

Development of legal mind in the era of high uncertainty

— The approach of systematic connection of social studies
between elementary school and junior high school —

Daisuke Yagyū Eiji Umeno Kenji Tanahashi Tadamichi Nagata

Abstract: This study aims to enable students to consider the significance and role of legal education in social life and problems concerning intellectual property right (trademark right), relating them to consumers' rights and duty, and company's social responsibility through lesson practice in elementary and junior high school, and acquire the basic way of thinking such as procedural justice. This experience is considered valuable from the perspective of legal literacy. As the achievement of this study is that considering the actual cases enabled the students to organize their own opinions by comprehending the facts, compare their own opinion with the others and understand the importance of creating a more desirable civil society.

1. Introduction

In modern society, globalization and high informatization have advanced, with the interests of the people involved are intricately intertwined, which makes it difficult to solve problems. It is not enough only to have knowledge to comprehend present and upcoming social matter. In such a circumstance, the subject of social studies should develop human who can adjust to the social change and develop peaceful world. In this modern society with globalization and informatization advanced, it is necessary for you to reconstruct your thought into more scientific one and acquire habit and ability to construct knowledge in your ways. In addition, you need capacity to have thinking ability and proper judging ability, to acknowledge the different values of others or other countries, and to peacefully develop relationships each other. This study aims to raise children so that they can have global capacity to play an important role in the 21st century.

2. Aims and methods

(1) Aims of legal education

Most part of our daily life is based on certain laws. In such a circumstance, it is important to educate students so that they can understand why laws are necessary and how we can develop better laws from the primary principle, and act independently and rightly based on that principle. What is important in legal education is not only to acquire legal knowledge but also acquire legal values and senses behind the knowledge; however, such values and senses are not acquired in a short period. Thus, it is desirable to introduce legal education into elementary school at latest¹⁾. To realize the society that democracy works well in Japan, each one of citizens needs to have capacity

to solve problems independently, and legal education plays important role for that. The aim of legal education can be “to enable people to understand the basis of law, and to develop ideal citizens who have knowledge, skills, and volitions to independently and fairly solve various and concrete problems occurring in the society”²⁾.

(2) Features of this study

The problems concerning intellectual property rights cover wide variety of rights, from the right for intellectual creation such as copyright or Patent right to promote creative enthusiasm, to the trademark right, the right for business sign to sustain one’s credit. At compulsory education level, however, there are practices dealing with intellectual property rights, but there are still few practices that “students consider intellectual property rights as a central theme” as a part of legal education. Thus, this study considers a concrete case of the trademark right (such as High Court Judgment of intellectual property right) as the first step of lesson about intellectual right property. Then we consider how protecting the trademark maintains the credit of employer, contributes to the development of industry, and leads to the protection of consumers’ benefit, by viewing from the perspective of “imitation” and relating to company’s role and social responsibility. In addition, this study aims to develop and practice lessons that relate company’s social responsibility and consumer sovereignty, judging fairly based on facts, and finally to develop legal mind⁴⁾. Legal education is clearly mentioned in the new course of study⁵⁾, but the principle of legal education is not fully realized. To develop legal education more, it is required to repeat trial and error through practices, and to embody the principle of legal education as various cases of practice.

(3) Methods

Only to understand intellectual property right as knowledge is not enough to improve capacity for fairly solving familiar social problem. The aim of legal education is also to acquire knowledge and skill to solve problems in real life, so we should educate students in accordance with their developmental stages, setting scenes as familiar as to their lives⁶⁾. Then we practiced lessons with small group learning and interactive learning between a teacher and students, focusing on the process of how each student thinks and judges and the reason why they lead to the judgement in each setting. As for evaluation, we assessed what students described in worksheets and students’ voice in the lessons.

3. Systematic connection of social studies between elementary and junior high school

(1) Systematic practice at our school

In accordance with the aim of this study, we introduce the following four abilities relating to the development of legal mind to make systematic connection between elementary and junior high schools for raising legal mind⁷⁾. Four abilities are ① the ability to understand legal system or legal principle, ② the ability to recognize that many scenes of daily life are related to laws, ③the ability to save right infringement and solve legal conflict, using laws, ④the ability to build and innovate laws.

Grade · Topic	Outline, number of lessons, four relating abilities
Grade 4	To understand that water contributes to healthy life of local

“The origin of water”	people or maintenance of good life surrounding (10 hours), ②
Grade 4 “Keep our lives”	To understand the works of related institutions to protect safety of people against accident or case, and those people’s device or effort. (19 hours), ②
Grade 4 “Make a comfortable life”	To think about local problem of garbage concerning “the disposal and usage of garbage”. (6 hours), ②
Grade 5 “Future industrial products and us”	To understand the features or roles of trade in our country, and to research, think, and adequately express the problems and developments. (4 hours), ②
Grade 5 “We utilize information”	To search for, think, and express the good use of information. (5 hours), ②・④
Grade 6 “Our lives and Japanese constitution”	To understand that our present democratic politics is based on the basic idea of Japanese constitution. (6 hours), ①
Grade 6 “Our lives and politics”	To understand that politics has an important role to give stability and improvement to citizens’ lives. (10 hours), ②
Grade 6 “For new and peaceful Japan”	To think about the problem and more development of Japan as a member of peaceful and democratic country. (6 hours), ①
Grade 7 “Think about Japanese territory	To think about the Takeshima Problem since Japan has historically deep relationship with Korea. (5 hours), ①
Grade 9 “Liberty – think about better society from the perspective of public welfare”	To think about whether you agree or disagree either with the accused or accuser with reason, based on Unconstitutional Judgement of Pharmaceutical Affairs Law, and to think and judge legally, with a perspective of public welfare. (3 hours), ①
Grade 9 “New rights – legal problem concerning with organ transplantation”	To think about what the problem of organ transplantation is, how to look at death, and the correlation of those two components, based on facts. (3 hours), ②
Grade 9	To understand the necessity, with information and

