

Lectures on the Civil Law Utilizing the Web Sites

*Masahiro Noguchi**

Faculty of Law, Daito Bunka University

This essay is based on the author's report to "Information-Technology-enabled Classes on Law", a symposium held on March 10, 2002, organized by Japanese Universities Association for Computer Education, with some additions and modifications.

1. Introduction ----- Students with few opportunities of learning a juristic way of thinking.

1) Information-Technology-enabled Classes

The major objectives of higher education are to seek a higher level of academic study, to promote interdisciplinary exchanges, to realize goals of education on general affairs, as well as to meet changing demand for human resources in society and ever-diversifying tastes of students. Thus, faculty of higher education is required of addressing various competing challenges.

In its report, "Further Improvement on Higher Education" (December 18, 1997), the University Council pointed out that in "an effort to enhance the student liquidity (the scope of choices)", introduction of multimedia-enabled education to universities and other higher educational institutions could drastically change the way how classes were conducted. That is, if exchange classes, distance education, and corporate education programs are to be further promoted by utilizing the media, the way that education is provided at universities and their equivalents will be transformed. Therefore, the Council maintained that it was necessary to seek possible ways to provide education at universities and their equivalents utilizing the media and share findings of the research.

This is a time when the way information education is provided at the university is changing. In the past, computer literacy education was the center of information education at higher educational institutions. Now, the point at issue is how to better process information using the multimedia in providing professional education at both undergraduate and graduate levels.

It is often said that studying law can be tough for some students. It is partly because for students with little real life experience, lectures using the deductive method can be difficult to follow. It is also because few students have learned anything about law or juristic ways of thinking by the time they finish high school, either at home or at school. In other words,

it is not that law is inherently difficult, but that those students have had few opportunities to learn juristic ways of thinking at home and at school until they finish high school, or that they are lacking sufficient real life, which is, at the end of the day, what law is all about. There are reasons why law is difficult for some student to understand.

In lectures on jurisprudence, information technology is a tool that can help provide "lectures that students can understand" or "lectures that interests students". For example, a lecturer may want to provide legal and other relevant information and reviews on legal cases concerning a subject legal or social issue before a class on his/her Web site. Which will allow students to sufficiently study the issue before and after the class. This is one of possible ways to arise academic interest in students and help them understand.

2) How to make students understand definitions of terminology, interpretation, and judicial precedents

The way juristic education was provided in the past Japan was effective as a mechanism of lecturing a lot of knowledge to a lot of students in a short period of time. That is, from the viewpoint of students, studying law mainly meant memorizing something.

Meanwhile, it can be safely said that those students have had few opportunities to learn juristic ways of thinking until they finish high school. It is true that they are supposed to have learned about the Constitution in civics or other social study classes, but they are not expected to have learned the legal system or juristic ways of thinking. That is why not a few students complain that they do not understand law once they have started studying law at college.

An argument holds: There are few opportunities for students to study law up to high school, which makes it difficult for students to understand law. However, I am not going to pursue this line here.

Sometimes, even among those who have studied law for some time, there are some who do not truly understand law. In the past, many textbooks first presented a theoretical proposition, followed by a deductive explanation (developing an argument to a wider scope, or drawing a logically natural conclusion from a premise, not based on one's experience). However, under the current educational scheme up to high school that puts little emphasis on abstract thinking, many students have not learned a logical way of thinking. That is why many students have difficulties in understanding, regarding issues presented in a textbook, "what the implication is in real life" or "why they must make such an argument".

For those students, various issues such as definitions of terminology (technical words, or words used in a peculiar sense in a discipline), interpretation, and significance of judicial precedents have to be presented in the light of practical issues. By doing so, it would be made it easier for students to understand the significance and functions.

In this way, we can give students incentives (as a catalysis to provoke volition) to get interested in learning law.

3) *In a class of law, core materials are the information of precedents, which students are required to understand well.*

In order to make students who have not been trained to think logically to understand law, the following procedure would be necessary after presenting a real life case and analyzing facts. That is, make students to think: ① why such a verdict was made, ② how different doctrines can interpret law differently, and ③ what is its implication in real life.

