

タイトル	Summary
著者	
引用	北海学園大学法学研究, 48(1)
発行日	2012-06-30

The Right of Mother and Patriarchal commonwealth in Hobbes's theory

Toshiko NAKAMURA

Introduction

- 1, From the state of nature into commonwealth
- 2, The origin of the right of mother
 - (1) Man and woman in the state of nature
 - (2) The right of mother as the original right of parent
 - (a) The origin of the right of dominion over foetus
 - (b) Changing nature of the right of mother
- 3, Transferring the right of mother
 - (1) The meaning of marriage relationship
 - (2) The meaning of 'union'
- 4, 'Common-wealth by Acquisition'
 - (1) The nature of the right of father
 - (2) The meaning of 'Acquisition' and 'Commonwealth'
 - (3) 'Common-wealth by Acquisition' and 'Common-wealth by Institution'
 - (4) The meaning of 'dominion'
- 5, 'Family' in the patriarchal commonwealth
 - (1) Patriarchal dominion in 'family'
 - (2) Patriarchal commonwealth
 - (3) Hobbes's pioneering idea of mother's right

**Die Aufhebungsverträge vom Arbeitsverhältniss und
„*undue influence*“ (I)**

Toshikazu UCHIYAMA

I. Einführung

II. Japanisches Recht

1. Die Rechtssprechung
2. Die rechtswissenschaftlichen Meinungen
3. Ein Vorschlag zum Arbeitsvertragsgesetz
4. Fazit

(Fortsetzung folgt.)

Die Tat im Nötigungsstand (1)

Takayoshi KANMOTO

- I Einleitung - Die Gesetzgebungssituation an der Tat im Nötigungsstand in Deutschland, Frankreich und Japan
- II Der Trend in der Rechtsprechung an der Tat im Nötigungsstand
(Band 48, Heft 1)
- III Die Situation der Lehre an der Tat im Nötigungsstand
- IV Die Fragen der Tat im Nötigungsstand
- V Schlußsatz

Versuch und Rücktritt (4)

Toshio YOSHIDA

Erster Kapitel Versuch

I Der Begriff des Versuchs

II Der Strafgrund des Versuchs

1. Situation in Deutschland

(A) Die gesetzliche Regelung

(B) Lehren

(a) Die objektiven Theorien

(aa) Die ältere objektive Theorie

(bb) Die neuere objektive Theorie (Die neuere Gefährlichkeits- theorie)

(cc) Die Lehre des Mangels am Tatbestand

(dd) Die moderne neue objektive Theorie

(b) Die subjektiven Theorien

(aa) Die reine subjektive Theorie

(bb) Die an der Gefährlichkeit des Täters orientierte Theorie (die Täterstheorie)

(cc) Die Theorie des Expressiv-Werdens eines Normbruchs

(c) Die Eindruckstheorie

(d) Die Vereinigungstheorie

(e) Andere neuere Theorien

(aa) Die dualistische Theorie, die im Unrechtsgehalt zwei For- men des Versuchs unterscheidet

(bb) Die Theorie der Verletzung des Anerkennungsverhältnisses

(cc) Die echt subjektiv-objektive Theorie

(dd) Die Lehre, die die Strafbarkeit des untauglichen Versuchs für verfassungswidrig hält

(ee) Die Lehre des auf Kant und Fichte berufenen Versuchsun- rechts

2. Situation in Österreich

(A) Die gesetzliche Regelung

(B) Lehren

3. Situation in der Schweiz

(A) Die gesetzliche Regelung

(B) Lehren

(Band 46 Nr. 1)

