

---

## Various Issues Concerning Labor Legislation Relating to Welfare Benefits

*Takayasu Yanagiya*

*Kwansei Gakuin University*

The main purpose of the paper is to clarify the problems surrounding the legal aspects of welfare benefits and the methods of tackling them, matters which, unlike work hours and wages, have received relatively little attention from the point of view of labor law. It proceeds first by considering how welfare benefits in general are constrained by national legal requirements, by company regulation in the form of Work Rules or Collective Agreements, by the restrictions of individual employment contracts and by limits on discretionary, paternalistic grants. It goes on to consider three specific topics which have given rise to the most disputes and legal precedents, such as company housing and dormitories, collective life insurance schemes, and grants for education and training. It concludes with thoughts on legislative intervention which might be necessary in future.

### I. Introduction

There has hitherto been a good deal of discussion in the literature about particular forms of welfare benefits provided by employers that have given rise to a good number of lawsuits, but very little about the legal status of welfare benefits in general.<sup>1</sup> This reflects the low status given to welfare benefits in labor legislation and in legal discussions of the same, in spite of the functional importance of such benefits in actual practice. These fringe benefits can take a wide variety of forms, and their substance—who offers them and how—can vary greatly over time (see, for example, the recent adoption of the cafeteria system, and the growth of out-sourcing of welfare activities). In this paper I want to look both at the legal problems surrounding welfare benefits in general, and at some specific forms of benefit which have given rise to most legal conflict and have served to establish legal precedents.

---

<sup>1</sup> For early examples of exceptions to this trend, Tatsuo Nishii, “Welfare Benefits” in *Salary and Welfare*, the collected works of *Business Law*, 20 vols., ed. Teruhisa Ishii, Toru Ariizumi and Yoshio Kanazawa (Tokyo: Diamond, Inc., 1965), 17:201; Nobuyoshi Shimada, *Company’s House, Welfare and Mutual Benefit*, vol. 20 of *Compendium of Labor Law Practice*, (Tokyo: Sogo Rodo Kenkyujo, 1972); Noriyuki Hikota, “Welfare Benefits, Health and Safety” in *Work Regulations: Their Jurisprudence and Practice*, ed. Tadashi Hanami and Yoshiro Fukase (Tokyo: Japan Institute of Labour, 1980), 423. More recently, Hiroshi Oyama, “Changes in Employment Practice and Company Welfare” in *Changes in Employment Practices and the Law*, ed. Joju Akita (Tokyo: Hosei University Press, 1993), 129; Teruhisa Kunitake, “The Legal Situation Regarding Worker Benefits,” in *The Study of Labor Protection Legislation*, ed. Hiroyoshi, Ito and others (Tokyo: Yuhikaku, 1994), 311; Keiji Sato, “Employee Welfare Measures and the Problem of Guaranteeing Recipient Rights” in *Lectures on Labor Law in the 21st Century*, 8 vols., ed. Japan Labor Law Association (Tokyo: Yuhikaku, 2000), 7:263.

## II. Various Issues Concerning Welfare Benefits in General and Labor Legislation

### 1. The Legal Definition of Welfare Benefits

The usual interpretation of welfare benefits would go somewhat as follows: benefits and services, and the facilities to provide them, offered by the employer as part of a contractual employment relationship, originally on a discretionary, goodwill basis, but sometimes in furtherance of a legal obligation, to workers and their families in order to improve their level of welfare or their work capacity. There is in fact no legal definition of the term in labor legislation, although it is used within laws, and matters relating to it are found in guidelines and exemplary listings.<sup>2</sup> Where the words are used it seems that something like the definition given above is assumed. In statistics of labor costs, it is usual to make a distinction between the legally required expenditures on insurance and pension contributions and expenditures which are at the discretion of the employer.<sup>3</sup> In the discussion which follows I shall be primarily concerned with the latter, discretionary type.

In legal terms, welfare benefits are treated in private law, not as part of the employment contract, but, in the case of contributions for private insurance schemes, for instance, as conforming to the law of gift contracts, in the case of loans for house purchase, etc. to the law of monetary consumer finance contracts, in the case of residence in company housing to the law of usufruct loans or cash rental contracts. As a result of their becoming associated with an employment contract, however, these contractual relationships become regulated through the filter of labor law. From a labor law point of view, it is possible to consider the way in which welfare benefits are constrained by national legal requirements, by company regulation in the form of Work Rules or Collective Agreements, by the restrictions of individual work contracts, and by limits on discretionary, paternalistic grants.

### 2. Welfare Benefits as Subject to Legal Constraints

Welfare benefits resemble wages and work hours as being a part of the conditions for supplying labor, built into employment contracts but the degree to which they receive protective guarantees under labor law is much less than in the case of those other two features. Nevertheless, insofar as they are discretionary goodwill gifts of the employer, there are legal constraints designed to frustrate any arbitrary abuse by the employer, of benefits in general and of certain types of benefit in particular. For example, in articles 16 and 17 of the Labor

---

<sup>2</sup> For instance, see Article 6, No. 2 of The Equal Employment Opportunity Act, Article 1 of Ordinance for Enforcement of the act, Administrative Interpretation (October 11, 2006, *Rokoku* No. 614), Article 3 and 11 of Part-Time Work Act and Article 4 of Act for Securing Manpower for Small and Medium-Sized Enterprises.

<sup>3</sup> For instance, Ministry of Health, Labour and Welfare's General Survey on Working Conditions, Nippon Keidanren (Japan Business Federation)'s Survey on Corporate Welfare Expenditures, and Rengo (Japanese Trade Union Confederation)'s Survey on Trends in the Provision of Welfare Benefits.

Standards Act it is forbidden to attach to the provision of loans as a welfare benefit, any such conditions as fixing in advance sums payable to the employer for breach of contract, or indemnity for damages, and forbidding also any offsetting of the sums lent against wages. Likewise Article 18 prevents any system of loans as a welfare benefit from being used as a compulsory savings scheme, and the provisions governing the annual paid holiday (Article 39) can be seen as originating in a concern for welfare benefits. Nevertheless there are some provisions which give rise to doubt as to whether they do become subject to labor law constraints in the same way as other conditions of work. We consider the chief of these below.

(1) Provisions Explicitly Specifying the Employers' Obligations and the Compulsory Minimum Content of Work Rules

The Labor Standards Act (henceforth LSA) lays down a number of rules regarding work conditions beginning with its very first article (See also Articles 2, 3, 13 and 15), but it is open to question whether welfare benefits are included in work conditions as there specified. It is most commonly assumed that they do, that the word "work conditions" includes also welfare benefits in general.<sup>4</sup>

Consequently work conditions would embrace all those contractual relationships generated by welfare benefits that were listed earlier. However, welfare benefits are not specified as one of the work conditions which an employer must clearly state when concluding an employment contract. (Article 15 and the accompanying Ordinance for Enforcement, Article 5.)