However, there is a problem in this approach. When textbook publishers are under pressure to make a textbook with moderate thickness (or thinness?) at a low price, it would be difficult for a textbook to cover judicial precedents with a thorough analysis of facts and explanation of relevant issues.

(It would be easier for students to have a thin textbook, if they have to simply memorize what is in a textbook. However, in order to truly understand law, a textbook with reasonable thickness is a must. It is quite a natural requirement for one to get interested in real social life and people's psychology in order to understand law.)

2. Classes Utilizing the Web Sites ----- Introductory Civil Code

1) *Supplement college classes with the Web sites*

A syllabus of the Introductory Civil Code shows that the course proceeds in the order of chapters of the textbook. The Civil Code is also one of the subjects of national examinations (bar exams and national and local civil service exams) and various qualifying examinations. Therefore, teachers must finish the textbook with a limited time allocation. However, from the viewpoint of teachers assigned to an Introductory Civil Code class, a one-year course with a 90-minute class per week would not be sufficient to cover a textbook and make students understand, regardless of students' learning abilities.

To make life tougher for teachers, it is freshmen with few real life experiences that they have to teach. (The same holds true for juniors at law school transferred from other disciplines.) The Introductory Civil Code for freshmen is a first professional subject to study at college, and what is covered in the class will define abstract principles and institutions as general rules of the Civil Code. Therefore, in order to make students to understand and secure a certain degree of educational achievements, it would require great efforts on the both sides of teachers and students. (In other words, a lecture schedule shown in the syllabus can be described as an ideal of teachers. From the viewpoint of students, on the other hand, they must study hard both before and after class to really understand what the syllabus says to be covered during the course.

In a class of the Introductory Civil Code, a teacher would write down important points on the blackboard, referring to the textbook or materials on judicial precedents. However, only explanation using the textbook or the blackboard can sometimes be too abstract for students to practically understand the Civil Code. That is, it is difficult for students to relate such things as the definition of a terminology or a certain issue in the interpretation of a law to real life and have solid understanding of its implication for their own lives. In such a case, to help students understand the reality of various conflicts that can occur in real life and a law to be adopted to solve the issue, it would be effective to have them search through a precedent database for facts related to an actual precedent. By learning from real life examples, students will be able to relate an abstraction to a concrete issue, having a vivid picture on their mind.

2) A picture tells more than thousand words

Subjects to be covered in the class must be posted on the Web site so that students can have ready access to related materials and study them whenever they like.

On the Web site, the following materials can be posted: ①the syllabus of the one-year Introductory Civil Code course, ②the topic and precedent(s) to be covered in each class, ③facts related to the precedent(s) to be covered in a class and the verdict for self-study before and after the class, and ④photos of the scene and the background of the case to help understand why a particular law is adopted in the case at issue. In this way, the information is offered to students as supplements for study before, during, and after the class.

3) If a teacher distributes handouts during a class, has students read them on the spot, and gives a lecture on them, it would be a waste of time and of little help for students to understand.

4) Advantages for teachers and students

a. Advantages for teachers

- i. No need to prepare handouts for every class (No need to make as many copies as the number of students before a class).
- ii. Will be able to have students focus more on logical thinking than note-taking because the materials that students have downloaded from the Web site spare them taking notes.

b. Advantages for students

- i. Will be allowed to better understand the case by reading the materials on the Web site before the class, in contrast to that handouts distributed during a class do not facilitate their understanding on the spot.
- ii. Will be able to concentrate on what the teacher is saying during a

class because downloaded materials spare them taking notes of precedents and other relevant information.

