

the government side (the Welfare Ministry) is not yet fully prepared to promote science and technology for the development and use of effective and safe medical and pharmaceutical products. These are problems requiring settlement in the future.

## **2. The Drug Victims Relief Fund Act 1979.**

(Adopted September 7, 1979 and put into force October 1, 1979. Ch. 55, 1979. Made up of eight chapters, 59 articles plus 11 supplementary provisions.)

The above Act was adopted and promulgated simultaneously with the Drugs, Cosmetics & Medical Instruments (Amendment) Act 1979.

The Act stipulates the creation of a fund for the relief of victims of damage accruing from the side effects of medical and pharmaceutical products by collecting contributions from manufacturers and importers of medical and pharmaceutical products. Certain points are incomplete, however, especially in determining the damage as such. It is also pointed out that depending upon its management, the fund may turn out to be relief for the very enterprises which have committed the harmful act concerned.

By Prof. HIDETAKE SATO  
MASANORI OKADA

## **2. Law of Property and Obligations**

### **1. The Civil Code and the Civil Code Application Act (Amendments) Act 1979.**

(Promulgated on Dec. 20, 1979, and put into force at the expiration of six months beginning with the day on which it was promulgated. Ch. 68, 1979)

1) Amendment to Article 11 [*quasi-incompetency*] of the Civil Code. Words such as “deaf,” “dumb,” and “blind” are deleted from the text.

2) Addition of Article 34.2 [*juridical person for public benefit*] to the Civil Code. Anyone who is not a juridical person in the Civil Code shall be restricted from using the title as such in his name.

Addition of Article 84.2 [*penalty for the breach of Article 34.2*] to the Civil Code. Under this provision, anyone in contravention of the provision of the Civil Code Article 34.2 shall be liable to a nonpenal fine not exceeding ¥100,000.

3) Addition of Paragraph 2 to Article 67 [*supervision of the competent authorities*] of the Civil Code.

This provision provides that competent authorities are entitled to issue necessary orders to a juridical person in the Civil Code in the course of their supervision.

Addition of Item 3.2 to the Civil Code Article 84.

This provision stipulates that a director in contravention of an order issued in accordance with Article 67 (2) of the Civil Code shall be liable to a nonpenal fine.

Amendment to the first part of the Civil Code Article 71 [*annulment of permission*].

The amendment provides that in case a juridical person fails to abide by supervisory orders or it is found not possible to realize the purpose of the said supervision by any other means, the competent authorities may cancel permission for its incorporation.

4) Addition of the second part to Article 71 of the Civil Code.

This provides that the competent authorities may cancel permission for its incorporation in case a juridical person fails to carry out undertakings for more than three consecutive years without good or justifiable reason.

5) Amendment to Article 25 [*hearing of director in case of annulment order and dissolution order*] of the Civil Code Application Act.

This provides that the competent authorities, in cancelling

permission for the incorporation of a juridical person, must give its director a hearing in advance. However, when all members of the board of directors of the said juridical person are absent or cannot be reached, it is not necessary to conduct a prior hearing.

Addition of Article 25.2 [*notice of dissolution order*] to the Civil Code Application Act.

When all directors of a juridical person are absent or their whereabouts unknown, the competent authorities in place of notifying them of the action of cancellation of the incorporation can publish the action to that effect in the Official Gazette, and the action shall go into effect 20 days after the date of publication.

6) Amendment to Article 77 (1) [*registration of dissolution*] of the Civil Code. Addition of Article 25.3 [*authorized registration*] of the Civil Code Application Act.

In case of dissolution due to the cancellation of permission for incorporation, liquidators at the commission of the competent authorities which have taken the action shall effect the registration.

7) Amendment to Article 84 and Article 1005 [*penal provisions for failing to present a testamentary document or for unlawful opening thereof*].

The maximum nonpenal fines were raised not to exceed ¥500,000 and ¥50,000 respectively.

### [*Comment*]

The existing system relating to a quasi-incompetent person is designed to protect him by restricting his legal capacity. Deaf, dumb and blind persons cannot necessarily be adjudged inferior to ordinary persons in terms of their capacity of judgment and they can well be protected by designating them as “feeble-minded” if need be. On this ground, the requirements of quasi-incompetence were rationalized.

Provisions regarding juridical persons of the Civil Code have been improved in that the supervision has become tighter in various

ways and the registration has become consistent with the reality through dissolution of dormant juridical persons by taking into consideration the actual conditions and other state of affairs in recent years involving juridical persons.

The current amendments are irrelevant to the basic principles of the Civil Code but should be regarded as auxiliary or technical revisions.

## **2. The Drug Victims Relief Fund Act 1979.**

(Promulgated and put into force at the same time on Oct. 1, 1979. Ch. 55, 1979) Consisting of 59 articles and seven supplementary provisions.

### **[Comment]**

The present Act aims at establishing a relief fund for damage resulting from the side effects of medicines, and provides for the management of the Fund in order to effect prompt relief through the payment of medical costs, pensions for the handicapped, survivorship annuity, etc., in connection with injuries to health (such as disease, disablement or death) caused by the side effects of the medicines coming under the Medical Affairs Act. The outbreak of Thalidomide and SMON disease cases around the latter part of the 1950's marked a turning point in implementing such legislation.

The relief system based on a pharmaceutical side effect damage relief fund to be established under the present Act is unprecedented in the world. Some of the salient features of the Fund are as follows: The fault principle of liability under the existing Civil Code and other Acts remains unchanged. In other words, the so-called "liability without fault" principle was not introduced in this instance. An independent organization (or institution) was set up for the relief and special Act was created for the relief system. No maximum ceiling was set as the total amount per incident. Judgment as to the extent of the side effect damage is to be made by the state (the Welfare Minister), not by the Fund

which concerns relief. There is a possibility that state subsidies may be extended.

### 3. The Provisional Registration on Security Contracts Act 1978.

(Promulgated on June 20, 1978, and put into force on Oct. 1, 1980. Ch. 78, 1978) Consisting of 20 articles and nine supplementary provisions.

#### [*Comment*]

In case a debtor fails to pay his debt to a creditor, the transfer of ownership based on the contract such as the promise to pay in kind (security contract under provisional registration), that is, acquisition of immovables of the debtor by the creditor, shall be effected only after a lapse of a fixed period of time, that is, two months after the claim for the estimated sum of the clearance money is made by the creditor against the debtor. The creditor cannot demand legal transfer of ownership until an exchange of the clearance money payment. The debtor is also entitled to redeem the said immovables if he has not received the clearance money from the creditor. The Act also stipulates the means available for other creditors of lesser priority as well as their relation with the creditor who is the party to the provisional registration.

The present Act was promulgated in 1978, but put into force on Oct. 10, 1980, simultaneously with the Civil Execution Act (Promulgated on March 30, 1979. Ch. 4, 1979).

By Prof. TERUAKI TAYAMA  
KAZUO FUJIMURA