That Article 5 of the Ordinance for Enforcement which provides a limiting list of the welfare benefits which must be clearly specified included, until their amendment in 1954, the following two items:

"Rules concerning all those matters which apply to all employees in the establishment," and "Rules concerning dormitory provisions," and it was generally assumed that the first of those would include all welfare benefits. Subsequently it was deemed unnecessary to include these two items in the narrow definition of work conditions and so they were eliminated.<sup>5</sup> Nevertheless, in Work Rules, etc, for welfare benefits which are granted on certain prescribed conditions, if they come under one of the items which are still in the list they will be specified. For example assistance with training would come under "Matters relating to skill training," long service rewards would come under "Matters relating to rewards and punishments." Also, as will be discussed later, among welfare benefits, i.e. money grants,

---

<sup>4</sup> Labour Standards Bureau, Ministry of Health, Labour and Welfare, ed. *Revised and New Edition: Labour Standard Act*, 2 vols. (Tokyo: Romugyosei, 2005), 1:63, 67, 75.

<sup>5</sup> Labour Standards Bureau, Ministry of Labour, ed. *Revised Edition: Labour Standard Act*, 2 vols. (Tokyo: Romugyosei Kenkyujo, 1958), 1:163-64. Further, work conditions as specified in the former Article 93 of the Labor Standards Act were transferred to Article 12 of the Labor Contracts Act as implemented in March 2008. As with other provisions regarding work conditions in Labor Contracts Act (Articles 1, 4, 7, 8, 9, 10) it is generally considered that welfare benefits in general are included.

for which the grant conditions are clear so that they can be included in wages, any allowances such as housing or family allowances which are paid regularly at least once a month (Article 24, Part 2 of the LSA), shall be included in the wages which have to be clearly specified in writing. (31 March 1999, *Kihatsu* No. 168) However, there is no obligation to specify any other welfare benefit, nor in the case of such other benefits, does any deviation of actual practice from what is specified justify an immediate breaking off of the employment contract such as is envisaged in Article 15, Part 2 of the LSA (27 November 1948, *Kishu* No. 3514).

There is also a difference between what has to be specified in work conditions according to Article 15 of LSA, and what has to be specified when recruiting for employment. In the latter case there are no limits set to the work conditions which must be specified (Article 5-3, Part 1 of the Employment Security Act and Article 4-2 of Ordinance for Enforcement of the act).

It is a different matter when it comes to what has to be specified in work rules as regulated by LSA Article 89. If a welfare benefit comes under No. 10, “stipulations applicable to all workers at the workplace concerned on matters other than those contained in the preceding items,” it would be conditionally essential to spell it out in Work Rules.<sup>6</sup> In actual practice it seems that this is what is often done, either in the main Work Rules themselves or in some supplementary appendix.<sup>7</sup> However, because welfare benefits are often not specified, even if they are schemes which apply to all workers, if they are not spelled out in Work Rules according to the prescriptions of the LSA, it can often happen that they become an offence under the LSA and if they are only regulated by unapproved rules internal to the company, their legal status may be in doubt. Such cases are quite frequent.

## (2) Welfare Benefits in Relation to Wage Regulation

As argued above, welfare benefits may be deemed to be included in the concept of working conditions, but if one does so, the question arises as to how they are differentiated from wages which are similarly dispensed by the employer. Wages, as a “reward for labor” (Article 11 of the LSA) are regulated in that LSA with respect to modes of payment and expiry terms, and they are the basis for calculating average wages and premiums for overtime and so on. Wages are the subject of the Minimum Wage Act and other labor protective legislations. If welfare benefits were to be included within wages, they would be subject to the same regulations. However, welfare benefits are not something which the employer has a taken-for-granted obligation (a debt) to pay under a contract of employment, they are something which are given as a grace and favor at the discretion of the employer (and have their legal basis in something other than the employment contract (labor supply contract) of

---

<sup>6</sup> Labour Standards Bureau, Ministry of Health, Labour and Welfare, ed. *Revised and New Edition: Labour Standard Act*, 2 vols. (Tokyo: Romugyosei, 2005), 2:881.

<sup>7</sup> Article 89, Part 2 was eliminated in the 1998 revision. The limitation on regulations which could be set separately from the basic Work Rules was thus removed.

the Civil Code. Such payments as family allowances and housing allowances which are generally seen as a part of wages, being essentially discretionary grace and favor grants (to be legally treated under the concept of gift contracts) can be included in the notion of welfare benefits. Thus welfare benefits and wages have a different legal basis from each other both in their nature and their origins. However, there is a tendency in administrative interpretations to expand the concept of wages (reward for labor) and to include discretionary welfare payments in the concept of wages, provided the amount and timing of payments is specified in Work Rules or a Collective Agreement. (September 13, 1947, *Hakki* No. 17). The basic thinking is that if the conditions of payment and the amount are clear and payment can be demanded then such payments should be protected just as much as wages. This is not to say that this applies to every payment which meets these conditions. Even though the conditions for payment may be clearly specified, grants to assist in self-directed training, for example, or supplementation of premiums for participation in voluntary life insurance schemes cannot be treated as wages.<sup>8</sup> And, in reverse, hourly or monthly payments such as performance-linked bonuses for which the amount cannot be specified in advance cannot be denied to have the character of wages. What is or is not wages, has to be decided case by case not only with reference to the conditions under which the payment is made but also considering the nature of every payment.<sup>9</sup> The same may be said of other payments which are differentiated both from wages and from welfare benefits such as business expenses—reimbursements for travel or sales expenses. These distinctions among wages, welfare benefits and business expenses have some importance when dealing with such questions as a cut-off in housing allowances during a strike, or the treatment of grants for personal study.

### (3) Regulations Viewed from the Standpoint of Equality of Treatment

Welfare benefits are also affected by regulations concerning equality of treatment. Article 3 of LSA (An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker) is, as already noted, generally considered to apply also to welfare benefits in general. The same applies in other pieces of legislation. The Equal Employment Opportunities Act (Act on Securing, Etc. of Equal Opportunity and Treatment

---

<sup>8</sup> The Administrative interpretation holds that the following are welfare benefits not included in wages: (i) Welfare benefits broadly understood (provision of housing or meals), (ii) Provision of facilities for workers' personal enjoyment (bathing or sports facilities), (iii) Benefits whose cost to the employer may vary from worker to worker (Free passes given to employees by railway companies), (iv) Assistance with workers' discretionary expenditures (supplementation of worker contributions to insurance and savings schemes). See Labour Standards Bureau, MHLW, *Revised and New Edition: Labour Standard Act*, 158ff. in note 4.

