

THE STUDY INTO ENGLISH MARINE INSURANCE LAW AND PRACTICE IN JAPAN

—Especially the Translated Literature of
English Marine Insurance Law—

Prof. Dr. Teruzô Katsuragi
Professor of Marine Insurance
at Waseda University, Tokyo and
Lecturer on Marine Insurance
at Keio University, Tokyo

I. Marine Insurance Policy in Current Use in Japan

In Japan, both the cargo policy and the hull policy are prepared in two languages—Japanese and English. The cargo policy in Japanese is used exclusively for coastwise cargoes, and is, needless to say, construed and governed by Japanese law and usage. The cargo policy in English, on the other hand, is used for export and import cargoes, and also for cargoes transported between foreign countries, even where a Japanese firm effects insurance on such cargoes with a Japanese marine insurance company. The hull policy in Japanese is used in almost all cases for ships except for builders' risks insurance for which the hull policy in English is used.

The terms of the policy in Japanese are not the same as those in English. They are, in fact, considerably different from each other, the latter not being a mere translation of the former. The policy in Japanese is a kind which is quite unique as it conforms to the domestic laws and practices, while the policy in English is a faithful copy of the Companies Combined Policy (Cargo) or the Companies Combined Policy (Hull) which is drawn up by the Institute of London Underwriters.

The special clauses attached to the policy in English are exactly

the same as the so-called "Institute clauses" drawn up by the Institute of London Underwriters.

The only difference between the Companies Combined Policy drawn up by the Institute of London Underwriters and the Japanese policy in English lies in the wording of the clause regarding the binding effect of the policy; the one in the Companies Combined Policy reads as follows:

"And it is agreed by us, the assurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street or in the Royal Exchange, or elsewhere in London."

whereas, the one in the Japanese policy in English runs as follows:

"And it is agreed that this Writing or Policy of Insurance shall be of as much Force and Virtue as the surest Writing or Policy of Insurance made in London."

In addition, in the Japanese policy in English is inserted the following governing clause:

"This insurance is understood and agreed to be subject to English law and usage as to liability for and settlement of any and all claims."

Marine insurance business is an international business; hence there may be such a case as a Dutch merchant's merchandise which is to be sent from the U. S. A. to Germany on a french ship is insured by the New York agent of a Japanese marine insurance company. Further, irrespective of whether the assured is a Japanese or a foreigner a Japanese marine insurance company issues a cargo policy in English on the merchandise which is shipped from Japan to a foreign country or vice versa.

In those cases, if a Japanese marine insurance company uses a policy in Japanese, those foreign shippers who have no knowledge of Japanese language or of Japanese law and suage, may not be

willing to effect insurance with a Japanese marine insurance company, and the foreign consignees in turn may decline to receive a policy in Japanese. Moreover, even where Japanese marine insurance companies use a policy in English, if the policy itself is construed and governed by Japanese law and usage, foreign shippers may hesitate or decline to effect insurance with Japanese marine insurance companies.

The marine insurance market in London was formed as far back several centuries ago, and the practices of marine insurance which then began to be established there were subsequently followed by the world marine insurance markets one after another with the expansion of the British control over the international marine transportation. If, therefore, an insurer issues a policy which has long been used in London, with the Institute clauses attached, merchants and shipowners of all over the world would naturally feel little or no apprehension about effecting insurance under such policy. That is the very reason why Japanese marine insurance companies have been using a policy in English for international transportation.

II. Necessity of Study into English Marine Insurance Law and Practice in Japan

As Japanese Commercial Code in which the marine insurance contract law is incorporated was originally drawn up on the model of German Commercial Code, Japanese scholars of commercial law are required to make studies of German commercial law. In so far as marine insurance law is concerned, however, it is of utmost necessity for scholars and marine insurance men to study English law because, as has already been pointed out, the policy in English has long been used in our country. Duties of a scholar of marine insurance law are, I believe, not only to pursue purely academic researches into marine insurance law, but also to offer advices to

interested people on proper constructions and interpretations of the clauses in the marine insurance policy which is the basis of an actual insurance contract. In order to achieve this purpose, it is of vital necessity to study English marine insurance law and practice.

III. Japanese Works on English Marine Insurance Law and Japanese Translation of British Literature

For a Japanese who aspires to study English marine insurance law, there seem to be two different approaches: one is to grasp the essence of English marine insurance law through careful reading of many law cases concerning English marine insurance, as well as of books and articles written by British scholars and experts on English marine insurance law; the other is to translate the literature on English marine insurance law into Japanese.

