b. Administrative Law

The legal binding force of a course of study established by the Ministry of Education.

Decision by the First Petty Bench of the Supreme Court on January 18, 1990. Case No. (*Gyo-tsu*) 45 of 1984. 1337 *Hanrei Jihō* 3; 71 *Hanrei Taimuzu* 72.

[Reference: Constitution of Japan, Articles 23 and 26, Fundamental Law of Education, Article 10, School Education Law, Articles 51 and 21.]

[Facts]

In 1970, the Board of Education of Fukuoka Prefecture dismissed three teachers, Youichi Kayashima, Takao Handa, Shigeto Yamaguchi, from the Prefectural Denshukan High School. The reasons for disciplinary dismissal were wide ranging, including having inspired students with a particular idea through the school newspaper, not having used textbooks in class, having lectured beyond the bounds of the course of study, and not having held examinations for grading students. The three teachers brought a suit in the Fukuoka District Court against the Board of Education for retraction of the disciplinary measure.

In July, 1978, the Fukuoka District Court ruled in favor of Mr. Handa and Mr. Yamaguchi but dismissed Mr. Kayashima's claim. In December, 1983, the Fukuoka High Court sustained the lower court's ruling and dismissed the appeals from Mr. Kayashima and the Board of Education respectively. Both Mr. Kayashima and the Board of Education appealed to the Supreme Court. (In the latter case, the First Petty Bench of the Supreme Court on the same day reversed the judgment of the court below and dismissed Mr. Handa's and Mr. Yamaguchi's claims.)

[Opinions of the Court]

Jokoku appeal dismissed.

"We assume that the judgment of the lower court is legitimate; that is, that the high school course of study has legal binding force

and find that this interpretation is not in violation of Articles 23 and 26 of the Constitution in light of precedent, the decision by the Grand Bench of the Supreme Court on May, 1976 [citation ommitted]."

"We also assume that the judgment of the lower court is legitimate in ruling that Article 21 of the School Education Law prescribes the duty of using textbooks in high schools, and find that this interpretation is not in violation of Article 26 of the Constitution and Article 10 of the Fundamental Law of Education in light of the precedent mentioned above."

[Comment]

This case affirmed the opinion of the lower court simply by citing the previous "achievement tests" case. In that case, the Supreme Court authorized the state to direct the content of education within the "necessary and substantial" boundaries and held that a course of study established by the Ministry of Education was "a necessary and reasonable standard" with the quality of "fundamental principles." However, that ruling was rather ambiguous, and lower courts have differed in interpreting the legal binding force of a course of study. Based on the understanding that the previous case had already settled this issue, the Supreme Court approved its legal effect without any detailed reasons.

The Court, then, ruled for the first time that high school teachers must always use textbooks in class and that they are subject to disciplinary measures if found to be in violation. Article 21 of the School Education Law, applied to high schools by Article 51, provides that textbooks approved by the Ministry of Education must be used in elementary schools. According to the interpretation by the Ministry of Education, school teachers have an obligation to use textbooks as the main teaching materials. Basically, the Court accepted this view also without any detailed reasons and rejected the contention by the plaintiffs that teachers should have complete discretion to use textbooks in accordance with circumstances. There may be some doubt concerning this ruling because even the Fukuoka High Court acknowledged the existence of some latitude on the side of teachers.

At least, the Court should have given a more detailed account of this issue.

Prof. KENJI URATA
SATOSHI KOTAKE

2. Law of Property and Obligations

The meaning of voluntary payment in Article 43 of the Loan Business Regulation Act.

Decision by the Second Petty Bench of the Supreme Court on January 22, 1990. Case No (*o*) 1531 of 1987. A case claiming for a declaration of the nonexistence of the debt. 44 *Minshū* 332.

[Reference: Loan Business Regulation Act, Article 43(1)(3); Interest Regulation Act, Articles 1 and 4.]

[Facts]

X (plaintiff, *koso* respondent, *jokoku* appellant) borrowed 2 million yen from Y (defendant, *koso* appellant, *jokoku* respondent), who lent money as a regular business practice, on January 10, 1984. According to their agreement, the rate of interest was 54.7% annually, the rate of delinquency charges was 73%, the due date of repayment was not fixed, and the amount of monthly repayment was 100,000 yen. Y issued to X a contract document as prescribed by Article 17 of the Loan Business Regulation Act (hereinafter referred to as the Loan Act). Until October 7, 1985, X had repaid to Y the principal, interest and delinquency charges in accordance with the terms of the contract. Y issued to X a receipt prescribed by Article 18 of the Loan Act at every repayment. The contracted rates of interest and delinquency charges exceeded the maximum provided