<sup>9</sup> For examples of a judgment relating the character of wages, see Yoshito Yamamoto, "The Legal Character of Wages," in *Lectures on Modern Labor Act*, 14 vols, ed. Japan Labor Law Association (Tokyo: Sogo Rodo Kenkyujo, 1983), 11:2ff.; Society for Labour Act, University of Tokyo, ed., *Annotation of Labor Standard Act*, 2 vols. (Tokyo: Yuhikaku, 2003), 1:170ff.

between Men and Women in Employment) from the moment of its activation in 1985 included welfare benefits in its purview along with wages and hours of work as “occupying an important place in the concept of working conditions” (former Article 10 of the act).<sup>10</sup> However, hitherto, among the variety of welfare benefits it has been only those which are granted under the clear conditions and have considerable economic value such as cash grants for house purchase which have been specified as not to be subject to discriminatory allocation as between the genders (Article 6 of the act and Article 1 of the Ordinance for Enforcement of the act).<sup>11</sup> Moreover, in this law too, the assumption is that there is a difference between wages and welfare benefits of the sort described above *a propos* administrative interpretations.

However, given the Japanese system of long-tenure employment, all of these provisions, whatever the institutional purpose and the function of the legislation have been made on the assumption that they apply to regular workers. All others—part-time workers, Temporary agency workers, contract workers, self-employed workers with exclusive contracts—have tended to be excluded. However, with the increase in numbers of such workers, the concern with providing decent conditions of work has made the question of welfare benefits for such workers (including those made legally compulsory) a matter of considerable juridical concern. As far as part-time workers are concerned, the so-called Part-time Labor Act (Act on Improvement, etc. of Employment Management for Part-Time Workers) in Article 3 speaks of equal treatment with “ordinary workers” and, as one of the improvements it seeks to make, the amplification of welfare benefits is specifically mentioned. More recently the strengthening of the provisions of that law (Articles 8 and 11 in particular) has come under scrutiny.

### 3. Welfare Benefits in Relation to Work Rules and Collective Agreements

#### (1) The Creation of a Right to Demand a Benefit

It is often the case that welfare benefits are specified in Work Rules and Collective Agreements. In the case of work rules, this is justified by the provisions of Article 89 of the LSA. In the case of Collective Agreements it is a result of the fact that unions have always considered such benefits to be a part of the real wage, and sought to bring them in the scope of the agreement. Where the concrete nature of the benefits is clearly specified in such rules or agreements, they cease to be a matter of discretionary paternalistic benefits and take on a contractual nature which creates the right to demand fulfillment of contract.<sup>12</sup>

<sup>10</sup> March 20, 1986, *Fuhatsu* No. 68, *Shokuhatsu* No. 112 and *Nohatsu* No. 54.

<sup>11</sup> There is a limited list of benefits designed to enhance the welfare of employees: loans and cash payments, cash payments to contribute to workers’ asset build-up and provision of housing. October 11, 2006, *Kojihatsu* No. 011002.

<sup>12</sup> There is a judgment which holds that, in the case of a “sympathy gift (*mimai-kin*)” given in supplement to an award under a workman’s compensation agreement, the amount specified in the Rules only indicated the upper limit of the “gift” to be paid, and so did not constitute grounds for a right to claim that sum. The *Fukoku Seimei* case (Tokyo District Court, Hachioji Branch Court, November 9,

Nevertheless, even when Work Rules and Collective Agreements are concerned, the degree of legal protection accorded to welfare benefits is low as compared with wages and work hours. This is evident in, for instance, judgments concerning the validity of changes in work rules. The Supreme Court has ruled that changes in important rights and work conditions such as wages and retirement payments should have a “rational basis in a high degree of necessity.” The Supreme Court did not explicitly say whether or not welfare benefits would be included in the category of important rights and work conditions, nor are there relevant precedents yet in lower courts, but given that welfare benefits are in origin discretionary and paternalistic grants, even if they should give rise to a right to demand them, that right is likely to be weakly interpreted.

## (2) Personnel Management and Welfare Benefits

The employee welfare aspect of welfare benefits tends to be emphasized, but there is another aspect, namely the way in which they directly or indirectly serve the objectives of personnel management. They have their origin in the attempt to secure labor supplies in the labor market, and are effective in promoting a sense of belonging and loyalty to the workplace, and to the resolution of dissatisfactions. These effects are recognized in judging the legal status of employers’ personnel decisions. For example, in judging the validity of orders to change job assignments or to move to another establishment, or of changes detrimental to the interests of workers in Work Rules, the nature and value of welfare benefits granted are taken into account as factors mitigating the disvalue incurred.<sup>13</sup>

## 4. Welfare Benefits as Seen in Employment Contracts

The normal situation is for welfare benefits which apply to all employees to be specified in Work Rules or Collective Agreements, but it also happens that the rights to demand welfare benefits are generated by separate agreements with individual employees, or by particular labor relations past practices. Equally, it sometimes happens that the treatment of certain welfare provisions becomes conventionalized within certain firms without being formally written into Work Rules. In such cases, provided the content of such provisions is fully understood by the employees, the right to demand such benefits, is recognized as part of an individual contract of employment, and changes in such intra-firm conventions are interpreted as being tantamount to changes in Work Rules.<sup>14</sup>

Again, welfare benefits are predicated on the existence of an employment contract

---

2000, *Rodohanrei [Rohan]* 805-95).

<sup>13</sup> For an example of a judgment relating to detrimental changes in Work Rules, see the Daishi Ginko case (Supreme Court, February 28, 1997, *Rohan* 710-12). And for one related to job transfer, the NTT Higashi-Nihon case (Fukushima District Court, Koriyama Branch Court, November 7, 2002, *Rohan* 844-45).

<sup>14</sup> For an example of a change in dormitory regulations, see the Higashi-Nihon Ryokaku Tetsudo (East Japan Railway), Sugunami Ryo (Sugunami Dormitory) case (Tokyo District Court, June 23, 1997, *Rohan* 719-25).

(i.e., having the status of employee). This gives rise to certain problems over benefits arising after employment has been terminated. See later for cases involving the vacation of company housing or employers' demands for repayment of grants and loans.<sup>15</sup>

### 5. Welfare Benefits as Discretionary, Paternalistic Grants

It is possible for welfare benefits to retain the status of discretionary grace-and-favor payments when they are not specified in Work Rules or when, even if they are governed by informal company practices, their content, or the nature of what can be demanded as of right is not fully known to the employees. In such cases the grant of the right to receive the benefit and its nature is left to the discretion of the employer.<sup>16</sup> However, insofar as unfair labor practices and discriminatory practices or deviation from the good-faith principle of labor contracts is not allowed, such discretionary benefits are not differently treated from those for which the right of entitlement is clear.

