

[Comment]

For two years after the introduction of the consumption tax, public opinion was at a deadlock toward the new indirect tax. On the one hand, some argued that the new tax took root and that it was unrealistic to repeal it and to revive the former tax system. On the other hand, against still popular discontent toward the new tax, there was a strong movement to demand reconsideration of the consumption tax. However, as confusion and discontent diminished relatively, both the ruling and opposition parties shelved the issue of the propriety of the tax's continuation and agreed to revise only some of the practical problems. In this sense, this revision is a product of political compromise. Although there was disagreement on the range of tax exemptions, as mentioned above, all parties came to an agreement to make a better system. Nevertheless, some of the principal problems remain, including the one concerning the tax rate. These problems are left to future deliberation.

Prof. KENJI URATA
SATOSHI KOTAKE

2. Law of Property and Obligations

The Land and House Lease Act.

Promulgated on October 4, 1991. Ch. 90. Effective as of August 1, 1992.

[Background of the Legislation]

The Civil Code of Japan differs from the systems of other countries in dealing with land and houses separately, not in one body.

People not owing land create the right to use another's land in order to build a house. In Japan, there is a method of creating a right by way of lease or superficies. The former is used in almost all cases. People in Japan call this method of using other's land "*shakuchi*," and this method of holding of one's own house "*motiya*." In European and American systems and customs, land and the building on it are dealt with together. People in Europe and America chiefly use the house leases in which the lessor leases the house and land in one body. But exceptionally, there are methods of land lease to use other's land in order to build one's own house on it: In France, the "*contrat de louage*" of the Code Civil, the "*bail emphytéotique*" of the Code rural, and the "*bail à construction*" of the Code de la construction et l'habitation; In Germany, the "*Erbbaurecht*" of the Verordnung über das Erbbaurecht; In England, the "building lease" of the Landlord and Tenant Act 1954.

The Civil Code of Japan is not sufficient to protect the rights of the lessee in the following points: ① The minimum term of the contract—the term may not exceed 20 years and parties may stipulate the term within 20 years as they wish according to the freedom of contract (Article 604 of the Civil Code). ② Expiration of the contract—in case of a contract in which the term is not stipulated, the lessor may at any time give notice to the lessee to terminate the contract (Article 617 of the Civil Code) and in case of a contract with a stipulated term, the lessor may reject renewal of the contract (Article 604 of the Civil Code). ③ Effectiveness against third parties—the lease of immovables, unless registered, shall not be effective as against a person who acquires real rights in such immovables (Article 605 of the Civil Code), but in practice the lessor rarely agrees to the application of the registration. ④ Collection of the capital invested on the lease-land—if the lessee of the land assigns ownership of the building on it, it is necessary for him to assign the lease of the land. But he cannot assign it without the lessor's consent (Article 612 of the Civil Code). ⑤ Regulation of the rent fee—determination of rent fees is left to the contract of the parties based on the principle of freedom of contract. In order to protect the lessee, who has weaker bargaining powers than the lessor, special acts

had to be enacted.

When the lessor of the land sells his land, the buyer of the land can evict an unregistered-lessee from the land (see above ③). The lessor can demand a rental increase by means of threatening the lessee with the sale of his land. This kind of the sale is called “*jishin baibai*,” which arose after the Russo-Japanese War. In response to problems of “*jishin baibai*,” the Building Protection Act was enacted on May 1, 1909. Under this act, the land-lease of lessee is effective against a buyer of the land, not with the register of the land-lease but with the register of the lessee’s house-ownership (Building Protection Act, Article 1). Faced with a house shortage after the First World War, “Land Lease Act” and “House Lease Act” provide as follows: Concerning ①, according to the Land Lease Act, the minimum term stipulated in the contract is 30 years in case of a solid building and is 20 years in case of other building. When the term is not stipulated in the contract, the term is 60 years in the case of the former and is 30 years in the case of the latter (Article 2). Concerning ③, according to the House Lease Act, the lease of the house is effective against a third party with the delivery of the house even if the lease of the house is not registered (Article 1). Concerning ④, according to the Land Lease Act, when the lessor does not consent to the assignment of the land lease with the lessee’s building on it, the assignee of the building can claim against the lessor for the purchase of his building (Article 10). And also when the lessor rejects the renewal of the contract, the lessee can do so (Article 4). Concerning ⑤, both parties can demand an increase or reduction of the rental fee when the rental has become unreasonable because of the change in circumstances such as an increase or decrease in taxes, the rise or fall of the value of land and so on (Land Lease Act, Article 12 and House Lease Act, Article 7). But concerning ②, both acts do not guarantee the lessee renewal of the contract. The just cause system was introduced by amendment of the Land Lease Law and the House Lease Law in 1941. Under this system, the lessor can not reject renewal of the contract or give notice to terminate the contract without just cause. Protection of the lessee has been promoted by special acts and judicial decisions, so the rights in lease give the