4. Situation in Japan

- A Lehre
 - a Die (rein)subjektive Theorie
 - b Die objektive Theorie
 - aa Die handlungsunwertorientierte objektive Theorie
 - bb Die Erfolgsunwertorientierte objektive Theorie
- B Der Strafgrund des Versuchs
- III Tatbestandmäßigkeit
 - 1 Subjektiver Tatbestand
 - a Tatplan
 - b Entschluß
 - c Vorsatz
 - 2 Objektiver Tatbestand
 - A Situation im deutschsprachigen Raum
 - a Die formell-objektive Theorie oder Tatbestandstheorie
 - b Die materiell-objektive Theorie
 - c Die subjektive Theorie
 - d Die subjektiv-objektive Theorie oder individuell-objektive Theorie
 - e Rechtsprechung
 - f Die konkretisierte Teilaktstheorie (*Roxins* Lehre)
 - B Lehre in Japan
 - a Die subjektive Theorie
 - b Die objektiven Theorien
 - aa Die formell-objektive Theorie oder Tatbestandstheorie
 - bb Die handlungsunwertorientierte materiell-objektive Theorie
 - cc Die Erfolgsunwertorientierte materiell-objektive Theorie
 - c Die eklektischen Theorien
 - aa Die subjektiv-objektive Theorie
 - bb Die objektiv-subjektive Theorie (Band 46, Nr. 2)
 - C Die Versuchshandlung (Abgrenzung von Vorbereitung und Versuch)
 - a Ausführungshandlung
 - b Ausführungsnahe Handlung
 - c Fälle (Band 46, Nr. 3/4)
 - D Mittelbare Täterschaft
 - E Erfolgsqualifizierte Delikte
 - 3 Objektive Zurechnung
- IV Rechtswidrigkeit
- V Schuld

(Der Beitrag wird fortgesetzt.)

**A Study for Realization of Adversary Procedure in Japanese
Civil Litigation and Introduction of Sanction Scheme as
a Basis for Adversary Process (4)**

— A Suggestion from Comparing Party Inquiry
in Japanese Code of Civil Procedure with
Interrogatories in U. S. Federal Rules of Civil Procedure —

Hiroyuki SAKAI

In last twelve years, the civil procedures of the first instance in Japanese district courts have been expedited. One of its' important causes is the frequent use of Issue Management Procedures, which are generally adopted in the present Japanese Code of Civil Procedure (enforced from January 1, 1998). However, some scholars of the law of civil procedure, judges and practitioners argue that in Japanese civil procedure, judges act vigorously to manage issues, but on the other hand, parties and its' attorneys do not present materials of facts and evidences of their cases that support their allegations on their own initiative and depend on judges in Issue Management Procedure. Then, there are some arguments that in Japanese civil litigation, especially Issue Management Procedure, process administration on parties' and their attorneys' initiative (adversary process) should be realized and various bases for introduction of adversary process in Japanese civil litigation should be equipped.

There are many supposed bases for introduction of adversary process in Japanese civil litigation. I cannot treat all of them, but I will treat a part of Evidence-Information Gathering Procedures as an important basis for adversary process, Party Inquiry ("Toujisyā-Shūkai") in this article. Party Inquiry in Japanese Code of Civil Procedure (Art. 163), in which parties may gain any information on their cases by sending written inquiries to other parties, is one of the Evidence-Information Gathering Procedures that expected to be used in Japanese adversarial civil litigation. However, Party Inquiry is not used much, because this procedure has no direct sanction schemes against parties and attorneys who refuse answers to other parties' inquiry or send false or dishonest answers, so there are no devices for this procedure to be effective. Japanese Party Inquiry is

modeled after interrogatory in U. S. Federal Rules of Civil Procedure (FRCP Rule 33), that is one of devices of discovery, but the former procedure has no direct sanction scheme for effective disclosure of information which the latter has (see FRCP Rule 37).

I think that realization of adversary procedure in Japanese civil litigation is favorable for theoretical and practical reasons. From this view, in this article, I will argue an introduction of sanction scheme in Japanese Party Inquiry, which is necessary basis to realize Japanese adversarial litigation, and to gain suggestions for my argument, I will examine the scheme of interrogatories in FRCP Rule 33 and sanction scheme for devices of discovery including interrogatories in FRCP Rule 37.