## III. Various Legal Problems Involving Individual Benefit Types

Some types of welfare benefit frequently give rise to disputes, and to scholarly analysis, and accumulate a goodly number of legal precedents. Owing to limitations of space I shall choose here to concentrate on (i) company housing, (ii) group life insurance arrangements and (iii) assistance for study, including study abroad.<sup>17</sup>

### 1. Problems Arising from the Occupancy of Company Houses or Dormitories

Housing provision takes the form of the employer giving occupancy in houses or dormitories to occupants who fulfill the condition of being his employees. Generally speaking married employees get houses, and dormitories are provided for single people or those who are posted away from home without their families. In either case whether the company is the owner of the housing or merely leasing it is not an issue. Although one does come across the words *shataku* (company houses) and *ryo* (dormitories) here and there in recent legislation, as with *fukurikosei* (welfare benefits) there is no legal definition, and the term is usually understood in the sense in which I have used it above. One can also divide the notion of company housing into two categories "work housing" which are a necessary part of the company organization provided in pursuit of particular important company objectives, and "ordinary company housing" to give employees a stable base, with the intention of improving their welfare, increasing their work efficiency or helping in recruitment. What is

---

<sup>15</sup> For a judgment on whether, in deciding on the need for an injunction determining an employee's provisional status, the advantage of being able to use the firm's welfare facilities is taken into account, see also the Chuo Taxi case (Tokushima District Court, June 6, 1997, *Rohan* 727-77).

<sup>16</sup> For an example of a judgement indicating this point concerning one-off gift celebrating an improvement in company results, see the case (Nagoya District Court, April 27, 1973, *Hanta* 298-327).

<sup>17</sup> There are also to be considered problems surrounding, for instance, the legality or otherwise of detrimental changes in a corporate pension system for former employees.



described in Article 94 of LSA as “dormitories attached to the enterprise” may be considered to belong to the first category. What are of interest from the point of view of welfare benefits are the other “ordinary company housing.”<sup>18</sup> In Japan, expenditure on company housing (whether owned or leased) makes up a substantial portion of total expenditure on non-statutory welfare benefits,<sup>19</sup> and has always been seen as an important form of fringe benefit.

Such housing, as with all matters pertaining to the leasing of housing, can generate a good deal of legal problems. Most frequent as a cause of dispute and most central to scholarly discussions has been the question of employers’ orders to vacate company housing on termination of the employment contract and the appropriate grace period in such cases.<sup>20</sup> Notably important has been the issue of the applicability of the provisions of the 1991 Act on Land and Building Lease (hereafter Leasehold Act) or former Building Lease Act before establishing Leasehold Act, and the preceding legislation which it superseded.

Precedents on this issue are concentrated in the period 1945-1955 when the earlier act was in place, and when the shortage of housing was acute. Most of the scholarly work also dates from this period and developed a critical stance towards those judgments. There are a few precedents from more recent times also, and one can discern a change in the arguments used in cases of orders to vacate, perhaps reflecting the easing of the housing situation.

Moreover, whether the housing is company-owned or leased, in the majority of cases, it has become usual for matters to be regulated within the company by a set of rules separate from the Work Rules themselves, or else a specification of rules in a Collective Agreement. Hence legal issues involve decision on the validity of such regulations governing such things as eviction after termination of employment, but in any case the nature of the contract is considered the primary consideration.

### (1) The Legal Character of the Occupancy Relationship

To deal with these problems it is first necessary to establish the legal character of the occupancy relationship (the contractual relationship on which it is based). If it is a leasing contract, then the Leasehold Act applies and the relationship has the same restrictions as apply generally as stipulated in Articles 28 and 30, namely that requests to vacate cannot be given without good reason, and so any company rules which infringed that principle would be considered invalid. But if the contractual relationship is construed as something other than a leasing contract, there is no protection from the the Leasehold Act. If the contract is a

---

<sup>18</sup> For the criteria for deciding whether company housing is or is not “dormitories attached to the enterprises,” see Labour Standards Bureau, MHLW, *Revised and New Edition: Labour Standard Act*, 903ff. in note 6.

<sup>19</sup> It is around 50 %. See surveys in note 3.

<sup>20</sup> For this issue, see also, Takayasu Yanagiya, “The Use of Company Housing, Dormitories and Other Company Facilities and the Termination of Employment Contracts,” *Quarterly Labor Law* 165, (Autumn 1992):32ff.

simple one involving the free provision of the housing by the employer, then there is no need for him to show “good reason” for a request to vacate.

It has generally been considered that which kind of contract it is, has to be evaluated in the light of two elements: for value—whether or not the occupant of company housing pays anything for the privilege of occupation—and specificity—whether or not acquiring the status of employee is a precondition for occupancy.

On this issue the Supreme Court ruled in 1954, that there was no general rule as to whether rent-paying occupancy of company housing was under one type of contract or another; each case had to be decided according to its special circumstances.<sup>21</sup> Later judgments, including those of the Supreme Court, have usually taken the amount of the rent paid as the indicator of “for value” (whether it had the character of a “quid pro quo”).<sup>22</sup> If it is at or close to the going rental rates in the market, that constituted “for value” and all the provisions of the Leasehold Acts should apply. On the other hand, if the rent was a token amount such that the “for value” criterion did not apply, it was from early on suggested that it was the Civil Code’s provisions concerning loan for use contracts that should apply.<sup>23</sup> Subsequently, in a number of judgments including those of the Supreme Court, great weight has been put on the “specificity” criterion and in most cases the occupancy of company housing has been treated as a specific contract lasting only as long as the employment relation lasts.<sup>24</sup>

As against this case-law tendency to treat the amount of rent paid as the deciding criterion, scholarly writings have tended to be critical, particularly as coming from labor law experts.<sup>25</sup> They argue that it is indeed the case that rents are often low, but that is often because they are held down as part of the terms of a Collective Agreement with the union, or because they remain unadjusted at the level set much earlier, or they were held down by previous rent-restricting legislation. Hence they cannot be used as a criterion of “for value” The criterion should be whether the employer is deriving any benefit from the provision of housing, such as improving recruitment or raising worker efficiency. Or it should be seen in the fact that the occupants of the houses or employees in general are offering their labor services and in return the employer is providing housing as, directly or indirectly, a part of the wage he pays for those labor services.

---

<sup>21</sup> The Nippon Semento case (Supreme Court, Third Petty Bench, November 16, 1954, *Minshu* 8-11-2047; the Tohoku Denryoku case (Supreme Court, Second Petty Bench, May 13, 1955, *Minshu* 9-6-711); the Musashi Zoki case (Supreme Court, Second Petty Bench, November 16, 1956, *Minshu* 10-11-1453).

<sup>22</sup> The Nippon Semento case and the Tohoku Denryoku case in note 21, and the Kamishima Kagaku Kogyo case (Supreme Court, Third Petty Bench, March 10, 1964, *Hanji* 369-21).

<sup>23</sup> For instance, see the Kawasaki Jukogyo case (Osaka District Court, May 10, 1955, *Hanji* 58-21).

<sup>24</sup> See the Nippon Semento case and the Tohoku Denryoku case in note 21, and Kamishima Kagaku Kogyo case in note 22.

