the problem of standard-form contracts is rather universal, it is certainly imperative to protect the interests of consumers who accept, knowingly or unknowingly, such contract terms.

Unlike some other countries, Japan does not have special legislation to regulate standard-form contracts as such. However, there are various "industry" regulations which dictate some aspects of standard forms used in a particular industry and authorize the competent ministry to approve of them. Thus, standard forms are examined in advance, and improper clauses may be corrected at this stage. The courts also play an important role in regulating standards-form contracts when they are applied in fact. The courts tend to construe the contract terms to the advantage of consumers, sometimes even against the plain and literal meaning of the word. In the legislative process of the Consumer Contracts Law a minority party proposed a clause that any ambiguity of contract provision shall be construed to the advantage of consumers, but it was not successful. There is an academic dispute regarding the nature of standard-form contracts. Some people want to regard them as quasi-legal norms, but the recent trend would stick to the contract theory, contending that individual consumers must at least have agreed, if vaguely, to be bound the standard forms.

This reminds us of the employer's work rules in relation to labor contracts. For most employees, work rules are the standard form of their contracts. They are in fact bound by the rules without their specific consent, and the academics have been divided between the norm theory and the contract theory to explain this conclusion. It is also common to see the courts construe provisions of work rules creatively to protect the interests of employees.

Two things should be noted, however. First, the Labor Standards Law provides a unique legal scheme for work rules, such as the employer's duty to ask for the opinion of the employees' representative in making work rules, and the effect of work rules as the minimum standard in relation to individual labor contracts. At the same time, work rules do not have to be approved of by any governmental agency. These features make work rules quite distinct from other business standard forms. Second, while the question of unfavorable change has been the dominant issue of work rules, resulting in the controversial judicial doctrine of "reasonable" changes, it has not been addressed so much in the discussion of standard -form contracts. This is partly because many standard-form contracts contain a reserve clause that the terms may be changed in the future, subject to the approval of the competent ministry. Perhaps it will be challenged before the court in the future if the change in question brings about substantial disadvantage to the customers, and a theory of unfavorable change of standard-form contracts may be formed.

For many consumers, it is almost unthinkable to file formal lawsuits against business enterprises to realize their contractual rights. Although the situation improved when the new Civil Procedure Law of 1996 introduced a summary procedure for small claims up to 300,000 yen, the courts are still thought, not without reason, to be bothersome, expensive, and time-consuming. On the other hand, more than 300 prefectural and municipal governments have established so-called Consumer Centers, which accept inquiries and complaints from consumers. They give information and advice to the consumers, frequently over telephone, and sometimes succeed in settling their disputes through conciliation.

Enforcement is important for labor contracts, too. According to the traditional notion, the Labor Standards Inspectors are for violations of the Labor Standards Law and any other contractual disputes between the parties, including abusive dismissal, should be brought before the court. Recently, however, the Labor Standards Offices have assumed advisory authorities in a wide range of employment disputes. This was intended to deal with an increasing number of individual employment disputes.^{#14} Still, labor contracts share with consumer contracts the need to achieve a more effective and accessible enforcement procedure.

(4) Business Contracts

Business contracts are too numerous and varied to be discussed as a whole. Just a few points will be made below, primarily in order to view the above-mentioned contracts in perspective.

Business contracts between enterprises are basically left to the parties. Most provisions of the Civil Code and the Commercial Code may be deviated if the parties stipulate otherwise. Contracts may be concluded either in writing or orally, although decent enterprises would like to have written contracts. Japanese contracts tend to be relatively simple and abstract. Instead of detailed provisions to deal with every conceivable situation, they often contain a general clause that the parties should discuss in good faith and resolve problems amicably when they arise. This trait is shared by many business contracts.

In reality, business contracts are not free from imbalance of economic power between the parties. The Anti-Monopoly Law prohibits not only private monopolization and unreasonable restraint of trade but also certain "unfair" trade practices, which include discriminatory pricing, tie-in sales, and abuse of a dominant position. These practices do not necessarily render the contracts null and void. They are to be remedied primarily by orders of the Fair Trade Commission. Such administrative scheme parallels unfair labor practices procedure of the Labor Relations Commissions for labor contracts.

In addition, the Subcontract Law (Prevention of Delayed Payment to Subcontractors Law) lists several specific abusive conducts of contractors toward their subcontractors. The Fair Trade Commission uses a summary procedure of advice in such cases. The law also includes the contractor's duty to give the subcontractors written documents specifying their contract terms. There are probably some other areas where similar legislation is apposite. Recently, a considerable number convenience-store owners have been demanding such legislation vigorously, condemning their powerful franchisers for imposing unfair contract terms upon them.

In business transactions, sales are often made in succession between the same parties, such as between the manufacture and the retailer. While a basic "frame" contract may or may not be found between them, it is not realistic to separate such a relation into a mere collection of individual sales. Thus, the notion of "successive sales" has been advocated. Some academics look to the theories of dismissal and other causes of termination of labor contracts in discussing the situation where one party discontinues such a successive-sales relation by refusing new sales. The employer's duty to bargain in good faith with labor unions is also referred to by analogy. Although the law of successive sales has much to be clarified, this

reminds us of the fact that labor contracts are one of the most explored "continuous" contracts.