“New human right – think about the right of self-determination”	explanation given, that patient express voluntary and true will, through legal experiences where you judge and express yourself. (10 hours), ②③
Grade 9 “Working – you earn and live yourself in the future-”	To have a legal experience where you judge and express yourself, based on the fact you read from the concrete case of labor trial because you’ll be able to harmonize work and life, thinking about labor law when you become worker. (10 hours), ②③
Grade 9 “To build a society you can feel safe and comfortable as a consumer.	To look at company’s social responsibility and behave responsibly as a consumer, by thinking about consumer’s sovereignty through the actual case (The case in Himeji that a boy died from choking jelly) ⁶⁾ (3 hours), ②③
Grade 9 “To build a safe and comfortable society as a consumer”	To compare some cases (The case in Himeji that a boy died from choking jelly ¹⁰⁾ and The case that a boy got serious aftereffect of disease from choking a capsule toy ¹¹⁾) and behave responsibly as a consumer with a perspective of company’s social responsibility. (11 hours), ②③
Grade 9 “Global society and human rights – from the perspective of imitation and creativity –”	To think about the concrete case of trademark right which is especially concerned with credit among intellectual property rights, analyze the problems, look for solutions, and finally judge and express, listening to others’ ideas. (12 hours), ③④
Grade 9 “People’s living and the role of government”	To pursue how to improve people’s living and welfare from the aspect of finance. (3 hours) ,②
Grade 9 “Government activity and finance – to build a better society- “	To get interested in economic problems such as improvement of social capitals, fullness of social insurance, treatment in decreasing birthrate and aging population, and economic growth of Japan, think about the finance from the perspective of security and distribution, and finally make presentation. (8 hours), ②③④

4. Practice Case 1

(1) The topic

Do we need laws? – the case of Singapore and Minabe-town in Wakayama prefecture – (Grade 6)

(2) About the topic

In this practice, we learn laws in Singapore which is to keep beautiful scenery of the town, and “Riceball with pickled plums bylaw” in Minabe-town which is to promote the spread of pickled plums. Through the actual cases, we aim to develop the basis of legal mind, which is the goal of this study, by considering the reason or significance of the presence of rules like laws to constitute the society.

(3) The goal and plan of lessons

① The goal of lessons

- To get interested in laws or bylaws through the case of laws set in Singapore and bylaws set in Minabe-town, and to be able to willingly pursue the reason or significance of laws and bylaws.
- To be able to consider and express the necessity of laws from the case of laws set in Singapore and bylaws in Minabe-town.
- To be able to understand the reason and significance of laws set in Singapore and bylaws in Minabe-town.

② Lesson plans (2 hours in total)

The first lesson 「Fine city」 Singapore

The second lesson Minabe-town “Riceball with pickled plums bylaw⁸⁾”

The unit consists of two lessons. We practiced them for Grade 6 in June 2018.

(4) Overall lesson

① The first lesson: “Fine city” Singapore

As a concrete case, we considered laws in Singapore which is to maintain the beautiful scenery of the town. By comparing Singapore and Japan, or understanding unique laws or bylaws in other countries, we considered the necessity of laws and bylaws.

In the first lesson, we learned that there are legitimate reasons for each country to have their unique laws or rules and those laws or rules are set in accordance with the condition or problem of each country or region.



Figure 1 The first lesson
「Fine city」 Singapore, blackboard

② The second lesson: Minabe-town “Riceball with pickled plums bylaw”

【The goal of this lesson】

To be able to think about why “Riceball with pickled plums bylaw” was set in Minabe-town in Wakayama Prefecture, and understand that laws exist not only to regulate people’s action, by comparing this with laws in Singapore.

In the introduction, we showed a part of “Riceball with pickled plums bylaw” in Minabe-town in Wakayama prefecture.

The bylaw concerning the spread of plums and rice balls using South Kisyu plums from Minabe-town

(The cooperation of townspeople)

Article 4 Towns people are required to cooperate to foster the spread of plum products such as plums and rice balls with plums, and they themselves try to improve their health condition.

Then we told students that fine or punishment are not mentioned in “Riceball with pickled plums bylaw”, and set the learning task as “why the bylaw was made although penalty was not set.”

Students said, “The bylaw was set because Wakayama is thriving in the production of plum and they want to spread them to more people”, or “These days people eat more bread than rice and less people eat plum, so probably the bylaw was set so that more people eat plum.” Then we told the students that one third of plum in Japan was produced in Minabe-town and showed the graph of change in consumption, and students said, “Just as I thought”.

Then we asked the students, “Why does the town need to set such a bylaw so that people eat more plums?” The students said, “it is more effective to set bylaws than just to address to each citizen.”, or “If more people eat more plums, farmers can earn more money. If farmers can earn more money, towns can get more tax, which is food for the towns.”

In addition, we asked, “The law in Singapore and the bylaw in Minabe-town are both ‘rules’, but are they truly the same?” Students said, “The one in Singapore is more rigid, and the one in Minabe-town is more positive.”, “Both are rules, but the one in Singapore is the rule to forbid like ‘Don’t do this’, and the one in Minabe-town is more like addressing, ‘Let’s do ~.’ Thus, I think they are different.”

At the end, we told the students that some other towns or villages set bylaws such as “Biting into a whole apple bylaw (Itayanagi-town in Aomori prefecture)⁹⁾” or “Toast with plum liquor bylaw (Tanabe City in Wakayama prefecture)¹⁰⁾” as Minabe-town did, and we closed the lesson.

After two lessons, students reviewed as follows.

- It is necessary to set rigid laws for littering in Singapore, but I don’t think Japan needs such a rigid law. Indeed, Japan has this kind of bylaws for littering, but I think Japanese people do not litter without such bylaws.
- It seems Mihara city has a bylaw to forbid littering, but we are not so conscious for that. But to keep a town clean, I think we need such bylaws even they are not so rigid as the one in Singapore.
- I thought that there are laws or bylaws which fit into the country. I can understand why Singapore has rigid laws. I thought Japan does not need such a rigid one.
- 「Riceball with pickled plums bylaw」 was interesting. I thought that wasn’t too serious, but really positive to speak out to everyone.
- As for laws or bylaws, I had a rigid image like “Don’t do this!”, but I found that there are also addressing kind of laws or bylaws like “Let’s do ○○.”

(5) Achievements (○) and problems (●)

- By understanding laws and bylaws over the world, or” Riceball with pickled plums bylaw” in Minabe-town, we could make students more interested in laws.
- By comparing laws in Singapore and bylaws in Mihara City and Minabe-Town, students could think about significance and different dispositions of laws.
- Students could not think enough about the reason or significance why rules like laws or bylaws exist for people to consist of the society. Considering the connection of elementary school and junior high school, we need to think more about what learning we should provide for students at grade six.