In Japan, scholars in the field of marine insurance law have made comments on English law in their books or made public their articles on English law in academic journals after years of intensive study into numerous law cases and much literature on English marine insurance; incidentally, I have published more than 100 articles on English marine insurance law in the academic journals here. As of April 1974, there are, as literature available in book form, six Japanese works written exclusively on English marine insurance of which three are mine. These six books are as follows:

1. T. Katsuragi: Study on Maritime Perils in English Law, 1949-1950 (3 vols. 1, 250 pages).
2. T. Katsuragi: An Interpretation of Standard Cargo Policy, 1st ed., 1951, 5th and revised ed., 1969 (533 pages).
3. Yoshisaku Kato: Formation and Development of Lloyd's Policy, 1953 (250 pages).
4. T. Katsuragi: Study of English Hull Policy, 1962 (482 pages).
5. Toshiaki Kamei: Insurance Industry in England, 1965 (285 pages).

6. Eiichi Kimura : Formation and Development of Lloyd's Policy,
1968 (320 pages).

On the other hand, there are quite number of versions of English books on marine insurance. In Japan, while all of those who are working with marine insurance companies recognize the utmost necessity of the study of English marine insurance law and practice, there are not so many people who can be said to have a good command of English sufficient for speedy reading and full understanding of the original English texts on marine insurance law and practice, despite the fact that for Japanese boys and students English is a required subject as a first foreign language through from junior high school to university. As a natural consequence, most of those who are working with marine insurance companies, trading firms and shipping companies tend to lean heavily on Japanese versions of English books on English marine insurance law and practice. In response to this demand, some scholars of marine insurance have long years taken up the task of translating English books on marine insurance into Japanese. It would not too much to say that practically all the famous books on English marine insurance published in England have already been translated in this country. Incidentally it might be mentioned that when the translation of "Arnould on the Law of Marine Insurance and Average" 14th ed., 1954 was completed by myself in 1956-1958, I had the pleasure to be given words of thanks and praise for this hard work by marine insurance people and students interested here.

Given below is a complete list of translated works on English marine insurance in chronological order, of which 8 works are mine.

(translators)	(original titles)
1. Masamichi Kato :	Chalmers and Owen, Marine Insurance Act, 1906, 1st ed., 1907.

2. Ikusaburo Shiina : William Gow, Marine Insurance 4th ed., 1909.
3. Sainosuke Hashimoto : Victor Dover, Handbook to Marine Insurance, 2nd ed., 1927.
4. T. Katsuragi : Templeman and Greenacre, Marine Insurance ; Its Principles and Practice, 4th ed., 1934.
5. The Tokio Marine & Fire Ins. Co., Ltd. : The Institute of London Underwriters, Institute Handbook on Marine Contracts, revised ed., 1950.
6. T. Katsuragi : Arnould on the Law of Marine Insurance and Average, 14th ed., by Lord Chorley, 1954.
7. T. Katsuragi and T. Imaizumi : Chalmers' Marine Insurance Act, 1906, 5th ed., by J. M. Holden and C. B. Drover, 1956.
8. T. Katsuragi, K. Osawa, T. Imaizumi and A. Tsuboi : Arnould on the Law of Marine Insurance and Average, 15th ed., by Lord Chorley and C. T. Bailhache, 1961.
9. T. Katsuragi, K. Ohtani, K. Ido, T. Hirano, H. Shimoyama and N. Nishimura : Historic Records Working Party of the Insurance Institute of London, Reports H. R. 3, 45,—Institute Time Clauses—Hulls and Institute Cargo Clauses, 2nd ed., 1964.
10. T. Katsuragi and T. Imaizumi : Chalmers' Marine Insurance Act, 1906, 6th ed., by E. R. Hardy Ivamy, 1966.
11. T. Katsuragi, T. Yokoh and K. Mori : E. R. Hardy Ivamy, General Principles of Insurance Law, 1966.
12. T. Katsuragi, K. Ohtani and K. Tsubaki : E. R. Hardy Ivamy, Marine Insurance, 1969.