<sup>25</sup> For these arguments, see Yanagiya, “The Use of Company Housing, Dormitories and Other Company Facilities and the Termination of Employment Contracts,” 37 in note 20.

Of these opinions the one to be taken seriously is the notion pointed out a propos of the reasons why rents are low, namely that in the case of long-standing occupancy one should look at the rents in relation to the market at the time occupancy began. As for the notion of basing the decision about “for value” on the grounds that housing provision is part of the wage paid for labor services, it is true that one sometimes treats the employment contract as an “equal price” exchange of wage and labor services, but it is doubtful whether one can properly take the “provision of labor services” beyond the employment contract and extend it to determine the “for value” (payment of “just value” price) of housing occupancy contracts. Surely there is no alternative to making the size of the rental payment the basis of judgment.

## (2) The Termination of Employment Contracts and the Validity of Requests to Vacate

In the majority of precedent judgments, it is held that if, in line with the arguments above, the use of company housing is not an ordinary rental contract, then it follows that the occupancy relation should end as soon as employment ends. Most judgments follow that line.

On the other hand, if the occupancy contract is treated as an ordinary rental contract, the provisions of the Leasehold Act should apply,<sup>26</sup> which means that the question arises as to whether the termination of employment constitutes a “valid reason” for terminating occupancy (Article 28 of the Leasehold Act [Article 1-2 of former Building Lease Act]). The same applies to judgments about the validity of rules which specify the maximum period of occupancy, or set a limit in terms of the occupants’ maximum age, but one should also take into account the fact that in recent judgments the question has been raised of possibly applying the concept of fixed-term leasing contracts [Article 38 of the Leasehold Act]). On this point the tendency has been generally to consider the termination of employment as ending also the occupancy relation, but there remains a difference between those which hold that termination of employment automatically counts as a “valid reason” and those who think one should take into account the particular circumstances both of the occupant and of the employer.<sup>27</sup>

---

<sup>26</sup> Most judgments, including those of the Supreme Court, have in fact taken the Leasehold Act as applying.

<sup>27</sup> Judgments between 1945 and 1955 when the shortage of housing was acute, including those of the Supreme Court, typically gave the termination of employment as a “factor which gives very strong weight in favor of the validity of a vacation order, but there are also some which hold that one should also take into account the interests of both employer and tenant such factors as the circumstances of those wanting to enter the vacated accommodation, the difficulty or otherwise of finding alternative accommodation. The Kobe Seikosho case (Supreme Court, First Petty Bench, April 23, 1953, *Minshu* 7-4-408); the Nippon Semento case (Osaka High Court [appeal hearing], April 23, 1954, *Kominshu* 7-3-338; Yokohama District Court, October 28, 1964, *Hanrei Times* [Hanta] 170-242). However, there were recently some cases based on the premise of the termination of employment as ending the occupancy relation. For an example of these cases, see Towakai case (Tokyo District Court, May 29, 2000, *Rohan* 795-85).

Next is the question of the period of grace allowed the occupant before vacation of the premises is required. Most of the earlier judgments which treat the lease as coming under Article 27 of the Leasehold Act (Article 3 of former Building Lease Act) and was formerly Article 3 of that act, and make the period six months.<sup>28</sup> More recent judgments, however, have, for instance, considered as valid contracts which lease accommodation up to the point of retirement and so generate an obligation to vacate it on retiring, that is to say upholding clauses in company housing provision rules which require vacation of the premises in less than the period specified in the Leasehold Act.<sup>29</sup>

As for cases in which no payment of rent was involved, there is no fluctuation in the consistency with which judges have ruled that company rules about a grace period are valid or that the the grace period should be counted as from the day at which employment ended.<sup>30</sup>

Nevertheless, the understanding is that the reason for the employment termination when it is other than retirement, and the good faith or otherwise of the employer have also to be taken into consideration when determining the grace period.

## 2. Problems Arising from Group Fixed Term Insurance (GFTI)

The term “group fixed term insurance” is used when a company or some other unit takes out a life insurance policy a year at a time, covering all its members. In the case of companies they are sometimes taken out for particular employees (e.g. board members) but frequently for the whole body of employees. This is a practice which has been frequently followed, as well as another type, the *jigyo hoken* (enterprise insurance).<sup>31</sup> These forms of insurance provide welfare benefits in the form of death and injury benefit, assistance in maintaining the livelihood of bereaved families, etc, and for that reason have been considered part of the welfare benefit system.<sup>32</sup>

The group fixed term insurance system, and in particular that which is known as Group A insurance<sup>33</sup> in which the company is both the payer of the contributions and also

---

<sup>28</sup> For a judgment which confirmed an original finding that the grace period from giving notice of ending the contract should be six months, see the Kobe Seikosho case in note 27.

<sup>29</sup> See the Towakai case in note 27. There is also a similar judgment in the X Company case (Utsunomiya District Court, August 28, 2006, *Rodo Keizai Hanrei Sokuho [Rokeisoku]* 1947-19).

<sup>30</sup> See the Nippon Semento case and the Tohoku Denryoku case in note 21, and the Kobe Seikosho case in note 27. More recently, for instance, the Kyodo Toshin Jutaku Hanbai case (Tokyo District Court, February 27, 2001, *Rohan* 812-48), the Hitachi Kinzoku Shoji case (Tokyo District Court, February 2, 2003, *Rokeisoku* 1835-20).

<sup>31</sup> The difference between the two types, both of which allow the company to be the insurer and employees the insured, is that the enterprise insurance is available to companies which have too few employees to qualify for group fixed term insurance.

<sup>32</sup> Other forms of company assistance besides life insurance, given to employees for buying private insurance products as part of the welfare benefit system, are traffic injury insurance and damage and loss insurance.

<sup>33</sup> For the group fixed term insurance and the enterprise insurance, see Naoyuki, Ino, “Insurance Contracts on the Life of Third Parties” in *Compendium of Court Practice: New Edition*, 30 vols., ed.

the party which receives the benefit, has, like the enterprise insurance system, given rise over the last decade and a half to frequent disputes between the company and the bereaved family when an employee dies. As a result the insurance industry created a new product in 1996. It is known as the Comprehensive Welfare Group Fixed Term Insurance, and since April 1997 it has sought to eliminate litigation by promoting a shift to this particular form.<sup>34</sup>

#### (1) Disputes Concerning Group Fixed Term Insurance (GFTI)

This is a form of insurance in which the insurer and the insured are different entities. In such cases in which the insured is not the recipient of the benefit, the law requires that for the contract to be valid there must be consent on the part of the person insured, (Article 674, part 1 of Commercial Code, but from April 1, 2010, Article 38 of the new Insurance Act), the reason being the danger of abuse of the system—murdering to get insurance money or else gambling or speculating on people’s lives to get unearned income. However in the case of GFTI, instead of consent of those insured it is merely a matter of informing the union unilaterally or getting its consent, and sometimes not even that. And there were cases in which the insurance money received was not used in accordance with the intentions of the system in order to promote employee welfare or support bereaved families, or if they were so used, only in small part. There were frequent instances of litigation by bereaved families over the proper destination of the insurance money.<sup>35</sup>

The two chief points at issue in such disputes were (i) did the mere notification of the contract to the company’s union amount to a giving of consent and therefore the contract should be held valid, and (ii) whether or not there was a legal basis for arguing that the destination of insurance payments should be the family of the deceased.<sup>36</sup> The precedents on the first point tend to take a liberal interpretation of “consent of the insured” and to accept either the consent of the company union or notification to the union as constituting consent.<sup>37</sup> On the second, in cases where the amount received by the family was less than the

---

Tsutomu Shiozaki and Jo Yamashita (Tokyo: Seirin Shoin, 2005), 19:231.