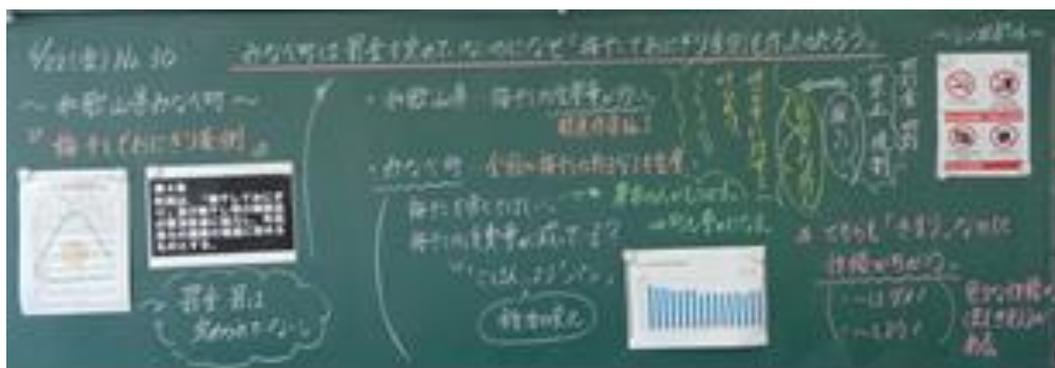


Figure 2. second period

“Riceball with pickled plums bylaw” in Minabe-town on the blackboard

5. Practice case 2

(1) Lesson title

Global society and human rights – from the perspective of imitation and creativity -

(2) About the lessons

These days, there is a concerning problem like “many pirate products or fake products are made in neighbor countries and a part of them are flown into Japan”, or “to unconsciously infringe on the contents created by others, with the increasing expansion of information device such as smartphone”. It is very “the era of high uncertainty” that these complicated and wide-ranging problems occur one after another and increases uncertain elements. In such an era, people are required to have a legal mind. If you create works or ideas with a significant effort but others copy or imitate the original works, your efforts would not pay off. This is why people should recognize the necessity to protect the products created by a person as his/her asset and actually protect them. This is what is called a problem of intellectual property, and you are required to have legal thinking faculty for this. On the other hand, humans partly made progress with “imitation”. When you create something, you refer to prior knowledge or material, and based on them, civilization could advance. That is to say, learning intellectual property rights means interpreting a social event from various perspectives. In this lesson, therefore, we especially adopt concrete case about trademark right leading to the maintenance of credit, find problems, analyze it, look for solutions, touching other’s ideas, and finally judge themselves and express, which is the opportunity for legal experience.

(3) The goal of unit

- To enable students to understand the role of company and social responsibility through familiar consumption.
- To enable students to pursue and express rational solutions, by considering cases about intellectual property rights occurring around Japan and the world, as a human living in the era of high uncertainty.
- To enable students to behave responsibly as a consumer, form a fair society.

(4) The lessons

The lessons consist of 13 class hours. From November to December in 2017, we had lessons for two classrooms of 9 grades. Among them, we will describe overall lesson and students' voices or actions, focusing on the second period in the third phase.

First phase Our life and economy · · · 5 hours

Second phase Market economy and finance · · · · · 4 hours

Third phase Global society and rights

–from the perspective of imitation and creativity · · · · · 4 hours

* We look back our life and consider “imitation” in the first period in the first phase, confirm the case fact based on trademark law and dealt with concrete case (confliction between Shiroy-koibito and Omoshiroy-koibito) in the second period, and in the third and fourth period, we considered a concrete trial case (Frank Miura case). The final task for the learning was imposed as a homework in the winter vacation.

In this chapter, we describe the outline of the first and second period in the third phase, and overall lesson and students' action, focusing on the third and fourth period in the third phase.

(5) The outline of the lesson

A About the first and second period in the third phase

- [1] In the first period of the third phase, we considered how students could perform creativity in the global society, focusing on “imitation” as a keyword. This content leads to intellectual property and make students more interested in the following lessons.

[The flow of lesson]

- ① Fill in preliminary questionnaire (“necessity of imitation”, “necessity of creativity”, “performance of creativity by imitation”)
- ② Read documents (with Powerpoint)
- ③ Based on ②, describe the own thoughts about “imitation” and “creativity”.
- ④ Based on ③, interact in groups, add opinions obtained in the groups, and reconstitute the own thoughts.
- ⑤ Describe the necessity of “creativity” and “imitation” for you into a scale.

We prepared worksheets and Powerpoint. The Powerpoint includes Ukiyoe work of Hiroshige

Utagawa “Meishoedohyakkei”, a copy of Van Gogh’s work, works by Alberto Sughi, and “Night Club” by Yoshihiko Wada, as an example of imitation.

【Outline of lessons】

“Is imitation bad?” To broaden the width of students’ thinking, we did not get into the very “trademark right” but let them think about “imitation” with some documents. Most students answered in preliminary questionnaire that “imitation” is necessary, “creativity” is also necessary, and the performance of “creativity” by “imitation” is important. After the interaction in groups, asked the necessity of “imitation”, 76% of students answered that they do not 100% need “imitation”. These students mentioned in ③④, “It is not good to imitate for individual benefit or to violate”, “It is bad to inflict a loss to others”, or “It is expected to show total originality”. The lessons started with the recognition that “imitation” is not “absolutely necessary” but can be carried out with some condition.

[2] The second lesson in the third phase contained the case between Shiroi-koibito and Omoshiroi-koibito as a concrete case of trademark dispute. The main questions were “What is the problem?”, “How can you solve it?”, “Which do you agree, the accused or the accuser”. In the lesson, we focused on the process of how students judged and why students judged like that, based on the principles.

[The lesson plan]

- ① Introduction (The aims, showing materials)
- ② Understand the concrete case and problems
- ③ Consider how to solve
- ④ Understand the way of legal thinking
- ⑤ Actually consider which side, the accused or the accuse (Explain the way of thinking toward the solutions based on the trademark laws)
- ⑥ Interact in groups and rethink about one’s own conclusion

We prepared worksheets and Powerpoint

④ the way of legal thinking

I We set the benchmark for the judgement of trademark as ①the similarity of appearance, ②the similarity of name (pronunciation), ③the similarity of concept (meaning), and judged the similarity of each component as whole.

II In the trial of trademark right infringement, furthermore, we judged the infringements of three functions ①the authorship indication function (the basic function of trademark that shows the origin of products or services by putting trademark on the product), ②Trust protective function (the trademark function that consumers expect the equal quality of products put the same trademark, and companies try to respond to this expectation), ③The advertisement function (the function of trademark that evokes the purchase and usage of products or service by remembering and having an image of trademark) ¹⁴⁾. In this practice, we focused on A and B①②.

