of the protection of the whole shareholders' interests, if there are some special reasons to justify the warrant's issuance, for example, if the company shows that a hostile bidder does not reasonably intend to manage the company, and acquisition of the managerial control by him might bring the company damage difficult to recover, the preliminary injunction of the warrant's issuance affecting who has the managerial control can not be permissible.

Editorial Note:

In the M & A context, when there is a conflict concerning managerial control, the issuance of the new shares to the third parties was sometimes so far used in Japan in order to dilute a hostile bidder's stake. In this case, the courts took the main purpose rule (*shuyo mokuteki rule*) that the issue of the new shares for the purpose of the dilution of the specific shareholders' stakes and the maintenance of the control of the incumbent managers was an unfair issuance. However, it is not clear whether this rule can apply to the warrant's issuance.

The case of March 23, 2005 importantly clarified that this rule could apply to the case of the warrant's issuance, as well and the bidder's appeal was approved. Furthermore, it is meaningful that the four categories of the justified warrant's issuance were provided from the viewpoint of the whole shareholders' interests.

8. Labor Law

X v. Kansai Medical College
Supreme Court 2nd P.B., June 3, 2005
Case No. (*jyu*) 1250 of 2002
1900 HANREI JIHO 168; 1183 HANREI TAIMUZU 231

Summary:

In a law suit in which the father of a deceased trainee doctor demanded the payment of the difference between the minimum wage

and what the son had been actually paid, the Supreme Court held that the trainee doctor in a university hospital shall be considered as "employee," and that the difference shall be paid.

Reference:

Article 9 of Labor Standards Law; Article 2, Item 1 of Minimum Wage Legislation.

Facts:

A, who was the son of X (plaintiff, *koso* respondent, and *jokoku* respondent), passed MCAT (Medical College Admission Test) on April 16, 1998 after he graduated from the Medical College that Y (defendant, *koso* appellant , and *jokoku* appellant) managed. He was registered as a doctor on May 20. As a trainee doctor, he had taken clinical training at the hospital that Y had managed since June 1. He died on August 16.

During the clinical training period, he was engaged in medical practices etc. everyday, excluding the day the hospital closed. He usually took blood samples and administered an intravenous drip from about 7:30. And he observed and assisted the examinations of the coach doctor in the morning. He often examined a patient in an interview and made a prescription. He assisted the examination of the coach doctor in the afternoon, and when an operation was performed, he observed it. During the evening, he administered an intravenous drip and assisted his coach doctor, and went home around 22:00. He stood by in the hospital when the coach doctor stayed at the hospital as a duty.

During the clinical training period, Y had provided A with a scholarship of 60,000 yen and some allowances every month. The allowances had been withheld.

X claimed against Y the difference between the minimum wage and what he had actually been paid, because Y paid him only the salary that fell below the minimum wage though he was a "laborer" that fell within Article 9 of Labor Standards Law (hence he was a "laborer" within Article 2, Item 1 of Minimum Wage Law).

In Osaka District Court and Osaka High Court, the court accepted X's insistence. That is, the "employee" that Labor Standards Law

defined was "anyone who supplies his/her labor for another one under direction or concrete instructions." Indeed, the medical practice that he did during the clinical training period had an aspect of volunteer work for training. However, the coach doctor directed and supervised him, and he was not able to refuse the instructions from the coach doctor. Moreover, the money that he had received had tax withheld as employment income. Therefore, he was a "employee" falling within Article 9 of Labor Standards Law.

Opinion:

Jokoku appeal dismissed.

Passing MCAT, a trainee doctor is registered as a doctor and receives a license from the Minister of Health and Welfare. That is, trainee doctors are qualified to do medical practice as a business. Indeed, clinical training aims to improve trainee doctors' capability, so it has an educational aspect. On the other hand, clinical training is supposed to include doctors' medical practices etc. under the instructions of coach doctors. And, when trainee doctors are engaged in medical practices, these practices inevitably have the character of the accomplishment of labor. When these practices are done under the direction and supervision of a hospital, a trainee doctor is a "employee" within Article 9 of Labor Standards Law.

In this case, A was engaged in medical practice under instructions of the coach doctor everyday excluding the day the hospital closed and the time and place in which he had to be engaged in this practice had been decided by Y. Moreover, Y paid him money under the pretext of scholarship, etc., and the money was withheld as a salary. Then, he is a "employee" falling within Article 9 of Labor Standards Law, so he is a "employee" within Article 2, Item 1 of Minimum Wage Law because he offered the labor under direction and supervision of Y. Therefore, Y had to pay him the same amount as the minimum wage depending on Article 5(2) of Minimum Wage Law.

Editorial Note:

This is the case that whether the trainee doctor who engaged in medical practice etc., while receiving clinical training in the university hos-

pital is a worker becomes an issue of law.

Article 9 of the Labor Standards Law defines a "employee" as the person who is employed for the business or the establishment "regardless of the kind of occupation" and is paid wages. At this point, the Courts have considered synthetically the form of labor and the character of reward, etc. A report in 1985 concerning this problem said the main factors of the criteria whether a man/woman was a "employee" was work under direction and supervision (possibility of refusing request of work, presence of direction and supervision for working and time and place restraint) and the character of reward, and that supplementary factors were the amount of reward and the way of tax management about reward.

Up to now, the Supreme Court has not shown a general opinion. But in some cases, the Supreme Court judged as follows (for example, the case of Yokohama-Minami labor standards inspection office, 28 November, 1996). It is important whether he/she works under direction and supervision of others. And, the methods of calculating reward, etc. are reinforcing factors.

This judgment is in line with past cases because it focused on the point that the labor was under direction and supervision. Concretely, it examined whether the time and place restraint and direction and supervision existed, and if so, the degree of them.

9. International Law and Organization

X et al. v. Japan
Tokyo High Court, June 23, 2005
Case No. (*ne*) 4212 of 2001
1904 HANREI JIHO 83

Summary:

Claim for compensation against the Government of Japan by three family members of a Chinese national who had been forced to work in a