Act, and finally this revision of the Bankruptcy Act. In the future, attention will be paid to how bankruptcy practice will be managed under this new bankruptcy law system.

However, we can hardly expect the present bankruptcy law system to be maintained without any revision. As an extension of this work of revision of the bankruptcy law system, we can expect the conception of a "United Bankruptcy Act" to emerge. Therefore, from now on, we should discuss the relationship between these proceedings.

Anyway, needless to say, the revision of this Bankruptcy Act, the fundamental law among the liquidation proceedings, is very significant for the Japanese bankruptcy law system.

6. Criminal Law and Procedure

Law for the Amendment of a part of the Criminal Law and so forth — Sexual Offenses —
Law No.156, December 8, 2004 (Effective on January 1, 2005).

Background:

As of 2002, the number of penal offenses noticed by the authorities had been on the increase for nine years. In 2003, it decreased by 1.3% as a whole, but that of murder increased by 4% and that of robbery by 9.7%. Moreover, the sexual offenses noticed by the authorities in 2004 were also increasing in number; compared with ten years ago, rape saw an increase of approximately 50%, forcible indecency one of approximately 180%. In such a situation of the occurrence of atrocious crimes, a public-opinion poll showed that 55% of the Japanese felt unease at public security.

It was then a very sensational sexual offense was reported by the media. The fact revealed by the reports was that members of a group called "Super-Free," which consisted of university students and whose usual activity was the planning of parties, had raped many female participants of their parties and had been arrested for quasi-rape (June 19,

2003). The members, after their parties — for example dance parties — carried on the parties at other places like bars, where they compelled a female student to drink hard alcoholic beverages, made her intoxicated, took them somewhere out of sight of other female students, and raped her in turn. On that occasion the members assigned different roles to each of themselves, abided by which some of them took the drunken female student away from the party room pretending to look after her, some stood guard lest people should come near and find their crime, others raped her and recorded the scene for blackmailing her into keeping that secret.

On February 10, 2004 the situation mentioned above led the Minister of Justice to consult the legislative council of the Ministry of Justice about an amendment of Criminal Law, Procedure and so on. The criminal section brought this subject under deliberation and the Minister of Justice who received its report on September 8 submitted a "Bill for the Amendment of a part of the Criminal Law and so forth" to the Diet on October 12. After the discussion in the Diet, it was approved and the law was enacted. With this enactment a part of the Criminal Law, the Criminal Procedure, the Law for the Punishment of Violent Conduct and so forth, the Law for the Punishment of Organized Crime and for the Regulation of Criminal Earnings and so forth were amended.

Main Provisions:

The main provisions of this amendment concerning sexual offences are as follows;

1. Raise of the statutory penalty.

(1) Forcible Indecency and Quasi-Forcible Indecency (*kyouseiwaisetsuzai* and *jun-kyouseiwaisetsuzai*):

The statutory penalty "not less than six months and not more than seven years' imprisonment with labor" changed to "not less than six months and not more than ten years' imprisonment with labor" (Penal Code, Arts. 176, 178 [1]).

(2) Rape and Quasi-Rape (*goukanzai* and *jun-goukanzai*):

The statutory penalty "not less than two years' imprisonment with labor for a limited term" changed to "not less than three years' imprisonment with labor for a limited term" (Arts. 177, 178 [2]).

(3) Rape resulting in death/bodily injury (*goukan-chishishouzai*):

The statutory penalty "for life or not less than three years' imprisonment with labor" changed to "for life or not less than five years' imprisonment with labor" (Art. 181 [2]).

(4) Additional information:

The maximum of the statutory penalty of imprisonment for a limited term changed from fifteen years to twenty years (Arts. 12, 13).

2. Establishment of new crimes.

(1) Collective Rape (*shudan-goukanzai*):

"Whoever commits Rape or Quasi-Rape jointly in not less than two persons on the spot shall be imprisoned for not less than four years" (Art. 178 [2]).

(2) Collective Rape resulting in death/bodily injury (*shudangoukan-chishishouzai*):

"Whoever commits Collective Rape or Attempted Collective Rape if death or injury results shall be imprisoned for life or not less than six years" (Art. 181 [3]).

Editorial Note:

1. Reason for the raising of the statutory penalty:

The raising of the statutory penalty for Rape and Forcible Indecency would be attributed to the stream of the respect of women's rights which can be seen in the enactment of "Law for the Prevention of Violence by the Spouse and for the Protection of the Victim" and so on.

It was often said that the former statutory penalty of Rape (not less than two years' imprisonment with labor) was unjustly too light compared to that of Robbery (not less than five years' imprisonment with labor). As this meant that the sexual freedom of women was thought less of than property, the former statutory penalty of Rape became inconsistent with the contemporary Japanese sense of norms and consequently it was raised this time.

The statutory penalty for Forcible Indecency was also raised because Forcible Indecency contains serious sexual offenses which does not involve the carnal knowledge but is remarkably harmful.

2. Establishment of new crimes and its statutory penalties:

Though exceptionally Rape which takes a collective form was not a crime indictable upon a complaint in the way that Rape is, the statutory penalties of this two crimes were same. This had been criticized just when the "Super-Free" case happened.