<sup>34</sup> In the case of enterprise insurance, as in other life insurance contracts, there is an item in the application form asking for the consent of the person whose life is being insured. As a result of guidance from the Ministry of Finance insurance companies also, since 1983, have commonly required companies, as what are called “supplementary conditions of agreement (*fuho kitei*)” to sign statements to the effect that the monies they receive shall be used for death allowances and condolence gifts. Courts have generally used the existence of such agreements as powerful arguments in their judgments. For a recent instance, see the Sera Kogyo case (Osaka District Court, March 19, 1999, *Rohan* 762-28).

<sup>35</sup> Some cases involve company directors, others ordinary employees. The account here concerns the latter type.

<sup>36</sup> For an analysis of the precedents, see Yoshiro Yamano, “Insurance Contracts on the Life of Third Parties,” *Kinyu Shoji Hanrei (The Banking and Business Law Cases)* 1135 (2002):66, and Ino, “Insurance Contracts on the Life of Third Parties,” 235 in note 33.

<sup>37</sup> In contrast there seems to be only the Bunka Shutter case (Shizuoka District Court, Hamamatsu Branch Court, March 24, 1997, *Rohan* 713- 39) holding that individual consent of the insured employees was required. Most commercial law theorists support the general tendency to which these

amount paid by the insurance company, lower courts have rejected the family's plea, holding that if the criteria for, or the amount of, the death benefit or condolence grant was specified or if the payment of insurance monies other than to the bereaved family was agreed in a Collective Agreement or in the company's Work Rules, this constituted consent to the arrangement.<sup>38</sup> On the other hand, particularly in the case of ordinary employees and not directors, there are judgments which seem to be groping for a legal basis for declaring the bereaved family to be the proper destination of the insurance money, whether or not there are such provisions in Work Rules, etc.<sup>39</sup> The arguments have been, for instance, that for a company to receive money far in excess of what its welfare benefit rules specify is an undeserved gain, unacceptably contrary to public order and healthy conventions,<sup>40</sup> or, that for particular circumstances there was an explicit or implicit understanding between the company and the insured person to pay a substantial amount,<sup>41</sup> or using the legal construction of contracts for third parties.<sup>42</sup> It has been a quite contentious matter in the lower courts. As far as scholarly opinion goes, the general view of the last argument—namely the one using the legal construct of contracts for third parties, the general tendency has been to see it as a somewhat dubious use of the legal construct, but, given the intentions and purposes of the GFTI as a part of the welfare benefit system, it constitutes an appropriate method of reconciling the conflict of interest.<sup>43</sup>

---

judgments conform. See Kenjiro Egashira, "Insurance Contracts on the Life of Third Parties," *Jurist* 764 (1982):62ff.

<sup>38</sup> The Takayama Densetsu case, (Kobe District, December 21, 1998, *Rohan* 764-77); The Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 1) (Nagoya High Court, April 26, 2002, *Rohan* 829-12).

<sup>39</sup> Nagoya District Court, April 24, 2002, *Hanta* 1123-237.

<sup>40</sup> Most judgments accept the legal construction of "explicit or implicit consent." For cases relating to GFTI, see the Toei Shikaku case (Aomori District Court, Hirosaki Branch Court, April 26, 1996, *Rohan* 703-65); the Akita Unyu case (Nagoya District Court, September 16, 1998, *Hanji* 1656-147); the Appeal Judgment of the same case (Nagoya High Court, May 31, 1999, *Rohan* 764-20); the Tokyo District Court, August 26, 1999, *Hanta* 1063-242), the Sumitomo Kinzoku Kogyo case (Group Life Insurance, No.1) (Nagoya District Court, February 5, 2001, *Rohan* 808-62), etc.

<sup>41</sup> The Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 2) (Nagoya District Court, March 6, 2000, *Rohan* 808-30) and the same case (Nagoya High Court, April 24, 2002, *Rohan* 829-38).

<sup>42</sup> Judgments have varied in their assessment of actual amounts to be paid to bereaved families, but a common calculation is: take the insurance company's payment, subtract the total insurance premiums the company has paid for the deceased, divide by two and pay the extent to which that sum exceeds the benefit already paid.

<sup>43</sup> For an analysis of commercial law theories relating to the Commercial Code, see Noritaka Yamashita, "Insurance Contracts on the Life of Third Parties," in *Compendium of Modern Judge-Made Law*, ed. Tsutomu Shiozaki (Tokyo: Shinnippon Hoki Publishing, 1998), 31ff. For labor law theories, see Hisashi Miyajima, "Unconstitutionality or Illegality of Group Fixed Term Insurance and Workers Rights," *Gakushuin Review of Law and Politics*, no. 30 (1995):45ff.; Mitsugi Shinada, "Hanhyo (case law research)" in *A Hundred Selected Cases in Labor Law*, 7th ed., ed. Takashi Araki, Kazuo Sugeno and Satoshi Nishitani (Tokyo: Yuhikaku, 2002), 104; and Mitsuo Omoteda, "Hanhyo (case law research)," *Minshoho Zasshi* 128 (2003):369.

However as for the Supreme Court, on point (i), a relaxed interpretation of the consent clause, it has generally gone along with the lower courts, but on (ii), it has come to hold that even if the GFTI is not operated with the intention to further the welfare of employees, given that the statutory situation is such that only the consent of the insured is required and not any affirmation that the profit of the insured should equal the amount of the insurance money, one cannot declare the contract to be contrary to public order, provided consent has been given, and that consequently it cannot discern grounds for assuming an explicit or implicit understanding that the insurance money in excess of that specified in work rules should be paid to the bereaved family.<sup>44</sup>

On the first question about consent, in cases where the insured employee did not even know of the insurance, or if he or she did know had no opportunity to reject it, this can hardly be construed as giving consent as specified in Article 674, part 1 of the Commercial Code which means that the contract should be ruled to be invalid. This would mean that the bereaved family could not receive the insurance money. However, if a company were to counter a bereaved family's claim to the insurance money on the grounds that the contract was invalid, it would leave itself open to the judgment that it was unacceptably failing to act in good faith.

