

March 2014 No 73

IPBA Journal

March 2014

No **73**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION

IPBA JOURNAL

www.ipba.org

Interview with Mr Michiyoshi Kiuchi, Justice of the Supreme Court of Japan

On 13 November 2013, Caroline Berube, the Chair of the Publications Committee of the IPBA and Tatsuki Nakayama, Vice-Chair of the IPBA Scholarship Committee, were honoured with an opportunity to interview Michiyoshi Kiuchi, a Justice of the Supreme Court of Japan, for the *IPBA Journal*. Below is a summary of the interview.

Michiyoshi Kiuchi graduated from the University of Tokyo, Faculty of Law, in 1973 and registered as an attorney with the Osaka Bar Association in 1975. He was very involved with the Osaka Bar Association and has held various leadership positions from 1981 to 2013, until he became a Justice of the Supreme Court of Japan. One of his favorite phrases is 'you must not be bound by your successful experiences' and his hobby is reading Japanese historical novels.



Mr Michiyoshi Kiuchi

1. What was your motivation to become a lawyer?

I decided to be a lawyer, hoping that I could have more freedom for what I should do in my daily work life. However, after being a lawyer, I found that I was not able to have as much leeway as I had expected. Nevertheless, I cannot compare my experience with other jobs because I have not had any other job other than as a lawyer.

2. How does one become a judge of the Supreme Court? Is the judge elected/recommended by the Bar Association or appointed by the Justice Department?

In my case, where I was nominated as a Supreme Court Judge with a lawyer's background, I was one of eight candidates nominated by the Japan Federation of Bar Associations. I do not know how other Supreme Court Judges with a different backgrounds (other than as a lawyer) are selected.

3. Among the eight candidate lawyers, do you know why you were selected as the Supreme Court Judge?

I am not really sure why I was selected from among them. However, I have had an interest, and pursued my career, in the fields of family law and bankruptcy law (of both commercial entities and individuals). These two fields might be the areas which are now in demand. I should say though that my expertise in family law and bankruptcy law have nothing to do with each other.

4. Can we understand then that each Supreme Court Judge has his/her area of expertise?

Yes. However, cases in the Supreme Court of Japan are allocated to a judge regardless of the specialty that each Judge has pursued.

5. As I understand it, an 'American Legal Education system' was introduced several years ago to address the low passage rate of the National Bar Examination. However, it caused a surplus of young lawyers and too few jobs were available for them. What are your thoughts on legal education in Japan?

In relation to the National Bar Exam of Japan, I think that the passage rate should be in excess of 50 percent. Otherwise, law school students would cram only for passing the Exam itself. In



other words, if the percentage pass rate of the National Bar Exam is lower than half, then students would not study in order to acquire the real skills or knowledge necessary to be a good lawyer, nor would he/she have time to stop and consider what it is to be a lawyer.

6. Presently foreign lawyers cannot appear in Japanese courts. Do you think the negotiations on TPP or the recent trend for globalisation will change this restrictive attitude?

To ask a question in return, do you think there is a need for foreign lawyers to appear in Japanese courts?

(Caroline) For example, in my practice in China, some of our clients in international transactions prefer me to appear in the Chinese court. However, in China only a lawyer of Chinese

nationality is admitted to appear in Chinese courts.

When I took part in the discussions for admitting Gaikokuho-Jimu-Bengoshi (registered foreign lawyers in Japan) about 20 years ago, I heard that there was no such need for foreign lawyers to appear in Japanese courts. Either way, what ultimately counts in relation to requirements for appearing at the bar is not one's nationality, but the talent or ability of the lawyer.

7. Then, is it the case that so long as foreigners pass the National Bar Exam in Japan, and thus acquire their qualification as a lawyer (which is possible), then he or she is admitted to appear in a Japanese court?

Yes. In this sense, the Japanese system would not unreasonably restrain the admission of foreign lawyers.



8. In 2013, a Supreme Court ruling in Japan declared unequal and unconstitutional the Civil Code clause that denies full inheritance rights to heirs born out of wedlock. It is reported that this ruling was influenced by the foreign trend where children born out of wedlock have stronger rights. Do you think this Supreme Court ruling was affected by the practices or trends in foreign countries?

In the last 20 years or so, the percentage of children born out of wedlock in Japan has been rather low and has scarcely, if at all, increased since 1995 when there was a previous Supreme Court ruling on this matter.

9. Yes, as far as we know, the percentage of children born out of wedlock in Japan has been only one to two percent.

This is extremely low compared to around 20 percent or more in European countries. If children born out of wedlock in Japan are increasing in number, then there might be an influence from foreign countries with a larger percentage of children born out of wedlock. Given the static, stagnant percentage of Japanese children born out of wedlock and the huge difference between Japan and foreign countries, I do not think that the laws in European or other western countries had direct influence on the Supreme Court ruling.

10. With regard to the acceptance of foreign judgments, do you think it is likely that, 'mutual guarantee/reciprocity' with more countries will be acknowledged in the future?

I do not believe that the judges in Japan have an inclination to unreasonably or intentionally refuse the acceptance of foreign judgments.

11. This interview will be published in the IPBA Journal which is read by many international lawyers. Do you have any specific message to IPBA members?

I hope that, both domestically and overseas, the role of not only litigation, but also the judiciary system as a whole, will increase in the future. For this cause, I would hope that IPBA members play an active role in many ways.

Further, I hope that more and more contracts in international transactions have clauses where the governing law is the law of Japan and Japanese courts have jurisdiction. As you may know, the Civil Code of Japan is now in the process of being overhauled and totally revised. And one of the purposes of this Civil Code revision is to make the Code or Japanese law practice more understandable to foreigners, and thus fit for global standards.



Caroline Berube
Managing Partner, HJM Asia Law & Co LLC

Caroline Berube is a managing partner of HJM Asia Law & Co LLC and focuses on Chinese corporate law and commercial practice. She has advised clients in various industries such as manufacturing, energy (oil, gas and mining), technology, and services. Caroline is also a regular speaker at many international conferences and is an arbitrator approved by the Chinese European Arbitration Centre.



Tatsuki Nakayama
Attorney at law, Miyake & Yamazaki

Tatsu Nakayama is a Senior Associate of Miyake & Yamazaki, Tokyo with the position of the Vice-Chair of the IPBA Scholarship Committee and the Secretary General of the Japan Fund Committee (Japan IPBA).