lessee the same protection as the rights in property. This process is called "Conversion of the Lease from Personal Property to Real Property."

Though an amendment was made again in 1966, the fundamental structure of renewing the contract without just cause has not been changed for about 50 years. According to authorities, the amendment of 1991 has the following purpose: the needs for the lease of the land and house become diversified because of great changes in the conditions of the social economy. In order to meet these needs, the Land Lease Act and the House Lease Act shall be amended and become reasonable and just. The key words of this amendment are "a variety of the needs for the lease because of great changes in the conditions of the social economy" and "the reasonable and just regulation of the relation between the lessor and the lessee." But the work of this amendment started when deregulation and redevelopment of cities were strongly requested by the developers.

The Ministry of Justice began research for amendment of the Land Lease Act and the House Lease Act in June 1985 and published "issues concerning amendment of the Land Lease Act and the House Lease Act" (hereinafter referred to as "Issues") in November 1985 and heard opinions from various groups. The Ministry of Justice published a "tentative outline concerning amendment of the Land Lease Act and the House Lease Act" (hereinafter referred to as the "Tentative Outline") in March 1989 and heard opinions from the various groups again. In February 1991, "the outline concerning amendment of the Land Lease Act and the House Lease Act" (hereinafter referred to as the "Outline") was submitted to the Minister of Justice. Finally, "the bill for amendment of the Land and House Lease Act" (hereinafter referred to as the "Bill") was proposed together with "the bill for amendment of a part of the Civil Conciliation Act" during the 120th session of the Diet in March 1991. Both bills passed in the 121st session of the Diet in September 1991 and were promulgated on October 4, 1991. This work of amendment started under the Nakasone Cabinet, which put up the slogans "development through deregulation and private developers." Indeed, the purpose of the amendment was, on the surface, "the match with a

variety of the needs for the lease” and “the reasonable and just regulation of the relation between the lessor and the lessee” and was stressed again, but in substance, the amendment is to ease redevelopment of major cities by evicting lessors. This amendment was criticized by academic lawyers and organizations of lessors. In particular, this criticism is true concerning the issue whether the efficient utilization of leased land and houses is included in the factors of the just cause judgment. In the process of the legislation, this criticism was reflected in the substance of the amendment. In consequence, the purpose of the amendment is consistent with its substance.

By this amendment three acts, the “Land Lease Act,” the “House Lease Act,” and the “Building Protection Act” were united into one act: the “Land and House Lease Act.”

[Main points of the Act and the Brief Comment]

The main points of this amendment are as follows: ① simplification and reduction of the terms of contract of lease; ② definition of the factors of the just cause judgment; ③ introduction of a system of land lease for years without renewal; ④ introduction of a system of the house lease for years without renewal; and ⑤ utilization of a system of civil conciliation over disputes on rentals.

Concerning ①: as to the ordinary lease (the word “ordinary” means not lease for years without renewal), the distinction between the solid and non-solid building is repealed and the term of the contract is 30 years uniformly (Article 3). In case of the renewal after the expiration of the first term, the Bill originally provided that the term of renewal of the contract is 10 years, but, in the Diet, this provision was objected to and finally only the first renewal is extend to 20 years (Article 4).

Concerning ②: In the Issues, it was raised whether the efficient utilization of the leased land or house on the part of the lessor should be included into the factors of the just cause judgment. In the Tentative Outline, the words “the efficient utilization of the leased land or house” were replaced by the words “the circumstances surrounding the land or house concerned.” But in the Outline, this phrase was eliminated. Taking this process of the legislation into consider-

ation, the development of major cities beyond both parties is not related to the factor of the just cause judgment and the system of just cause maintains its essential structure of balancing the interests of both parties.