【The outline of lessons】

Students tried to understand the outline and problems of case from documents or explanation. Their ways of solution were “talk with each other so that Ishiya confectionery company will not suffer disadvantages.”, “this imitation can be accepted as long as it is fun (but Yoshimoto entertainment conglomerate should pay Ishiya some parts of profit).”, “the imitation was fun, but should not be accepted because Ishiya was upset about it.”, “Only the trial can solve this”. To consider the problem more in detail, we considered the existence of violation on trademark law, article 37 from the perspective of appearance, name, and concepts, and judged the similarity. Then students made the final judgement with the components whether the authorship indication function (what is the company of this product?) and trust protective function (products from this company can be trusted!) are violated.

【The results of students' similarity judgements】 (N=75)

Judgement	Appearance	Name	Concept
Similarity	51 (68%)	62 (83%)	10 (13%)
Unsimilarity	16 (21%)	12 (16%)	54 (72%)
Hard to judge	8 (11%)	1 (1%)	11 (15%)

The result of synthetic judgement based on the result of similarity judgements above was that 48 students agreed with the accuser “Shiroi-koibito”(Ishiya) , and 27 students agreed with the accused “Omoshiroi-koibito” (Yoshimoto). Students recognized the similarity in appearance and name, and unsimilarity in concept. Students who agreed with Ishiya tend to recognize more similarities than those who agreed with Yoshimoto. Although some students who agreed with Yoshimoto also recognized many similarities, but they said many of them were accepted as parody. That is to say, students more guaranteed the parody sense of Yoshimoto, whose name was wide-spread in the world of comedy, than the loss of accusing company from the trademark right infringement. On the contrary, some students who agreed with Ishiya recognized less similarities. This is because Ishiya suffered a loss and parody was thought to be unaccepted. Moreover, some students judged that Yoshimoto’s claim can be accepted within limited sales, package should be changed more, or Yoshimoto should get the acceptance from Ishiya, for instance. It seems that not only similarity, but also economic aspect influenced students’ final judgement. At the end of the lesson, we explained that this case went into a trial, but they settled into reconciliation and no judgement was made by the court¹⁵⁾. Many students wanted to know what judgements would be made if the trial continued. students judged that Yoshimoto’s claim can be accepted within limited sales, package should be changed more, or Yoshimoto should get the acceptance from Ishiya, for instance. It seems that not only similarity, but also economic aspect influenced students’ final

judgement. At the end of the lesson, we explained that this case went into a trial, but they settled into reconciliation and no judgement was made by the court¹⁵). Many students wanted to know what judgements would be made if the trial continued.

The content of worksheets is mentioned in the statement below

*** Reference [Summary of the case/Perspectives on thinking] (Contents on handouts)**

(1) Summary of the case

As *Yoshimoto Kogyo* started selling waffles named “*Omoshiroi Koibito* (Funny lovers)”, *Ishiya Seika*, a famous confectionery company for “*Shiroi Koibito* (White lovers)”, filed a suit to Sapporo district court against *Yoshimoto Kogyo* and the other two companies for trademark infringement, and for suspension and recall of sales according to unjust competition preventive means. This controversial product was on sale as a souvenir from Osaka July 19th in 2010 in some souvenir shops in Nanba Grand Kagetsu, Shin-Osaka station, Itami airport, Kansai airport, Kobe airport. According to *Ishiya Seika*, however, *Omoshiroi Koibito* started being sold in other areas than Kinki area, and they had no choice ignoring the product. It was obvious that *Omoshiroi Koibito* deliberately imitated *Shiroi Koibito* since the former looked completely the same as *Shiroi Koibito* in terms of layout of packages, which *Yoshimoto Kogyo* mentioned that the controversial product was filled with “jokes” and “humors”. Although this product could be considered as a parody, this resulted in contravening the trademark right due to using the well-known trademark as a parody.

[plaintiff's (*Ishiya seika*) testimony] ¹⁶⁾

“We were honestly surprised at first, but the sales remained in some shops related to *Yoshimoto Osaka city* and we thought that the sale was just for a short period of time as a parody product,”

“However, the market was extended to other souvenirs shops in *JR Shin-Osaka station, Kyoto station, Kansai International airport, and later to Tokyo Kotsu Kaikan in Chiyoda, Tokyo*. We even had heard that *Yoshimoto Kogyo* was also considering the sales in *Hokkaido*.”

“*Shiroi koibito* is the key product accounting of 80 percent of the sales.”

“We received some complaints about the fact that customers bought *Omoshiroi Koibito* by mistake in *Tokyo* although they wanted to get *Shiroi Koibito* .

“We invested about 500 million yen for advertising expenses of *Shiroi Koibito*.”

(2) Perspective on thinking

1) Applicable law

Trademark act: Article 37 (Acts deemed to constitute infringement)

The following acts shall be deemed to constitute infringement of a trademark right or an exclusive right to use:

(i) the use of a trademark similar to the registered trademark in connection with the designated goods or designated services, or the use of the registered trademark or a trademark similar thereto in connection with goods or services similar to the designated goods or

designated services;

2) Perspective on thinking 1

Considering trademark act, generally judge whether *Omoshiroi Koibito* is similar to *Shiroi Koibito* in terms of three similarities; appearance, designation and concept.

3) Perspective on thinking 2

[Document: The use of “*Is it allowed as a parody?*”] *Parody is defined “An imitation of a well-known existing work with a purpose of a travesty and a satirical effect and mimicry understanding of its features”*(Shogakukan digital Daijisen)

Even if this parody was permitted regarding trademark, the trademark, whose purpose was the authorship indication and quality protection, had no need to confirm the concepts of “fair use” or “quotation”, and should also be discussed from the authorship indication function and trust protective function.(the rest omitted)

B The third and fourth periods in the third phase

[1] In the third period in the third phase, as the introduction of the lesson, we reviewed the case of trademark infringement “*Shiroi Koibito against Omoshiroi Koibito*” that students learned about in the previous lesson. In addition, we showed students various trademarks surrounding our everyday life in order to encourage students to grow their interests. We also explained why business people gain trademark right, associating this with Trademark Act Article 1 (purpose) [the purpose of this act is to maintain the trust from those who use trademarks in their business by protecting their trademarks, contribute to the development of industry, and protect customers’ profit.] The case of trademark infringement in the previous lesson was *Furanku Miura affair*”. The main questions were “What was the problem here?”, and “Was the trademark, *Furanku Miura*, similar to the trademark, Frank Muller?”. The contents of this lesson enabled students to use what they learned in their previous lesson, which led them to engage in the activity and remember the previous lesson.