AZUSA ONO KOKKEN RONKÔ AND RÔMA RITSUYÔ

compiled and edited by
Prof. Masao Fukushima,
Prof. Kichisaburo Nakamura, and
Prof. Tokuji Satô,

published by
The Institute of Comparative Law,
Waseda University, Tokyo, 1974.

1. Preface.

Azusa Ono (1852-1886), a colleague of Marquis Shigenobu Ohkuma (1838-1922) who was the founder of Tokyo Senmon Gakko (now Waseda University), is said to have laid the spiritual foundation of the University. He played a very important role in encouraging young talents with his philosophy of “the Independence of Learning” (academic freedom), in the formative era of modern Japan. He was an intellectual leader of his times, remaining, throughout his short life of 34 years, out of “bureaucratism” i.e. the Bureaucrats and the government schools. He was, so to speak, a Japanese “great Commoner” who devoted himself to the pursuit of learning and to political activity. He was called a “martyr” by Marquis Ohkuma because he led a sober, hard working life struggling with adversity, and, coupled with his unblemished character, he exerted an educative and lasting influence on his colleagues and students.

He assumed the role of a beacon in the period of confusion after the Meiji Restoration of 1868. Founded on a sound positivism, his learning bore the characteristics of clear judgment on contemporary

problems, coupled with original contributions of his own. During his stay in the United States and European countries, during the years 1871-1874, he studied European institutions and the principles of democracy, and further, their application to contemporary Japan with particular reference to its modernization. The research so conducted bore rich fruit in his "Kokken Hanron" (An Introduction to the Constitutional Principles in Modern Civilized Nations) and "Minpô no Hone" (The Principles of Private Law) (which was never completed) within ten years that followed. He died young, because he was completely exhausted from his devoted application to these pursuits. But his academic achievements attainable only by a most distinguished social scientist in the Meiji era are immortal, and it is the natural consequence that many works on him have appeared since.

It was a transitional stage, both politically and legally, in the history of modern Japan when he wrote, at the age of 24, his "Kokken Ronkô" (An Essay on the Constitutional Principles in Modern Japan) and "Rôma Ritsuyô" (The Pandects: A Treatise on the Roman Law), both in 1876. It was also a time when the Imperial Order for the Establishment of the Diet (1875) had just been issued, and when there was wide-ranging discussion about the direction Japan should head for. In these treatises he proposed with great boldness what the coming constitution of Japan should be like. Notwithstanding their basic and historic importance in Meiji thought, they were never published although their existence was known. We only had access to a quotation from the "Introduction" to the "Rôma Ritsuyô" in "Ono Azusa" written by Shin'nojô Nagata in 1897, and these works were considered to have been lost.

Until quite recently it was not realised that manuscripts of these two treatises were kept in the Ministry of Justice Library. On their discovery, we planned to make these enduring masterpieces

available to the academic world in general. We have here literally reproduced the full text of his “Kokken Ronkô” and “Rôma Ritsuyô” as well as “Doshô Yoron” (A Discourse on the Constitutional Institution in Japan) which he wrote for the “Kyôzon Zasshi” in 1875. They are accordingly furnished as valuable materials for the study of Meiji thought today, after the lapse of nearly a century.

2. The Outlines of the Present Book.

- (1) The contents are as follows.
 - (a) Preface by the editors.
 - (b) Kokken Ronkô (An Essay on the Constitutional Principles in Modern Japan), Books I and II, written in 1876.
 - (c) Doshô Yoron (A Discourse on the Constitutional Institution in Japan), written in 1875.
 - (d) Rôma Ritsuyô (The Pandects: A Treatise on the Roman Law), Book I to III, written in 1876.
 - (e) Explanatory Notes by the editors:
 - (i) Ono's Views of “the Constitution” and “the Civil Law”, by Kichisaburô Nakamura, Professor of Law, Waseda University.
 - (ii) On “Kokken Ronkô”, by Masao Fukushima, Visiting Professor of Law, Waseda University.
 - (iii) On “Rôma Ritsuyô” Compiled and Translated by Azusa Ono, by Tokuji Satô, Professor of Law, Waseda University.
 - (iv) Ono's Views and Their Characteristics Seen from the Notes to “Rôma Ritsuyô”, by Masao Fukushima, Visiting Professor of Law, Waseda University.
- (2) Analytical Notes on the Work.
 - (a) “Kokken Ronkô”, Books I and II.
 “Kokken Ronkô”, the parent work of the erudite “Kokken