On the second point as the contract stood before the introduction of the new form, it is impossible to deny that although the intention was the promotion of employee welfare, in addition to making maintenance payments to the bereaved family the insurance money could be used for general employee welfare, and even to some extent to cover the employer's expenses in recruiting and training a substitute worker. Hence it is difficult not to go along with the view of the Supreme Court when it rules that when a company's Work Rules or its Collective Agreement or individual employment contract specifies the amount of death benefit or condolence money to be paid, that is the amount the bereaved family should receive even if the insurance money generously exceeds that sum. One can interpret this as meaning that in the event that there is no specific provision in Work Rules, etc, then the construction of the lower courts about an offence to public order or an implicit contract might be permitted. Although the judgment of the Supreme Court seems appropriate, it is certainly the case that to allow the use of insurance monies on a large scale for something other than grants to the bereaved family would be contrary to the spirit of the contract as an institution.

---

<sup>44</sup> The Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 1) (Supreme Court, Third Petty Court, April 11, 2006, *Rohan* 915-26); the Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 2) (Supreme Court, Third Petty Court, April 11, 2006, *Rohan* 915-51). For scholars' critical evaluation of these judgments, see Tomonobu Yamashita, "The Group Fixed Term Insurance and the Destination of the Insurance Money," *New Business Law*, no. 834 (2006):12, and Ikuko Mizushima, "The Group Fixed Term Insurance and the Consent of the Insured," *Journal of Labor Law*, no. 108 (2006):224.

## (2) Comprehensive Welfare Group Fixed Term Insurance

Given that these problems with the GFTI (the consent of the insured, the criteria for deciding the amount of money to be paid and the rightful destination of that money paid by insurance companies) gave rise to the above sort of disputes, the industry, as early as November 1996 produced as a new product the Comprehensive Welfare Group Fixed Term Insurance and subsequently firms have switched to this new form of contract,<sup>45</sup> though the proportion of employees insured has been falling.<sup>46</sup> The new product deals with the consent problem by requiring notification to every employee with the right of contracting out, and prevents disputes about the destination of the sums paid out, by separating the main insurance contract which specifies the amounts to be paid to the bereaved family from a special “human value contract” which deals with the portion to be paid to the firm.

It seems safe to say that disputes are unlikely to arise under the new contract system,<sup>47</sup> though there is still some room for disputes concerning the business insurance (*jigyō hoken*) individual type of contract which did not receive the same treatment,<sup>48</sup> and some have pointed out the need for legislation to regulate the matter.<sup>49</sup>

## 3. Problems Arising from Grants for Assistance in Education and Training

There are several forms of direct payments to employees as part of the welfare benefit system; rent supplement for housing rented by the company for employees, contributions towards mortgage or insurance payments, support for sporting activities, etc. There are also grants made with an eye to employees’ future rather than their present contributions to the company, typically study abroad and various kinds of skill development. Unlike other kinds of grant, it may be required that the money will wholly or partially be paid back unless the labor contract is signed or the employee continues working for a certain period, and sometimes this is specified in the Work Rules.<sup>50</sup> The object is to make sure that the grant serves

---

<sup>45</sup> On the new system, see, for instance, Ino, “Insurance Contracts on the Life of Third Parties,” 251, in note 33.

<sup>46</sup> Under the former system the participation rate shown by a 1995 survey to be covered were 76.3% for the A-type and 70.2% for the B type. After the change, a survey conducted at the end of 1999 and the beginning of 2000, found the rate to be 66.9%, subsequently falling to 54.3% at end 2003, early 2004. See “Surveys of the Welfare Benefit System published by the Institute of Labour Administration.

<sup>47</sup> It has been pointed out by Ino in “Insurance Contracts on the Life of Third Parties” (253, note 33) and by Yamano Yoshiro in “Validity and Efficacy of the Group Fixed Term Insurance,” *Hanrei Taimuzu*, no. 933 (1997):42, that there is the possibility of problems arising from the article in the main contract which allows the company taking out the insurance to separately specify the recipient of the insurance money.

<sup>48</sup> For elaborations of the difference between the business insurance and the Comprehensive Welfare Group Fixed Term Insurance, see Kuramochi (Comprehensive Welfare Group Fixed Term Insurance) case (Tokyo District Court, October 21, 2002, *Rohan* 842-68).

<sup>49</sup> See Yamano, “Validity and Efficacy of the Group Fixed Term Insurance,” 45-46 in note 47.

<sup>50</sup> There are instances in which “conditional on continuing in employment for a certain period” includes the need to sign an employment contract, and others where it involves an undertaking not to



its purpose, but the question arises whether or not such understandings breach Article 16 of the LSA which bans contracts that “fix in advance either a sum payable to the employer for breach of contract or an amount of indemnity for damages” or Article 14 which specifies the maximum length of fixed term contracts.

Article 16, forbidding any specification of an amount to be paid by an employee or his guarantor as an indemnity for non-completion or breach of contract is intended to prevent forced labor, undue pressure against the employee’s free will, enforced servitude and prolongation of employment. It is interpreted as including the imposition of constraints on an employee’s freedom to retire.<sup>51</sup> Along with Article 14 it was intended to prevent the sort of abuses which occurred in prewar times, but their significance at the present day is in relation to these grants for education and training.<sup>52</sup>

There were originally more judgments concerning the application of Article 16 in the case of training courses than study abroad and, at first, the operative considerations have been whether or not the use of the grant system was at the employee’s own free choice, whether the sum asked to be returned represents a reasonable estimate of the actual cost, whether the expenditure was conceived as the company provisionally making payment on behalf of the individual, whether the period of continued employment required in order to be released of the obligation to repay was appropriate, and in the light of all these considerations taken together whether or not an agreement to repay the money amounted to unreasonable pressure on the employee to continue in employment.<sup>53</sup>

Since then more recent judgments, particularly with regard to study abroad, have hinged on whether or not the expenditure was on education and training of the sort that the employer should normally undertake so that a requirement to pay back would take the form of a sanction, or whether, alternatively, it was something that the employee himself or herself should normally pay for but which the company temporarily undertook on the employee’s behalf (*mutuatus*). This, what is known as the “normal course of business or otherwise” criterion has come to be the chief criterion used.<sup>54</sup> One may consider it as amount-

---

work for competing firms in the same industry for a given period after retirement.

<sup>51</sup> Labour Standards Bureau, Ministry of Health, Labour and Welfare, *Labour Standard Act*, 1:232-33 in note 4.

<sup>52</sup> There are scholars who hold that it is wrong to deal with the modern problem of education and training grants by applying Article 16 which was intended to prevent quite different traditional abuses and that what should be in question is the rationality of the content and operation of such grants. For example, Teruhisa Kokubu, “Hanhyo (case law research),” *Rohan* 750-6 (1999) and Tomoko Kawada, “Hanhyo (case law research),” *Rohan* 766-15 (1999).