[The lesson plan]

- ① Introduction (The aim of this lesson, Introducing examples of trademarks)
- ② Building common understanding of lawful thinking.
- ③ Understanding the case and where problems were situated.
- ④ Providing the questions such below.

Parody trademark is an imitation of a well-known existing work with a purpose of a travesty and a satirical effect and mimicry understanding of its features. Parody trademarks have capture. Please judge whether opponent’s trademark function was substantially infringed in this case, considering perspectives of the authorship indication function and and trust protective function.

- ⑤ Exchanging opinions in groups and think about each own conclusion by oneself again.

Handouts and powerpoints were prepared.

【The outline of the lesson】

Students considered whether Article 4 (unregistrable trademarks) is violated or not in terms of appearance, name and concepts, and those two were similar or not. They later made the final decision after checking the authorship indication function (e.g., *Where is the company selling products?*) and the trust protective function (e.g., *A product from this company should be alright.*) as an evidence for the judgement.

【The result of students' similarity judgements】 (N=71)

Judgement	Appearance	Name	Concept
Similarity	51 (72%)	57 (80%)	13 (18%)
Dissimilarity	20 (28%)	14 (20%)	58 (82%)

As a result of holistic judgement, 34 students (48%) agreed with the statements of a plaintiff “*Furanku Miura*”, and 37 students (52%) agreed with the statement of a defendant “*Franck Muller*”. Moreover, they confirmed the relationship of the final decision with the similar trial decision.

Similarity judgement (Three perspectives integrated)	The final decision (a plaintiff against a defendant)
A: Similar 45 (63%)	a <i>Furanku Miura</i> 12 (17%) b <i>Franck Muller</i> 33 (46%)
B: Not similar 26 (37%)	a <i>Furanku Miura</i> 22 (31%) b <i>Franck Muller</i> 4 (6%)

The result shows that generally when similar, they tended to support *Franck Muller* (A · b) with a risk of confusion. On the other hand, when it was not similar, they tended to support *Furanku Miura* (B · b). However, in fact, the students' conclusions varied since there were other perspectives occurred than the three perspectives. For instance, although there were some risks of confusion owing to the final decision of “similar”, the reason why 12 students (A · a) supported *Furanku Miura* was that customers must be able to distinguish the difference of price and function and would buy the products based on the acknowledgement of parody in instruction manual, which would not infringe the authorship indication function and trust protective function. Moreover, four students (B · b) supported *Franck Muller* although there is no risk of confusion. However, they judged they were not similar since they asked for making a more careful judgement. If there were people who got confused and purchased by mistake, this might result in infringing on the authorship indication function and trust protective function. We managed observe that there were 10 students (914%) who changed their holistic judgement every

time after judging on their own and in groups. In more details, there were five students changed from A · b to A · a, three students from B · b to B · a, and two students from A · a to A · b (The final result is shown in the graph above). The reason of the change by five students was because of the influence from other factors than similarity such as price, customers' judgement ability and so forth. Three students who thought any potential caused confusion should be allowed at first, but their carefulness was eased through listening to other students' opinions. In addition, two students changed their minds since Franc Muller would lose its profit if customers purchase products with some confusion from *Furanku Miura*, which should not be tolerated even if it was a parody.

In this unit, the reasons why we focused on two trademark infringement cases were because the first case was relatively easy to understand what happened but difficult to summarize since the case was unsolved, whereas the second case ensured its result and made students compare their own decision with the trial decision. Moreover, students had to know the essence of these cases more deeply through thinking about these two cases. Therefore, this is considered as an effective way to have students consider the significance of intellectual property rights.

(Students' comments)

【Supporting “*Furanku Miura*”】

- *They are not similar except how to read those and the sounds. We can tell the difference since “Miura” is written in Chinese character. If we bought this product by mistake, it would lose the trust of a defendant from customers. However, since it would be unlikely to buy it wrongly since the price and function are completely different. For this reasons, the second case should be accepted.*
- *The way to read the names are similar, but I think we can tell the difference because the way how the name is written such as including Chinese characters, and the product looks different and cheap. I don't think 800,000-30,000,000 worth watch would not be broken so easily.*

【Supporting Franc Muller】

- *I think people are more strongly influenced by appearance and names than its concepts. The purpose of watch is simply to check the time, so although Franc Muller's watch has a high quality, customers would go for *Furanku Miura* if its quality is quite fine. Moreover, customers would not read the instruction manual so that the manual cannot be a resource to judge if it is a right product.*
- *The sound of names and appearance are so similar that this might confuse customers. Although “Miura” is Chinese characters, its font is almost the same as Franc Muller. Its price and its function are of course, different, but this would lose customers' trust if this keeps on market.*

*** Reference [Summary of the case/ Perspectives on thinking] (Contents on handouts)**

【The summary of the case】

Plaintiff : Co. Dinks applied for the trademark "Furanku Miura" to Patent Office, and the trademark officially registered in August 24th, 2012. They started selling a watch named "Furanku Miura" on the day.

Defendant : The trademark management company made a request for a trial for trademark patent invalidation of trademark "Furanku Miura" to Patent Office on April 22nd in 2015. Its reason was because the trademark "Franc Muller" was registered earlier than *Furanku Miura* was, and on September 8th in 2015, Patent Office vacated.

The plaintiff brought an action for a revocation suit against the vacated judgement to the Intellectual Property High Court on October 16th in 2015, and the decision was made on April 12th in 2016.

【Applicable law】

Article 4 (1) Notwithstanding the preceding Article, no trademark shall be registered if the trademark:

- (x) is identical with, or similar to, another person's trademark which is well known among consumers as that indicating goods or services in connection with the person's business, if such a trademark is used in connection with such goods or services or goods or services similar thereto;
- (xv) is likely to cause confusion in connection with the goods or services pertaining to a business of another person
- (xix) is identical with, or similar to, a trademark which is well known among consumers in Japan or abroad as that indicating goods or services pertaining to a business of another person, if such trademark is used for unfair purposes (referring to the purpose of gaining unfair profits, the purpose of causing damage to the other person, or any other unfair purposes, the same shall apply hereinafter)

[2] The fourth period in the third phase, based on the trial decision "*Furanku Miura*" incident made in the third period, we encouraged students to discuss a difference between their decision and the judge's decision based on *Furanku Miura*. In addition, student learned that trademark infringement has become a serious issue not only in Japan but globally, and Japan is largely influenced. The major question here was "*Please look back how you came to the final decision though the report of the trial decision*" and "*Please consider trademark issues in globalization in terms of where, what and how to do*".

【The lesson plan】

- ① Introduction (The aim of this lesson, Introducing examples of trademarks)
- ② Reading the report of the trail decision and comparing students' own decision with the contents of the decision.