3. Case Example (Abuse of right ----- Unazuki Onsen (hot spring) Case

1) *Make students to understand the situations of an actual conflict and a law to be adopted to solve the issue*

----- *Unazuki Onsen Case* (Great Court of Cassation verdict on October 5, 1935)

The *Unazuki Onsen Case* is a lawsuit concerning removal of a hot water pipeline in a hot spring town in the *Kurobe Gorge* in Toyama Prefecture. The background of the case is as follows: A wooden pipeline was laid along the *Kurobe River*, running between precarious cliffs, from *Kuronagi Onsen*, the wellspring of *Unazuki Onsen*, to *Unazuki Onsen* for about seven kilo meters. The pipeline, however, was laid on the 112-*tsubo* (about 370 m²) land nearby the *Onomuna Valley* without approval of the landowner. (However, the pipeline trespassed on only a piece of land smaller than 2 *tsubo* (about 6.6 m².) The plaintiff, taking advantage of the situation, bought the land and demanded the owner of a *Ryokan* inn of *Unazuki Onsen* to buy the land at an unreasonably high price.

The verdict held as follows: Since the land involved in this case is barren steep hillsides, the plaintiff's demand would not bring any benefits to himself, suppose it was met. On the other hand, however, removal of the pipeline would do fatal damage to *Unazuki Onsen* and its residents. Thus, the verdict ruled that the plaintiff's execution of right to demand to abate a nuisance based on the property right was abuse of right, contradicting the spirit of property right that was socially acceptable. Let's here think about how to supplement a class covering this case using the Internet.

2) *Understanding the significance of the verdict*

a. Students do not understand why a pipeline intruding 2-*tsubo* land is not removable.

The verdict ruled that a demand to remove a pipeline intruding only 2-*tsubo* land could not be approved because it was abuse of right. But why is it abuse of right? In other words, students do not understand why a pipeline running only 2-*tsubo* space could not be removed. For students to understand, visual illustration of facts will help.

3) *Make students to understand the verdict in real terms by showing them visual images of the scene on the Web site*

Students would not fully understand why a certain form of execution of right is considered abuse of right by merely studying a leading case

without thoroughly reading description of concrete facts related to the execution of right. Therefore, for students to understand what kind of act is considered abuse of right they have to understand the requirements for an execution of right to be considered abuse of right and which specific facts in the case at issue are considered meeting these requirements. For that purpose, we need to explain the facts involved and the background of the incident.

In a class that covers this case, as to why the execution of right to demand to remove a pipeline intruding 2-tsubo space is considered abuse of right, I posted photos of the site (steep and barren hillside) in the *Kurobe Gorge* on the Web site. By seeing the photos, students understood the circumstances where the plaintiff had tried to reap unjustifiable benefits, knowingly taking advantage of the situation that the geographic condition had not allowed to remove the pipeline intruding 2-tsubo space. In this way, I made students to understand in real terms the requirements to be considered as abuse of right in this case, deepening their understanding of the concept of abuse of right. Moreover, by making students to understand that the interpretation of law is, at the end of the day, a matter of judgment of value on the premises of relations between individuals and society. In this way, "understandable" and "interesting" classes could be offered to students.

3. Future Challenges

1) *Class is the core, and the Web is to offer supplementary materials to the class.*

As to judicial precedents, law, and social issues to be covered in class, such information as follows can be provided in advance of a class on the Web site: ① legal information (precedents, statute, and instructions), ② its peripheral information (trends in legislation, newspaper articles, etc.), ③ facts related to the precedent, the gist of the verdict, and the explanation of the verdict to be covered in a class, and ④ the social background of a certain case. These kinds of information are difficult to be fully covered in a class due to time constraints. But by creating an environment that allows students to study as they like out of classroom before and after class, students might be more interested in learning and better understand law.

This is a method, which can be described as a kind of distance education, to supplement lectures given in a classroom. Unlike an ephemeral lecture in a classroom, students can repeatedly study those materials obtained on the Web site, which we expect will be of great educational impacts.

2) *Problems in preparing materials*

a. Preparing materials for the Web site to supplement classroom lectures

- is a time-consuming job. Collecting information on precedents and related materials, and creating and posting a database on the Web site require much time and energy. That's why we need supportive tools.
- b. When offering materials and judicial precedents on the Web site, use visuals and images to help understand in more real terms.
 - c. Protection of the date on the Web site (PDF files) is also important.

The issues described above must be addressed when using the Internet to supplement classes.