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De facto director of the court cases in Japan:

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In this article, I considered the court cases of our country mentioned about de facto director's responsibility to third party mainly. Many cases denying the responsibility for the person concerned nominates the continuous performance of their duties as directors (continuous participation in the conduct of affairs) for requirements of the de facto director. However, in those cases, there is a case catching a person ruling over the company as the de facto director. And, with the case, it is not mentioned the participation in the conduct of affairs at all. This case deserves attention as the thing which is going to let you take responsibility for person - like the shadow director in the person - U.K. method which rules the company concerned substantially by commanding legal directors.

On the other hand, since many cases which affirmed the responsibility of the person concerned don't specify the requirement for a de facto director, some are nuclear any shall be thought as important between participating in the conduct of affairs of the company and governing the company. In particular, it is not clear whether a propositus is not authorized as a shadow director when he does not participate in the conduct of affairs directly. Therefore I want to consider the boundary line with a de facto director and the shadow director mainly on the British law that these director systems coexist in this connection. In addition, I want to consider whether the shadow director may be made to take responsibility about what he doesn't order.

Rechtfertigender Notstand (3・Schluss)

Toshio YOSHIDA

I Grundgedanken des Notstandes

1. Rechtsphilosophischer Rückblick
2. Rechtsvorschriften
 - (a) Japan
 - (b) Deutschland
 - (c) Österreich
 - (d) Schweiz
3. Theorienstreit
 - (a) Einheitstheorie (Rechtswidrigkeitsausschließung)
 - (b) Einheitstheorie (Schuldausschließung)
 - (c) Differenzierungstheorie
 - (d) Strafausschließungstheorie
4. Gründe des Notstandes
 - (a) Rechtfertigender Notstand
 - (b) Entschuldigender Notstand

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II Notstandssituation

1. Definition
2. Individualrechtsgut
3. Notstandgefahr
 - (a) Zeitpunkt
 - (b) Wahrscheinlichkeitsgrad
 - (c) Beurteilungssubjekt
 - (d) Gegenwärtigkeit

III Notstandshandlung

1. Allgemeines
2. Eignung, Erforderlichkeit
3. Einziges Mittel (ultima ratio)
4. Höherwertigkeit des geretteten Gutes
 - (a) Allgemeines
 - (b) Rechtsgütervergleich
 - (c) Rettungschancen
 - (d) Angemessenheitskorrektiv

(Bd. 48, Nr. 3)

IV Subjektives Element

V Sonderpflichten

VI Verschuldete Notstandslage

VII Notstandshilfe

VIII Notstandsüberschreitung

IX Putativnotstand

X Putativnotstandsüberschreitung

(Bd. 48, Nr. 4)

Die Tat im Nötigungsstand (4)

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
 - 1 Die kein handlungstheorie
 - 2 Die Rechtfertigungstheorie
 - 3 Die Schuldausschließungstheorie (Band 48, Heft 2)
 - 4 Meine Theorie (Band 48, Heft 3)
- IV Die Fragen der Tat im Nötigungsstand
- V Schlußsatz (Band 48, Heft 4)

A Study for Realization of Adversary Procedure in Japanese Civil Litigation and Introduction of Sanction Scheme as a Basis for Adversary Process (5)

— 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.