③ Considering trademark issues happening across borders (instruction with handouts and powerpoints).

③ Summary

Handouts and powerpoints were prepared

【The outline of the lesson】

After reviewing the previous lesson, we checked a revocation suit against the vacated judgement by using handouts and powerpoints. The students showed a great interest in the trial judgement. The Intellectual Property High Court ordered a rescission of judgement for dissimilarity of the two trademarks, which resulted in the opposite decision to 37 students' decision. We provided students with time to think about what and how the difference between their decision and the trial decision is, using the judge's decision as one of criteria. As a result, it turned out that judgement on appearance was the most difficult for students, but, at the same time, it influenced the holistic judgement the most.

- The number of the students whose decision was different from the trial decision: 37.
- The number of the students whose decision was the same as the trial decision: 14.
- The number of the students whose decision was the same as the final decision but different in respective perspectives: appearance: 15, designation: 9 and concept: 5. In addition, the number of the students whose decision was different in terms of one of three perspectives: 12, two of three perspectives: 7, and all of three perspectives.

Apart from the difference from the trial decision, each student had some parts to consider, and managed to review and compare the contents of their decision with the trial decision. Through this activity, the students were also able to understand what kind of reasons would contribute to a trial decision in an actual court, and why a judge carefully makes a decision (judicial obligation), which, moreover, enabled the students to review Trademark Act: Article 1 (Purpose). Keeping in mind that there was not always only one answer in law, we considered that at the stage of junior high school, it is important to compare contents of a trial decision with how they made their own decision. Thinking about their own decision and its reason again objectively would grow their legal minds since they actually experienced thinking of things logically and reasonably in these series of activities.

(Comments in handouts)

Q 1 : Compare your decision with the reports of trial judgements by Intellectual Property High Court, and think/ analyze why the trial decision was different from the students' decisions and analyze it.

(Students' comments)

• I thought their designations were similar, but I was impressed that the reason was well explained in detail by looking at word by word in order to make the audience understand. I also made the same decision as the trial decision, but it made more sense to me about their dissimilarity by reading the report of the trial judgement.

• *In similarity judgement, my holistic decision was the same as the trial judgement, but different from the trial judgement in terms of appearance and designation. Regarding appearance, the font of numbers looked completely similar but the font of “Katakana” and Chinese characters did not at all. I thought designation sounded totally different, but I felt their sense of language was quite similar when I actually said them in a row. Although I thought “Furanku Miura” might disturb the defendant’s business, I was convinced by the judge’s decision that the confusion would not be occurred since their price ranges and business directions were completely different.*

Q 2 : Why do the court judge a situation in that details?

(Students’ comments)

• *This incident is not only about the problem concerning watches, but this incident would also stop those who plan a bad imitation from doing the same thing. They could set a border between legal or illegal in order to protect trademark rights, which also potentially provides judgement criteria for customers who want to buy things. However, since both sides were completely different, in order to give them better understanding, they would have to provide a better explanation. In addition, considering things from various perspectives, which helps both sides understand the fair judgement and feel more convinced.*

Regarding Q1, the students engaged in activity cooperatively and helped each other in groups. The students wrote comments about how important it is to respect a right of those who registered a trademark at first, how to convince the both sides, protecting customers, fairness in a trial in Q2.

Next, we introduced other cases concerning parody trademarks such as PUMA, canned coffee BOSS and so forth, and made sure that trademark infringement occurred not only nationally but also internationally based on handouts ¹⁹⁾.

As a summary, we showed a task as below. Many students managed to express their opinions concerning intellectual property rights (trademark) considering specific contents that they learned in lessons.

【Task】

Through lessons in Civics in Social studies, we learned “companies”, “production”, “prices” and so forth. Among them, we have discussed intellectual property rights (trademark) by looking at actual cases. For instance, “Imitation and Creativity”, “*Shiroi Koibito vs Omoshiroi Koibito*”, “*Franc Muller vs Furanku Miura*”. I think you also came to understand how it is important for us to consider intellectual property rights (trademark) in this global society. Considering this, please answer a question below, looking back previous lessons.

(Question) **Why is it important to think about** intellectual property rights (trademark) in this global society? Considering what we have learned, please describe with your words.

(Students' comments

- [...] I thought especially, Japan has many small and medium-sized enterprises and strong technical capability, so we should take this sort of rights seriously. I also learned that companies also need to make efforts since they might potentially lose their trademark rights if they postpone registering their trademarks.
- [...] Even if there are laws, we would not necessarily follow all the laws [...] Consumers usually received an impression from trademarks by just taking a brief look. In addition, how trademarks look all depends on how we as consumers perceive the information from trademarks. Therefore, intellectual property rights are “information” and it is really difficult to accurately protect something that can be seen differently depending on receivers. In addition, we need to consider how we can protect intellectual property rights if our opponents are the world.
- [...] This trademark right allows companies to invent products without any concerns since this right appropriately justifies if imitation occurs. This right very carefully justifies if a case is imitation under the various perspectives such as appearance, designation and. Without it, companies might end up with the decreased amounts of profits because consumers might purchase an imitation product by mistake and companies lose the trust from consumers. I think it is difficult to invent a product from zero and not necessarily wrong to imitate a product, but important in terms of how much they can put their originality.

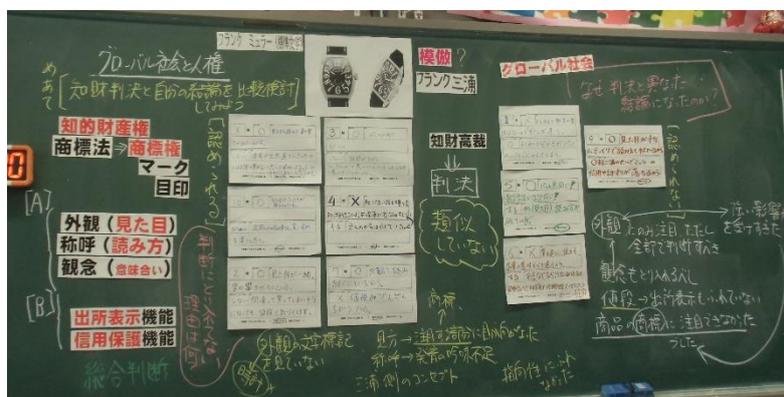


Figure 3. Notes on blackboard during a lesson

Reading comments from other students, there was the following comment such as “Because of the lessons, I had a research about trademarks on my own. For instance, I was surprised with the fact even comic books, such as *BLACK JACK*, registered the trademarks. Therefore, I thought it is important for companies to prepare for any potential problem caused by other companies imitating their products, and understand why it would be problematic for them. In addition, I learned that it would never be permitted since trademark infringement would cause companies loss.” In addition, we found many comments such as “How do companies protect their profits in fair competition?”, “Companies should prepare themselves for any potential problems such as *G-SHOCK* by *CASIO*”, “Laws are necessary to control society”, “Trademark

infringement deteriorate business competition globally, which cause a bad influence on industries”.

