detail, with the status of prison inmates.

Viewed from this point, it is desirable for the inmates to learn of the contents, for it concurs with the spirit of "freedom of person" (Constitution §§ 33 and 34), that no person shall be arrested or detained except on a warrant issued by a competent judicial officer, and the right to know (Constitution § 21). We cannot conclude that the decision in the current case generally recognized the prohibition of reading directives, etc. by inmates in prison, because the part concerning the behavior of the inmates is believed to have caused the current decision.

On the other hand, the question arises that if the *Jokoku* appellees had been treated inequitably, it would have violated the principle of equality in the Constitution (§ 14). The existing Prison Act has no direct regulation on the reading of documents by inmates but leaves the matter to Cabinet Orders, etc. (Prison Act § 31). This way of leaving the matter to the orders by the administrative authorities has also become a disputed point in the current case. On this score, many writers are of the opinion that this conflicts with the principle of administration under law.

[Reference: Constitution §§ 21, 33 and 34, Prison Act § 31, Prison Act Enforcement Order § 86–1]

By Prof. HIDETAKE SATO
HIROSHI KOBAYASHI

2. Law of Property and Obligations

1. *Monchu* in Okinawa, a clan or a blood-related association, is tantamount to an unincorporated association.

Decision by the Second Petty Bench, the Supreme Court, on Feb. 8, 1980. (Case No. [*o*] 701 of 1975. Claim for confirmation of land ownership and resultant transfer registration. Dismissed.

34 *Minshū* 138. 961 *Hanrei Jihō* 64.)

[Reference: Civil Code § 33]

[Opinions of the Court]

1) The *Monchu* in the current case owns land and other assets bequeathed by an ancestor as *Monchu* property and is composed of various organs necessary for the management of the property;

2) The scope of the constituent members can be determined by family lineage records, etc.;

3) With the consent of the constituent members, an executive body in charge of daily routine work is chosen annually in the fixed period of time, that is, the *Higan* festival period when Buddhist services are performed during the equinoctial week; and

4) Since the Meiji Era the *Monchu* with gains accruing from the management of the *Monchu* property has been performing various activities such as the religious rites for ancestors, granting scholarships to children of members, a mutual financing association called *Monchu Makuai*, and other mutual aid enterprises, such as renting some of the land owned by *Monchu* to poverty-stricken members.

In this regard, the *Monchu* in this case can be judged to be corresponding to an unincorporated association.

[Comment]

An unincorporated association functions like an incorporated association in reality, but has an intermediate purpose, so to speak, in that it does not persue public or business interests. Hence, it is an association without a legal personality.

The requirements for the existence of an unincorporated association are as follows: (1) it should have an organization as an association; (2) the principle of majority decision is observed; (3) it continue to exist as an association despite changes in membership; and (4) major points necessary for the management of property, the management of a general meeting and the method of representation in the organization are established. (Decision by the First Petty Bench, the Supreme Court, on Oct. 15, 1974.

18 *Minshū* 1671; 393 *Hanrei Jihō* 28).

The current decision concluded that the *Monchu* in question has met the requirements above. But, since there are many *Monchus* in Okinawa and their systems are varied, the intent of the current decision should not be easily referred to other *Monchus.*

2. Ownership can be approved of land that perishes under the sea at high tide (or a beach at ebb tide).

Decision by the Second Civil Department, the Nagoya High Court, on Aug. 29, 1980. (Case No. [*gyo ko*] 5 of 1975. A case demanding to vacate the registration of disappearance of land. Dismissed. *Jokoku* appeal was filed. 977 *Hanrei Jihō* 15. 424 *Hanrei Taimuzu* 46.)

[Reference: Civil Code § 85]

[Opinions of the Court]

The "land" as an object of property is strictly a legal concept, not a natural or physical concept. It is sufficient to interpret that the requirements for "land" are that it should be a land surface that can be controlled actually by man and that has an economic value. Even if it is ground under the sea it can be recognized as "land" which can be the object of ownership in terms of law as long as it satisfies the requirements above.

