Abstracts

Dividing Line between "Employment," "Contract," and "Mandate," and Usefulness of Employment Contract Provisions

Norikazu Ashino (Toyo University)

Service contracts originate from ancient Roman law. The contract forms of "Employment," "Contract," and "Mandate" in Japanese Civil Code have come to be differentiated due to the diversification of services provided throughout their historical development since they were handed down from Roman law, but this differentiation is not inevitable. In the process of drafting the Japanese Civil Code, there were various discussions about the criteria for differentiation, especially concerning the treatment of mandate contracts. Legislators kept employment provisions in mind as the general provisions of service contracts. They assumed that the parties concerned with employment contracts were equal. However, due to the development of society, disparities have arisen among people, and the legislators' premise has collapsed. Therefore, in the theories developed about Civil Code after World War II, the concept of "usage dependency" came to be used in considering the problem of employment contracts. As a result, the applicable scope of "Employment" became limited.

With the revision of the Law of Obligations in 2017 in Japan, the definitional provisions concerning service contracts have not been changed. However, there is still a need to re-examine the relationship of each contract and the usefulness of each provision. In particular, the courts still judge the legal nature of a contract by the expression "similar to employment" or "employment color." Therefore, the usefulness of the employment contract provisions need to be reconsidered.

Can the Revision of the Civil Code be an Opportunity to Review the Labor Contract Theory?

Kenji Takahashi (Rissho University)

This paper discusses new changes in the theory of the labor contracts prompted by Civil Code revisions. The revised Civil Code and its theory will prompt a new perspective concerning labor law theory. Therefore, this paper will examine the following three important issues:

1. No "due consideration of fault" in the case of the breach of a contract,
2. The new theory concerning the restriction of rules of employment, and
3. The risk of loss and the possibility of new interpretations.

Free-will Autonomy of an Employee and its Conflict with Mandatory Provisions of Employment Laws: Reviewing Issues based on the Reform of the Japanese Civil Code

Hiroyuki Minagawa (Chiba University)

Based on the reform of the Japanese Civil Code in 2017, this article is intended to review a legal issue on the freedom of an employee's autonomy and its limitation set by mandatory employment laws. Firstly, I outline discussions and results of the Civil Code reforms of the provisions concerning Juristic Acts, Manifestation of Intention, and the Principle of Freedom of Contract, and thereby confirm that these general principles have not changed and continue to be the fundamental basis of the whole of private law, including employment law. Secondly, I review the legal issue of the freedom of an employee's autonomy and its conflict with a mandatory norm of employment laws, using critical analysis of judicial decisions that appear to allow the validity of the free-will consent of an employee that might be prohibited by the compulsory provisions of the Labor Standard Law (Art. 24 Para. 1) or the Equal Employment Opportunity Law (Art. 9 Para. 3). As a result, I point out that the standpoint of such judicial decisions does not generally intend to permit a derogation from a mandatory norm with an employee's free-will consent objectively adduced with reasonable facts, and instead, that those judicial decisions will set limitations on the scope of the mandatory norms in correlation with an employee's autonomy.

Freedom to Conclude Contract and Freedom to Conclude Contract of Employment

Masatoshi Ohki (Waseda University)

In recent years, regulations about an employer's duty to conclude (stable) contracts of employment with non-standard workers in certain cases have been passed, and intense debate over these regulations has been developing. In that debate, some argue that such regulations impose excessive restrictions on the freedom of contract. This paper aims to bring a new perspective to the debate about regulations on an employer's duty to conclude certain contracts by examining the principle of freedom of contract in civil law and the discussion related to compulsory contracts. From the examination of this paper it is clear that, firstly, the principle of freedom of contract was established based on a specific idea of society in a specific age. Secondly, recent contractual law theory is oriented towards new ideas instead of traditional individualism. Thirdly, on the other hand, recent contract law theory has been subjected to severe criticism, and it has become clear that at the present time there are not enough arguments to argue this point. These findings provide the following suggestions to the current discussion. First, the legitimacy of the recent regulations cannot be overlooked just by looking at their consistency with existing legal theories. Secondly, in discussing the new social situation and thought, there is a possibility of holding a discussion focusing on the nature of services.