The statutory penalty for Collective Rape resulting in death/bodily injury is the severest of the sexual crimes and its minimum is six years' imprisonment with labor. This minimum was fixed because it was the maximum of suspending the execution of sentence by the reduction of punishment according to extenuating circumstances. In Japan the court can reduce a punishment at most only to half using the reduction of punishment according to extenuating circumstances and the execution of more than three years' imprisonment cannot be suspended. The statutory penalty of Collective Rape leaves the door open to the suspension of the execution of sentence for those who, for example, have no criminal record and have done their best to compensate the damage they inflicted on a victim.

The maximum penalty of men's having unlawful carnal knowledge forcibly against women's will was and remains the maximum of the imprisonment with labor for a limited term. So, the amendment which we have seen is, in a word, the raising of its minimum penalty by both the raising of the statutory penalty of Rape and the establishment of the new crime.

But what significance does this raising of the "minimum" penalty have? In other words, what is the purpose of limiting the choice of the judge and what will result from it? Needless to say, it is clear that a motive of this amendment lies in the response to the public sentiment, yet this seems, by itself, insufficient for deciding what the criminal justice ought to be.

Law for Lay Participation in Criminal Trials

Law No.63, May 21, 2004 (Effective by May, 2009).

Background:

It is generally thought that there are two backgrounds for introducing lay participation in criminal trials in Japan.

Today democracy is said to have a universal value. But when it comes to justice, most people may think of the popular review of the Supreme Court's Judge as the only product of democracy in the legal system. There are, however, other forms of democratic legal systems in the world apart from this kind of review. For example, United States of America has a jury system. Moreover, there is lay participation in German and Italy. Therefore, it will be safely said that Japan carries out justice reform and has its original lay participation.

Since Japan's society today has become much more complicated, the people's way of thinking way and sense of values have become very various. Many people believe that such a trend isn't necessarily reflected in criminal courts. For example, judgments and decisions of criminal trials are so difficult and out of date that many people in Japan cannot understand them well. As a result, they do not come to regard a criminal court as close to them and easy to understand. There is less confidence concerning criminal trials.

In order to solve such problems, the reforms of justice are indispensable. Thus, Japan's Diet has created the system of lay participation in criminal trials.

Main Provisions:

1. About cases where the lay participation in criminal trials is needed:

In principle two cases are prepared (Art. 2 [1]); cases treated as death penalty or imprisonment with or without labor for life and cases where the victims are killed by intentional criminal acts and such cases are brought to a collegiate court. There is an exception. (Art. 3 [1]) The following case does not need the lay participation. This is where civilian judges (what is called *saibanin*) and their relations may face a crisis because of the participation in a criminal trial.

2. About the constitution of a collegiate court:

The system of a collegiate court demanding lay participation consists of three professional judges and six civilian judges (Art. 2 [2]). But the system consists of one professional judge and four civilian judges when the accused admits the facts charged and the parties concerned have no objection and the court judges such a situation to be reasonable.

(Art. 2 [2], conditional clause).

3. About the authority and decision of professional judges and civilian judges:

The decision whether the accused is guilty or not and the judgment of sentencing depends upon the approval of the majority of the collegiate court composed of professional judges and civilian judges. Moreover, that approval needs the support of both more than one professional judge and more than one civilian judge (Art. 67).

Only professional judges are tasked with the interpretation of laws and the judgment of procedure (Art. 68).

4. About the qualification and selection of civilian judges and so on:

First of all, every year lists of candidates for civilian judges are made by extracting at random from voters for the House of Representatives. Then, civilian judges are selected from the lists randomly (Art. 13).

Those who are regarded as unfit, forbidden occupations, representing the danger of leading to unfair trials ore are regarded as unsuitable by the parties concerned cannot be civilian judges (Arts. 14–15).

Those who have grounds for declining can decline the request to serve as a civilian judge (Art. 16).

Civilian judges are put under an obligation to appear in court on a fixed day for the trial and observe confidentiality (Arts. 52, 63 [1], 66 [2], 70 [1]).

In case of neglecting such obligations, *Saibanins* are dismissed (Art. 41).

Civilian judges are paid daily allowances and travel expenses.

5. About trial procedure demanding lay participation:

Carrying out the procedure of reorganization before a public trial is a duty (Art. 49).

Civilian judges as well as professional judges can perform examinations of a witness and put questions to the accused (Arts. 56, 59).

6. Others provisions:

Entreaties and threats to civilian judges and the leakage of secrets are objects of punishment (Arts. 77–79).

When employees become civilian judges, the employers are pro-

hibited from firing the employees or doing them harm for this reason (Art. 71).

It is prohibited to reveal information which can specify a civilian judges' name and so on (Art. 72).

It is prohibited to contact civilian judges regarding cases in which they are involved (Art. 73).

Editorial Note:

In order to increase national confidence in criminal trials, the system of civilian judges has been established, but there are some problems.

Most people are almost entirely ignorant of jurisprudence, especially criminal laws, and so feel uneasy about the criminal court where they will take part. Concretely speaking, they have practically no self-confidence to discuss and perform a trial with professional judges. The uneasiness may bring about the failure of the court. Therefore, adequate training in criminal trials for amateur judges is necessary.

Some Japanese people feel ill at ease about the future of their jobs after they themselves have become *saibanins* in spite of the provision which assures the employment. They think that being selected as a *saibanin* actually will do them much harm. Therefore, more effective measures to guarantee a job's status should be taken.

Moreover, a further movement of enlightenment for the system of *saibanin* is needed. Rather few people understand the true sense and effectiveness of it.