This is a Comparative Law course that will discuss differences between the Civil Law and Common Law systems and various areas of Japanese substantive and procedural law vis-à-vis American law in the same areas. The readings for each class are set forth under each class heading along with a summary description of the subject matter to be discussed in the class. Students who wish to contact me prior to the start of the Week One week may do so by email at [email protected]. The text for the course is Goodman, The Rule of Law in Japan: A Comparative Analysis, Revised Third Edition (Kluwer Law International, 2012), referred to below as Goodman, The Rule of Law in Japan.

For students who desire additional readings on any subject or subjects I will be happy to provide citations for additional source materials.

I – Foundations of the Japanese legal/ Judicial system

Common Law v. Civil Law

A. Historic basis for Japanese Law / Comparison of law in Pre-Constitutional (“Edo” or “Tokugawa”) Japan vs. Common Law tradition and Stare Decisis

B. Japanese and US Constitutions
   a. Separation of Powers – vertical and horizontal
   b. Application to private party relations / Good Faith / against good morals
   c. Law making in Japan
   d. Judicial Review

C. The Japanese and US judicial systems
   a. Structures of the Court systems
   b. Judges Appointments / independence

Goodman, The Rule of Law in Japan pgs 15-24; 32-34; 50-61; 66-69, 74-78; 94-99; 103-109

II – Judicial Review, Individuality and Family Law
A. Circumstance decisions / PM set aside authority

B. Judicial Review cases in Japan – standards
   i) Apportionment
   ii) Overseas voting
   iii) Nationality Act
   iv) Out of Wedlock Inheritance
   v) One surname Requirement
      a. The Family Register system
   vi) Female waiting period to remarry
      a) Equality (?)

C. Family Law
   i) Hague Convention on Civil Aspects of Child Abduction / Japan’s accession and statute
   ii) Posthumous In Vitro Fertilization
   iii) Surrogacy
   iv) Best Interests of the Child


III – Contracts and Corporations

A. Tokugawa – historic basis for legal concepts

B. Nature of Contracts

C. Good Faith in Civil Law (Japanese Law)
D. Restrictive markets and effect on Japanese contract law
   a. Lifetime employment
   b. Consumer contracts
   c. Distributorships

E. Corporate structure
   a. Classical
   b. 21st Century

F. Corporate

G. Governance
   a. Japanese vs. US theory of corporate function
   b. Boards of Directors
   c. Change of control
      i. Proxy contest
      ii. Hostile takeovers and defense


IV – Litigation and Renunciation of War

A. Functions of Civil Litigation Systems /
   a. Form follows function
   b. Production vs. Discovery
   c. Adversary vs. Inquest – hybrid (?)

B. Function of Criminal Litigation System
a. Guilt / innocence

b. Review of Prosecutor’s Determination of guilt ( )

c. Saiban’in and unanticipated changes

C. Administrative Law Systems

a. Common Law / Civil Law

b. Standing

D. Renunciation of War Clause in Constitution

a. Historic development after 1947

b. Legal Challenges

c. Cabinet Legislation Bureau

d. Amendment vs. Interpretation

i. Prime Minister Abe

ii. United States Role

iii. Cabinet Declaration (summer 2014)

1. Meaning for Article 9

2. Meaning for other Articles in Constitution

3. Meaning for US

Goodman, The Rule of Law in Japan 395-410; 464- 482; 267-274.