6. Achievements and Limitations

In order to deepen knowledge and understanding through social studies, we need to make a detailed plan to attract the interests and attentions. The students in the lessons managed to engage in an activity with a great interest in the similar two trademark infringement cases: “*Shiroi Koibito vs Omoshiroi Koibito*” and “*Franc Muller vs Furanku Miura*”. Moreover, they were able to reconsider their opinions and make a final decision by comparing plaintiff’s opinion with defendant’s opinion and reconsidering their opinions with consideration towards other students’ opinions under the perspectives of “Imitation” and “Trust” which Imitation sometimes might lead to new creativity while imitation without rules might result in stealing opponents’ trust. Especially, the second case gained the trial decision already. Thus, we introduced this case as the actual fact, and provided students with opportunities to consider why the court made such a trial decision. The students carefully read the reason for the trial decision by the court, and compared it with their own opinion. This actually encouraged students to understand the laws help us to solve things logically, and are also the techniques to control society²⁰⁾. In addition, when the students made their own decision, not only did they make similarity judgement of trademark, but they are also trying to understand problems from the various perspectives of the purpose of companies, relationships of other countries, the roles of the laws and trials.

One of the limitations is that the aim of this unit was to encourage students’ abilities for legal thinking and making-decision through learning actual cases. However, we consider that we need to connect this learning with deepening social judgement more than just actually experiencing. In order do so, we need to provide students with opportunities to consider a reason for decision-making of a case, and socially make a judgement considering a result since we suppose that this leads to a higher level of experiencing learning. Moreover, when students makes a legal decision, sensitivity is one of the important elements. Sensitivity is based on social recognition and students’ subjectivity, and is important criteria to judge whether a case is passed or not in the future global society where they are expected to make a choice under various circumstances. Therefore, through lessons in social studies, we as teachers need to aim at developing students’ sensitivity from a fair position²²⁾.

While continuing to overcome problems, we would like to develop a systematic curriculum of social studies for elementary and junior high schools and further investigate the effect of its implement.

References

1) In order to achieve the purpose of legal education, we should focus on continuity and accumulation through the entire school curriculum. In other words, in the entire school education, we need to conduct coherent legal education, so we are expected to have a perspective to use education content of a previous school year in a present school year to conduct a better education. For more information in *Kantobengoshirengokai “Korekrano Hokyoku”*, pp. 37-38, 46-50.

2) *Kantobengoshirengokai "Korekrano Hokyoiku"*, pp. 45.

3) The cited references regarding intellectual property rights are as follows. Naoki Koizumi, *Chitekizaisanhou Nyumon*, Iwanamishoten, 2017. Kenichi Inaho, *Tanoshikumanaberu Zaisan Nyumon*, Koudanshagendaishinsyo, 2017. Ryo Shimanami, Tatsuhiro Ueno, Hisayoshi Yokoyama, *Chosakukenho Nyumon*, Yuhikaku, 2016. Naoki Koizumi, Yasuto Komada, *Chitekizaisanhowotanoshimimi 23mon*, Koubundou. 2013.

4) Legal mind theory can be categorized in various ways, but in this present research, we simply define legal mind as considering things logically (Ichiro Kato, *Rigaru · maindonitsuite—Hotekina · mononokangaekata—*, Hogakukyoshitsu 133gou, 1991, pp. 27-36). In addition, as a concrete perspective, we referred the following perspective, dispute resolution ability theory which is ①problem finding ability, ②problem analyzing ability, ③proposing ideas for problem solving ability ④Persuasive ability (Yoshimitsu Aoyama, *Zadankai: Korekrahougakuwomanaubuhitobitohe, Hougakukyoshitsudai8go, 1981, pp.16*), and considering legal cases, ①Developing logical thinking methods, ②Thinking based on evidence, ③Keeping in mind to respect human rights and handle a case equally, ④Following an appropriate procedure such as listening to statements from both sides, ⑤Making a final decision after respecting legal stability, or if it was inconvenient, making a decision and focusing on concrete validity under consideration for practical benefit. (Kato, 1991). In addition, there are some reference mentioning about "brave of being criticized by opponents about one self's opinion", "strength of not saying with authority" in various factors for legal mind. Setsu Kobayashi, Kenpo, kihonkoko to rigarumaind, *Hogakusemina 374go, 1986, pp. 27.* "There might always be more than one conclusion, but we find legal mind important to make a decision in the end." Noriyuki Nishida, *Zadankai: Hogakuwoikanimanabuk—Senpai Soshite Kyotositeno Shitenotaikenkara—*, Hogakukyoshitsu Zokan "Shinhogauannai' 86", 1986, pp.42. Kisque Ryuzaki, *Legal · Mind soshite Nihonnoayumi*, Hogakusyoshitsu 175go, 1995, pp.22-29, Ichiro Kato, *Hogakuwomanaubutameni, Shinhogakuanai' 85*, Yuhikaku Gekkan Hogakusyoshitsuzoka, 1985, Kanto.

5) Zizi tsushin shuppankyoku, *Jugyogakawaru! Shigakusyushidoyoryo handfobukku tyugakkoushaken*, ziziytsushinsha, 2017, pp. 66-67.

6) For instance, for upper elementary graders, we should encourage them to introduce a familiar specific topic, consider it deeper, conduct presentation or debate. Then, it is ideal to relate all contents of materials, contents of discussion and opinions and "righteous" "justice" "fairness" together, and encouraged them to be able to understand concretely. Moreover, it is reasonable for junior high school students to, as lesson materials, introduce accident, troubles, issues that are highly likely to occur in our society, and let students experience consideration and solution with methods using actual legal system, mock trial, legal process. Then, there is a suggestion that it is ideal for students to understand legal value and legal concepts on their own, use these in mock situations during classes in a better way, and use their own thoughts, opinions and discussions in reference to 1)

Kantobengoshirengokai "Korekrano Hokyoiku", pp. 46- 50. 7) Legal education is education that enables students to develop legal values and perspective towards legal matters. For instance, during learning process, developing these four powers is considered to be a big part of it. Toshihiro Tosida, *Hokyoikunozissenkaramietekurumono*, Hogaku semina 622 go, Nihon hyouron sha, 2010, pp. 19-24. As legal resource, in the reference to *Kantobengoshikai rengokaihen, Hokyoiku*

-21seiki wo ikirukodomotachinotameni, Gendaizinunsha, 2002, under p. 13.

