

Abstract of Doctoral Thesis

Title: Litigation and Expertise : the Role of Litigation and their Transformation
in the Age of Science and Technology

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This thesis considers how judges can evaluate evidence and make rulings in cases which contain scientific issues (So-called science litigation) and how the judiciary can play a role to create norms for techno-scientific issues. This thesis compare the institutional and procedural contexts in the United States and Japan.

This thesis composes of three parts. In the first part, it overviews the history and characteristics of science litigation in the United States and in Japan. In the United States, it has been recognized that “science stands at the bar” and the judiciary has played a significant role in making norms relating techno-scientific issues. On the other hand, in Japan, since 1960s, the courts made decisions relating scientific issues in pollution cases. But, scholars analyze pollution cases not as scientific litigation but as “modern type litigation”.

It does not mean that Japanese courts do not care about scientifically reasonable decisions. Notable reforms to “strengthen the handling of cases requiring specialized knowledge (so-called specialized litigation)” were undertaken in 2000s. It assumes that the court should make reasonable decisions based on specialized knowledge. It can be called as “paradigm of specialized litigation”. Second part depicts the reality and problems of “specialized litigation paradigm”. In chapter 6, it examines the interaction between the court-appointed experts and judges in medical malpractice litigation process.

In the last part, it considered the transformation of expertise of lawyers and the base of legitimacy of litigation in the age of specialized litigation. It refers to the studies of professions, legal ethics and specialization of the justice in the United States.

It concludes that the judiciary cannot avoid the role to create the norms especially for advanced techno-scientific issues. It proposes ideas to improve the procedures to submit expert witness and the new conceptions of procedural justice in specialized cases.