In this regard, the claim of the appellants that the "demarcation line between land and sea should be drawn at the high water mark on the days of the Vernal or Autumnal Equinox Day, and that the private ownership of land that disappears at this time should not be recognized," cannot be accepted.

Whether or not the land has perished under the sea should not be decided by such a standard. A decision must be made taking into consideration the process in which the land in question disappeared under the sea, present conditions, the intents of the parties concerned, scientific and technological standards, and whether or not it can be controlled and has an economic value.

[Comment]

There have been many disputes as to the ownership of land under the sea. Opinions are varied at present according to decisions, academic theories and actual administrative cases whether or not such land can be the object of ownership.

It is worthy of note in that the current decision took a positive step in paving the way for the theory that land under the sea can be the object of ownership. The decision will have a large effect on actual cases and attention is focussed on the outcome of the *Jokoku* trial.

3. The exercise of subrogation by an obligee on the basis of a claim for distribution of property prior to the establishment of firm contents by agreement or adjustment in court cannot be permitted.

Decision by the Second Petty Bench, the Supreme Court, on July 11, 1980. (Case No. [o] 321 of 1978. Claim for confirmation of ownership. *Jokoku* appeal dismissed in part. Reversed and decided in part. 34 *Minshū* 628. 977 *Hanrei Jihō* 62.)

[Reference : Civil Code §§ 423 and 768]

[Opinions of the Court]

A claim for distribution of property arising from divorce has the nature of a kind of private right, but until its firm contents are established by agreement or adjustment in court its scope and contents are neither confirmed nor established.

Hence, it stands to reason that the exercise of subrogation by an obligee to preserve such a claim for distribution of property cannot be permitted.

[Comment]

Subrogation is the right of the obligee to exercise the right of an obligor on a third party in place of the obligor to the satisfaction of the right of the obligee's claim in case the obligor does not exercise his right.

In the current decision, it was ruled that the exercise of subrogation by an obligee to preserve the claim for distribution of property cannot be permitted prior to the establishment of firm contents by agreement or adjustment in court. The ruling is expected to have a large effect in practice, and it may be necessary to study in the future what means are available to preserve the claim for distribution of property.

4. The time that constitutes delay for performance of making compensation for damages due to default of an obligation arising from violation of the safety guarantee, and the inherent right of the bereaved family of a person who has died due to default of an obligation.

Decision by the First Petty Bench, the Supreme Court, on Dec. 18, 1980. (Case No. [*o*] 1089 of 1976. A case in which compensation for damages was demanded. *Jokoku* appeal dismissed in part, reversed and decided in part. 34 *Minshū* 888. 992 *Hanrei Jihō* 44.)

[Reference: Civil Code § § 412 and 415]

[Opinions of the Court]

The obligation to make compensation for damages due to default of an obligation resulting from violation of the responsibility to guarantee safety is an obligation for which no time is fixed. According to Article 412 para. 3 of the Civil Code, the obligor falls into delay from the time when the demand from the obligee for performance is made upon him. The *Jokoku* appellants have been demanding the payment of money for damages due to delay from Jan, 23, 1968, the day following the incident. However, there is no reason why they should be able to claim compensation covering the period prior to the day when the delay occurred.

As to the claim covering the period after the delay occurred, since part of the claim for damage compensation was recognized, the claim for the payment of damage compensation on the basis of delay should be recognized within the limit of the recogni-

tion made as such.

The *Jokoku* appellants demanded ¥1,250,000 each as solatia for their mental disorder resulting from the death of their son Kamimura, and the court below admitted their claims only up to ¥500,000 each.

Since it is difficult to interpret that the *Jokoku* appellants, who were not parties to the employment contract or any other such legal relationship between the late Kamimura and the *Jokoku* appellees, can acquire the inherent right to claim solatia on the basis of default of an obligation in the employment contract or any other such legal relationship, it should be concluded that the *Jokoku* appellants had not acquired such claims for solatia.