8) Wakayama-ken Minabe-shi HP (Minabe-cho, Kishunakoume shiyono Onigiri oyobi umeboshino

Gukyunikansuru jore)

http://www.town.minabe.lg.jp/_files/00000475/umeboshi_onigiri_jourei.pdf#search=%27%E6%A2%85%E5%B9%B2%E3%81%97%E3%81%A7%E3%81%8A%E3%81%AB%E3%81%8E%E3%82%8A%E6%9D%A1%E4%BE%8B%27

9) Wakayama-ken Tanabe-shi HP (Tanabe-shi Kishuumesyu niyoru kanpai oyobi umeboshino hukyuni kansurujorei) <http://www.city.tanabe.lg.jp/gikai/jyourei.html>

10) Aoyama-ken Itayanagi-machi HP (Rngono seisanni okeru anzenseinokakuhoto seisanshajohono kanriniyoru ringonohukyusokushinwohakrujore)

<http://www.town.itayanagi.aomori.jp/ringomarukajiri/regulations/regulations-1.html>

11) With reference to 3), Inaho, pp.3.

12) The references regarding “Imitation” are as follow, Ryoza Kikkawa, 「【Dai 6kai】 To analyze design concepts of products made in Japan」, Nikke Monodukuri, 2013 9gatsu go. Michihiko Otsuka (Faculty of intellectual property, Osaka institute of technology), *Sangyoshakaito Chitekizaisan (jo) Dai2han* (lecture handouts), 2015, pp. 8-15, 43-58. Yasuhiro Hirano, *Shacho, shohyotorokuha osumidesuka?*, Diamond, 2012, pp. 66-105. Yasuki Hamano, *Mohosareru Nihon*, Shodensha, 2005, pp. 138-141, 176-182. Hisayoshi Miyatake, *Tadashi Kopipeno susume*, Iwanami Junior Shinsho, 2017, pp. 115-131. Satoshi Yamamoto, *Hogakuno omoshirosa [Kaiteiban]*, Hokuju Shuppan, 2014, pp.185-195.

13) The cited references are as follow. Hirano(cited above), pp. 178-182. Soichi Tokizane, *Kopipe to netsuzo*, Jusonbo, 2016, pp. 133-135. Inaho (cited above), pp. 166-167. Yoshiyuki Tamura. “*Shiroi Koibito*” vs “*Omoshiroi koibito*” *ziken ~Shohyoho • Husekyosoho niokeru parodyteki shiyu no Toriatsukai ~*, Westlaw Japan Dai2go, 2013.

14) Ippan koryu sokushin kyokai (Mipuro), *Shoshinshanotameno Shohyokenwomanabu*, 2017, pp.4-9. Free web service “J-PlatPat”, provided by National Center for Industrial Property Information and Trainin, enables us to learnabout another person’s exclusive rights concerning trademarks in Japan.

15) The case of trademark dispute, “*Shiroi Koibit*” against “*Omoshiroi Koibiro*”, finally ended up with the settlement between Ishiya confectionery company and Yoshimoto Kogyo not by a trial decision in February 2015. In the contents of settlements, ①Yoshimoto Kogyo has to change the contents into what are unlikely to confuse package of “*Omohsiroi Koibito*” with “*Shiro Koibito*”. ② The permanent sales of “*Omohsiroi Koibito*” should be conducted only in Osaka, Kyoto, Hyogo, Shiga, and Wakayama (except for when they have special events for a short period of time, limited under 36 events every year except Hokkaido and Aomori.

https://legalus.jp/corporate_legal/intellectual_property/ed-1957

16) Online Nikkei, November 28th, 2011, “*Ishiyaseika shacho ‘Omoshiroi Koibito’ Omoshirokunai*” *Yoshimoto teiso*

17) The trademark introduced during lessons, letter trademark “*Kawasaki*” (Trademark registration 4465066), Graphic trademark “*Kuroneko@peimento*” (30856063), Three-dimensional “*Peko chan ningyo*” (4157614), “Colonel Sanders” (4153602), “Family Mart *no tenpo*” (5272518), union trademark “NISSAN” (5212866), the shape of Coca-Cola’s bottle, the trademark for *Seirogan* from Taiko (2015 029809), the trademark for “*Oi Ocha*” from Ito en (5805757) .

18) The cited references are as follow. Tokizane (cited above), pp. 137-140. Nobuaki Arai, *Pakuri shohyo*, Nikkei premier series, 2017, pp. 120-127. Eichi Awata, Hiroshi Maegawa, “*Furanku Miura*”*wo tsukutta DINKs •*

Shimobe Yoshiki shacho ni arekore kitekita (the contents of the interview,

<https://gigazine.net/news/20161224-frank-miura-interview/>, Ayumu Ijima, *Furanku Miura ziken hanketsu nitsuite*, 2016, Innoventier legal update, <https://innoventier.com/archives/2016/04/1121>

19) Sankei Shinbun, October 28th, 2017, *Nisemono yunyu yurushimasen*, the article introducing inspection activities in Kansai airport branch customs. Japan Customs HP (3. Intellectual property, regulation for infringement of intellectual property) includes the introduction of the details for its suspension proposal.

http://www.customs.go.jp/mizugiwa/chiteki/pages/d_007.htm, Ministry of Finance Customs Office, *Chiteki zaisan shigai vuppin no sashidomezisseki* (January-September, 2017) *Sokuho*, November 2017, pp. 1-4. The Cabinet Office, Intellectual Property Strategy Headquarters, *Chitekizaisansenryakuhonbu dai4kai kensho · hyoka · kikakuinkai Mohohin · kaizokubantaisakuno genjo to kadai*, April 4th, 2018, pp. 2-9. Arai (cited above) pp. 175-181.

20) Kato (cited above), 1985, *Kanto*.

21) Soji Katakami, “*Shakaikenkyuka*”niyoru *Shakaikajugyo no kaishin*, Kazama shobo, 2012, pp. 43-50, 101-108.

22) Jun Sato, *Jibun de kotae wo tsukuruchikara to goikese wo hakaru chikara wo sodateru*, Shakaikyoiku 682go, Meiji tosho, 2016, pp. 99-10.