In the Land and House Lease Act, the factors of the just cause judgment divide into three stages. The primary factor is to balance the necessity of both parties to use the land or house concerned. The secondary factor is the course of the land or house concerned and present situation of using the land or house concerned. If the interests of both parties are on equal level in the consideration of these factors, the payment of the eviction fee is taken into consideration as a supplementary factor. But, when the lessee's interests overweight the lessor's in the consideration of the primary and secondary factors, this supplementary factor is not taken into consideration even if the amount of the eviction fee is extraordinarily high (Articles 6 and 28).

The Tentative Outline proposed a distinction between the residential house lease and business house lease. The latter could be terminated without just cause by paying a sum of money to compensate for the loss of goodwill. But this proposal was not taken over in the Land and House Lease Act.

Concerning ③: There are three types in the land lease for years without renewal. It is common to three house leases that the term of the contract is expired without renewal. The first type is a standard one and is distinguished from the other two in that the minimum term is 50 years, which is a longer period than the other two. After the expiration of the contract, the lessee can not claim the purchase of his building on the leased land so he must destroy the building (Article 22). The second type's character is that the lessee can transfer the building on the leased land to the lessor for a reasonable price after the expiration of the term. The minimum term is 30 years (Article 23). The third type restricts the purpose of the lease to the holding of the building for the use of the business. The minimum term is 10 years and the maximum term is 20 years. After the expiration of the contract, the lessee can not claim the purchase of his building on the leased land (Article 24). To the lessor, the lease

for years without renewal is more favorable than the ordinary lease because the leased land is restored to him after the expiration of the term. Some people forecast that this type of the lease will drive out the ordinary lease and become the primary one.

Concerning ④: If the owner of the building moves the base and center of living for a certain period because of transfer, medical treatment, nursing of relatives or other unavoidable reasons, he may stipulate that the term of the contract will be this certain period without renewal (Article 38). This type of house lease, so-called relocation, has been used so far, although it is against Articles 1–2 and 6 of the House Lease Act. The amendment meets the needs of the society.

Concerning ⑤: Under the present litigation system, too much time and cost is required to resolve rental disputes. The system of the civil conciliation is utilized for attaining simple and speedy resolution. So long as the parties dispute over the rental, they must apply for civil conciliation before bringing an action (Article 24-2 of the Civil Conciliation Act). The conciliation board may stipulate the conciliation clauses when parties agree to their observance with the written instrument (Article 24-3 of the Civil Conciliation Act). In order to attain the simple and speedy resolution, the system of the civil conciliation must be improved in respect of the number of the conciliators and their ability to resolve disputes.

According to Article 4 of the schedule of the Land and House Lease Act, this Act will be applied to existing leases. But some of the following articles of the schedule provide that the Land Lease Act or the House Lease Act exceptionally will be applied to existing leases in the same manner as so far. In particular, it is important that the Land and House Lease Act can be applied to the renewal of the term of the existing leases (Article 6 of the schedule). Therefore, three of types the lease coexist: ① existing leases under the Land Lease Act or the House Lease Act, ② ordinary leases under the Land and House Lease Act and ③ leases for years without the renewal under the Land and House Lease Act. In order to unify these complicated relations of the leases, the Land and House Lease Act must be amended in the future.

Taking the process of the legislation into consideration, the pur-

pose of the Land and House Lease Act is not to meet the needs of the development in major cities but to regulate the private relation between the lessor and lessee. We must watch the administration of the Land and House Lease Act in order to realize the purpose of this act.

Prof. KATSUICHI UCHIDA
HIDEHO SUMITA

3. Labor Law

Parental Leave Act.

Promulgated on May 15, 1991. Ch. 76. Effective as of April 1, 1992.

[Outline of the Act]

1. The Act aims at the promotion of continuous employment of men and women workers who bring up their children (Art. 1).

2. In this Act, the term “parental leave” means leave for bringing up a child who has not reached one year old. A man or woman worker whose employment contract is of indefinite period may take parental leave, giving notice to his/her employer (Art. 2). If an employer reaches an agreement with the trade union or persons representing a majority of the workers at the establishment, the employer may refuse a request for parental leave by the following workers: workers who have worked for the employer for less than one year; workers whose spouse can take care of the child at all times; workers for whom the ministerial ordinance allows the employer to refuse the leave (Art. 3).

3. Dismissal of a worker is not justified by his/her taking parental