[Comment]

The responsibility to guarantee safety has often been employed together with the doctrines of tort in dealing with the claim for damage compensation in labor accidents.

In the current decision, it was made clear that the delay for performance of compensation for damages on the basis of default of an obligation arising from violation of the responsibility to guarantee safety begins when the obligor was demanded compensation for damages from the obligee pursuant to Article 412 (3) of the Civil Code.

With regard to the claim for solatia, there is no room for the claim for damages due to delay of performance since the *Jokoku* appellants had not acquired the inherent rights to claim solatia.

Recently there have been many cases concerning labor accidents in which lower courts have recognized claims for damages on the ground of violation of the responsibility to guarantee safety by the employer. The current decision was extremely worthy of attention in that the Supreme Court clarified its position on such problems.

5. Noise and vibration due to the operation of the Shinkansen.

Decision by the Fourth Civil Department, the Nagoya District Court, on Sep. 11, 1980. (Case No. [*wa*] 641 of 1974. A case demanding prohibition of the infiltration of noise and vibration of the Tokaido Shinkansen bullet line. *Koso* appeal. 976 *Hanrei Jihō* 40. 428 *Hanrei Taimuzu* 86.)

[Reference: Civil Code § § 206, 414 (3) and 709]

[Opinions of the Court]

The infiltration of noise and vibration into the premises of the residents (plaintiffs) has to be found illegal so that they can demand the Japanese National Railways (defendant) stop such environmental pollution as noise and vibration.

The judgment on illegality, however, has to be based on the balance between the disadvantage incurred upon the defendant arising from the injunction of such infiltration in the future, as well as the influence to be exerted on the general public other than the parties concerned (social loss) and the disadvantage to be incurred on the plaintiffs (infringement on personal rights) by not injuncting such infiltration.

The most immediate and effective measure to avoid the cause of such infringement is to slow down operations over a distance of seven kilometers in issue but it cannot be deemed reasonable to injunct the act of infringement by such means as a slowdown since the resultant effect on the defendant and the general public would be great.

Accordingly, it is difficult to admit that the infiltration of noise and vibration of the Shinkansen into the premises of the plaintiffs exceeds the permissible limit as far as the demand for injunction is concerned. Hence, the illegality therefrom cannot be recognized.

[Comment]

The Tokaido Shinkansen gave rise to a problem such as construction noise from the time the construction of the line itself got under way. When the line was opened, the noise and vibration as well as the disturbance of television reception arising from the operation of the bullet trains caused various problems.

The court in the current decision ruled that the nuisance due to the noise and vibration was not slight and that there were diversified patterns of damage. It also admitted that the mental disorder of the plaintiffs was extremely painful, but refused to recognize any physical damage on the ground that it would be difficult to establish clearly the cause and effect between the noise and vibration and bodily disorders.

Although the court virtually recognized the claim of the plaintiffs for solatia concerning the past, it dismissed their demand for injunction of such environmental pollution and solatia for the future.

The current decision recognized personal rights as the basis for injunction while denying environmental rights. In measuring the interests between the personal rights of the plaintiffs and the public nature of the Shinkansen, the court thought much of the effect on the public nature of the Shinkansen if a slowdown of speed was ordered. Herein arises the question again on what should be meant by public nature.

By Prof. TERUAKI TAYAMA
KAZUO FUJIMURA

3. Family Law

Action for the denial of legitimacy and provisions of the Civil Code on the limitation of actions and Articles 13 and 14 Para. 1 of the Constitution

Decision by the First Petty Bench, the Supreme Court, Mar. 27, 1980. Dismissed. (Case No. (*o*) 1331 of 1979. 32 *Kasai Geppō* No. 8, pp. 66, 970 *Hanrei Jihō* 151, and 419 *Hanrei Taimuzu* 86.)

[Facts]

X (plaintiff, appellant, *Jokoku* appellant) married Y (defendant,