<sup>53</sup> For instance, Osaka High Court, February 28, 1968, *Hanrei Jiho (Hanji)*, 517-85, and Kawai Gakki Seisakusho case (Shizuoka District Court [appeal court], December 23, 1977, *Rohan* 295-60).

<sup>54</sup> Most recent judgments concerning grants to study abroad have used this approach. The Haseko Corporation case (Tokyo District Court, May 26, 1997, *Rohan* 717-14); the Fuji Jukogyo case (Tokyo District Court, March 17, 1998, *Rohan* 734-15); the Shin Nippon Shoken case (Tokyo District Court, September 25, 1998, *Rohan* 746-7); the Nomura Shoken case (Tokyo District Court, April 16, 2002, *Rohan* 827-40); the Meiji Seimei Hoken case (Tokyo District Court, December 24, 2003, *Rohan*

ing to judgment as to whether the employer's expenditure on education and training amounts to a form of welfare benefit or is to be counted as, like the payment of travel expenses and so on a "business expense" (sometimes also as part of the wage).<sup>55</sup>

However, even using the "normal course of business" criterion, a number of questions can arise which have to be taken account of in the overall judgment; whether or not the arrangement was made by an executive order or by the employee's free will, the declared intention of the scheme and its place in the company's overall training plan, where employees were sent abroad, the subject they studied and its relation to the firm's business, living conditions abroad (whether they had business duties or not) and so on.

This method of resolving the question is persuasive, given that it sets reasonable limits to the application of Article 16, allowing the interests of both employer and employee to be reconciled in a way that permits the continuation of a system which can be meaningful to employees,<sup>56</sup> and makes it relatively easy for employers to predict whether or not they would be in breach of Article 16. Nevertheless, the "normal course of business" criterion and the question of whether or not there is a constraint on the employee's freedom to conclude or terminate a contract of employment (i.e. leave his job) do not necessarily coincide. There are cases where, even when such grants for study and training are made as a welfare benefit, one cannot ignore that they have the effect of acting as a constraint on freedom, and, contrariwise, there are "normal course of business" cases of study abroad where, even though an obligation to make restitution is agreed, the limitation on freedom of choice is limited and there are no problems in allowing free contracting between the parties. Strictly speaking, in both cases one can consider the size of the sum to be restituted and the length of the period of subsequent employment deemed to release the employee from the obligation of restitution as supplementary considerations in deciding whether the "normal course of business" criterion applies.<sup>57</sup> At any rate, it would seem sensible, in the first case to exclude it in principle from the purview of Article 16 of LSA and treat it as something that requires dealing with at the statutory regulation level,<sup>58</sup> and in the second case to treat it as

---

881-88); the same case (Tokyo District Court, January 26, 2004, *Rohan* 872-46) and others. As for grants for study and training, see also the Saron Do Riri case (Urawa District Court, May 30, 1986, *Rohan* 489-85); the Wakokai case (Osaka District Court, December 1, 2002, *Rohan* 840-32); the Tokushima Kenko Seikatsu Kyodo Kumiai case (Tokushima District Court, August 21, 2002, *Rohan* 849-95) and others. As for scholarly opinion, the approach was already endorsed in Kazuo Sugeno, *Labor Law*, 3rd ed. (Tokyo: Kobundo, 1993), 132.

<sup>55</sup> See the Higashi-Hakone Kaihatsu case (Tokyo High Court, May 31, 1979, *Hanta* 355-337).

<sup>56</sup> See Nomura Shoken case in note 54.

<sup>57</sup> For a judgment which applies such an argument a propos the subsequent employment period, see, for example, Nomura Shoken case in note 54, and in scholarly commentary, see Shinya Ouchi, "Hanhyo (case law research)," *Jirist*, no. 1130 (1998):135. Labour Standards Bureau, M HLW, 236 in note 4 can be considered to carry the same meaning.

<sup>58</sup> In the Report of the Study Group concerning the Appropriate Contents of a Labor Contract Act, published by the Ministry of Health, Labour and Welfare in September 2005, study abroad which could not be counted as "in the normal course of business" was to be excluded from the scope of Arti-

something to be judged in the light of Article 16.

Again, Article 16 forbids any setting in advance of the sum to be paid in damages for breach of contract, but it does not forbid the company requiring the payment of damages equal to the loss that it has suffered, nor any agreement between employer and employee as to such payment.<sup>59</sup> Even in the case of study and training grants which are treated as normal business expenditure, the employer may well have suffered some damage from the employee's quitting his job. There is a real question as to whether spending on the education and training should be considered a "damage" but there are cases where it would seem legitimate for the employer to demand the payment of damages.<sup>60</sup>

#### **IV. By Way of Conclusion**

We have been looking at problems arising in labor law concerning welfare benefits, and also at some particular points at issue. Looking forward to the future it is apparent that consideration must be given to treating these issues as a matter for statutory regulation. In that connection the following points should probably be taken up.

First, as concerns those among the welfare benefit issues which are most widespread and most frequently treated under specific company rules (housing and various cash grants) it is necessary to consider either explicitly enumerating instances in Article 15 of the LSA, or, in Article 89 listing the essential contents of a set of Work Rules, not just offering the general blanket clause (Article 89, No. 10), about "stipulations applicable to all workers at the workplace" but listing such stipulations explicitly. It is the fact that welfare benefits tend to be a matter for company-by-company treatment, and they should be considered particularly in the light of the need to prevent disputes and ensuring equality of treatment in the workplace.<sup>61</sup> Again, when considering welfare benefits for non-standard workers, the function of such benefits in securing the offer of good employment alternatives cannot be ignored, and it does need careful consideration. It is also necessary to take up the questions concerning the particular forms of welfare benefit treated in this paper to see if the prevention of disputes does indeed require legislation and if so of what kind.<sup>62</sup>

---

cle 16, and the maximum period of subsequent employment was to be set at 5 years, it being possible for the company to reclaim the whole amount of the cost if the employee left during that period. In the Labor Contract Act as enacted in March 2008, however, there was no such clause.

<sup>59</sup> September 13, 1943, *Hakki* No. 17.

<sup>60</sup> For instance, the Tokushima Kenko Seikatsu Kyodo Kumiai case in note 54.

<sup>61</sup> The 1993 Report of the Study Group on Revision of the Labor Standards Act did recommend that a propos housing as an important form of welfare benefit such as company houses, there should be explicit written rules and they should be written into Work Rules.

<sup>62</sup> See the 1993 Report of the Study Group in note 61. And for discussion of legislation on the restitution of grants for study and training, see MHLW's Report of the Study Group Concerning the Appropriate Contents of a Labor Contract Act in note 58.