3. Concluding Remarks

Labor contracts share with house lease contracts and consumer contracts an attribute of having the "weaker party" to be protected by law, culminating in special statutes for that purpose. House lease contracts and some of consumer contracts also create continuous relationships, just like labor contracts. Yet, labor contracts are quite unique in comparison with these or other types of contracts.

The most crucial element seems to be that the employee works under the direction and supervision of the employer. Thus, in contrast to mandate or contract for work, there are a wide range of terms and conditions for the parties to decide, such as working hours, breaks and rest days, leaves, safety and health, discipline, transfer, etc. These are far more various and complicated than what are contained in typical house lease contracts or consumer contracts. Labor contracts are thus complex contracts by nature. At the same time, there are usually a bunch of employees in the enterprise who are subject to the same conditions. This has facilitated the development of a mechanism through which the contents of labor contracts are formed collectively. In this sense, labor contracts are institutionalized contracts.

As for Japanese labor contracts, such institutionalization centers on the employer's work rules. Because of the mandate of the Labor Standards Law, work rules almost always exist as reference to the individual labor contracts. Because work rules in fact bind all the employees of the establishment, they can be a useful tool to unify the conditions throughout the establishment. Such collectivism merges with the peculiarly continuous nature of Japanese labor contracts -- the practice of so-called life-time employment and the legal doctrine of abusive dismissal. Labor contracts seem to be more for creating the "status" of employee than for determining substantive terms and conditions of employment.

Today, however, there is a trend toward revitalizing labor contracts in Japan. As many employers are trying to "individualize" their personnel management, individual labor contracts inevitably assume a more important role than before.^{#15} The recent amendment of the Labor Standards Law, which expanded the employer's duty to clarify the conditions in writing at the time of hiring, also added to the significance of labor contracts. There is a strong argument for the enactment of the Labor Contracts Law, apart from the Labor Standards Law, to deal with labor contracts as such. It is relevant indeed to review labor contracts at this time from a broader perspective of contracts in general, and hopefully the law of labor contracts will provide a valuable insight to other areas of contract law as well.

<NOTES>

#1 For Japanese law of labor contract, see Ryuichi Yamakawa, "The Role of the Employment Contract in Japan," in L. Betten (ed), *The Employment Contract in Transforming Labour Relations* (1995). For a comprehensive view of Japanese labor law in general, see Kazuo Sugeno, *Japanese Labor Law* (1992).

As for the general Japanese legal system as well as other civil and commercial contracts, see Hiroshi Oda, *Japanese Law* (2nd ed. 1999). See also Hiroshi Oda, *Basic Japanese Laws* (1997).

#2 For an overview of the 1998 amendments to the Labor Standards Law, see Ryuichi Yamakawa, "Overhaul After 50 Years: The Amendment of the Labour Standards Law," *Japan Labor Bulletin* 37-11-5 (1998).

#3 Dainihon Printing Co. case, Supreme Court, July 20, 1979, *Minshu* 33-5-582.

#4 Nihon Salt Manufacturing Co. case, Supreme Court, April 25, 1975, *Minshu* 29-4-456; Kochi Broadcasting Co. case, Supreme Court, January 31, 1977, *Rodo-hanrei* 268-17.

#5 Toshiba Yanagimachi-Factory case, Supreme Court, July 7, 1974, *Minshu* 38-5-927. See also Hitachi Medico case, Supreme Court, December 4, 1986, *Rodo-hanrei* 486-6.

#6 Shuhoku Bus Co. case, Supreme Court, December 25, 1968, *Minshu* 22-13-3459.

#7 Takeda System case, Supreme Court, November 25, 1983, *Rodo-hanrei* 418-21; Omagari City Agricultural Cooperative case, Supreme Court, February 26, 1988, *Minshu* 38-1-84; Daishi Bank case, Supreme Court, February 28, 1997, *Rodo-hanrei* 710-12.

#8 Asahi Fire & Marine Insurance Co. case, Supreme Court, March 27, 1997, *Rodo-hanrei* 713-27.

#9 S.D.F. Auto-Mechanic Factory case, Supreme Court, February 25, 1975, *Minshu* 29-2-143; Kawayoshi case, Supreme Court, April 10, 1984, *Minshu* 38-6-557.

#10 Tokyo Heppu Sandal Industrial Union case, Central Labor Relations Commission, August 17, 1960, *Chuo-rodo-jiho* 357-36.

#11 The House Lease Law was accompanied by the Land Lease Law of 1921, which was eventually integrated into the Land and House Lease Law of 1991. The Land Lease Law protected the rights of lessee of the land who owns a house on it. It should be noted that the land and the house may belong to different persons in Japan.

#12 Mitsubishi Jushi case, Supreme Court, December 12, 1973, *Minshu* 27-11-1536.

#13 Simonoseki-Shogyo High School case, Supreme Court, July 10, 1980, *Rodo-hanrei* 345-20.

#14 See Hiroya Nakakubo, "Procedures for Resolving Individual Employment Disputes," *Japan Labor Bulletin* 35-6-5 (1996).

#15 Hiroya Nakakubo, "Individualisation of Employment Relations in Japan: A Legal Analysis," in S. Deery & R. Mitchell (ed), *Employment Relations: Individualisation and Union Exclusion* (1999).