

## Noticeable Judicial Precedents

### 1. Supreme Court Judgment on the Qualification for Claim Concerning Action for Future Performance

(Supreme Court Reports (civil cases) No. 242 p.117; Hanrei Times No. 1386 p. 179: Decision of the Second Petty Bench of the Supreme Court, dated December 21, 2012 (case number 2011 (Ju) No. 1626))

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The judicial precedent in question (Supreme Court Reports (civil cases) No. 242 p. 117: Decision of the Supreme Court dated December 21, 2012) is described as follows. Y, who was a co-owner of land, leased the relevant land to third parties for the use of parking space for approximately 50 vehicles, and obtained the profits arising therefrom. X1 and X2, who were also co-owners of the same land, filed a claim against Y for unjust enrichment related to the proportional shares of X1 and X2. The court of the first instance dismissed all claims made by X1 and X2. The court of original judgment permitted claims for any unjust enrichment that would have accrued on or after the day following conclusion of oral argument (i.e., an action for future performance), as well as the aforementioned claims for unjust enrichment in part. In regards to an action for future performance, which were among the claim in question based on the decision of the court of original judgment, this court dismissed the decision of the court of original judgment because “the claim in question did not qualify as an action to seek future performance by their nature,” quoting Supreme Court Reports (civil cases) No. 153 p. 627: Decision of the Supreme Court dated March 31, 1988.

An action for future performance described in this judicial precedent is an action for assertion of the delivery claim that it is not necessary to perform by the time of the conclusion of oral argument (Code of Civil Procedure Article 135). Such claims include claims that have not reached maturity, claims subject to a condition judicial precedent, rights to

reimbursement, and the like. As long as a basis for such claims has been established, such claims can be accepted. That is to say, even the delivery claim that cannot be fulfilled upon conclusion of oral argument could be acceptable when such claims can be made in the form of an action for future performance. An action for future performance is permissible where it is necessary to make an action therefor in advance” (Code of Civil Procedure Article 135). Conventionally, two requirements have been argued for in relation to a judgment regarding the presence or absence of a decision in favor of the necessity mentioned above (i.e., benefit of suit). That is, it was understood that the aforementioned claims would be recognized to the extent that: (1) the claims in question have the qualification that provides the basis to seek future performance (i.e., the qualifications for claim); and (2) it is necessary to obtain a judgment ordering performance beforehand (i.e., benefit of suit, in a narrow sense), despite the fact that such claims need not be fulfilled by the time of the conclusion of oral argument. (Provided that requirement (1) is recognized, if requirement (2) is subsequently recognized, the relevant actions for future performance will become valid.) In the case in question, when the claims for unjust enrichment related to profits after the conclusion of oral argument (i.e., future profits) became a point of issue, requirement (1) for an action for future performance became problematic.

In regards to requirement (1), conventionally, “as long as a basis for claims has been established and the nature thereof has been clarified, such claims are acceptable.” However, thereafter, in the case of the Osaka International Airport lawsuit (Minshu (Collection of Civil Precedents) Vol. 35 No. 10 p. 1369: Decision of the Supreme Court dated December 16, 1981), in regards to future claims for damages based on unlawful acts, requirement (1) was tightened using the following four conditions (with classification differing depending upon the advocate in question). Those four conditions are: (a) that there exist facts and legal relationships providing the basis of rights in question; (b) that the continuation of the aforementioned relationships can be expected; (c) that reasons concerning the establishment and nature of claims beneficial to debtors in the future can be clearly expected to emerge in advance; and (d) that it is not unreasonable to impose on debtors the burden of filing a suit considering the aforementioned emerging reasons as causes to oppose

execution. This judicial precedent considered the difficulty of computation of damages, distribution of the burden of proof and assertion, and the scope of *res judicata*, among other things. However, as Justice Dando gave an opposing opinion, this judicial precedent was controversial. Thereafter, the Supreme Court applied the standards arising from the decision of the Osaka International Airport lawsuit to the same type of case as the case in question based on Supreme Court Reports (civil cases) No. 153 p. 627: Decision of the Supreme Court dated March 31, 1988, quoted in the judgment of the present case. To the contrary, certain critical doctrines emerged. Criticisms included the assertion that the judicial precedent theory of the Osaka International Airport lawsuit, which was a major pollution-related lawsuit, should not be used for disputes among private individuals. Alternatively, in a case that resulted in a judgment ordering performance with conditioning on the income from rent paid by a lessee to a lessor (defendant), such criticisms also included the assertion that the co-owner (plaintiff) was able to receive a certificate of execution by proving the aforementioned fact. Thus, in such a case, the reason that the lessor (defendant) bore a heavier burden in initiating prosecution was meaningless. In the case of the Yokota Air Base lawsuit (Hanrei Jihou No. 1978 p. 7: Decision of the Supreme Court dated May 29, 2007), judgment was made based on the standards arising from the Osaka International Airport lawsuit mentioned above. In regards to court opinions, 2 (who were former lawyers) out of 5 justices gave opposing opinions, while the other 3 justices gave concurring opinions. In this case, It was assessed that there would be a possibility for future change of such judgment of the Supreme Court. With this as a background, the judgment in 2012 of the present case was made. However, the 2012 judgment in the present case followed the judgment of 1988 described above. This means that the standards arising from the Osaka International Airport lawsuit would be maintained in relation to qualification for an action for future performance. It can be also said that arguments would continue. The 2012 judgment of the present case could be expected to cause future arguments, leading to changes regarding whether or not such judgment would determine continued application of the standards arising from the Osaka International Airport lawsuit, or whether such judgment would be transitional or not. Until the present, this judgment has confirmed that the

standards arising from the Osaka International Airport lawsuit still remain effective. In relation to the judgment of the present case, it can be expected that strong criticisms would be developed based on certain doctrines. In this regard, the aforementioned precedent is introduced as a judicial precedent that will form an important aspect of discussions on jurisprudence relating to the Code of Civil Procedure.

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## 2. Railway Accidents and the power of prosecution

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On April 25, 2005, an express train travelling on the West Japan Railway (JR West) Fukuchiyama Line derailed and overturned after failing to properly negotiate a curve in the railway, resulting in the tragic death of 106 passengers and injuring 493 people (the “accident”). Even though the direct cause of this accident was that the driver of the train, who was also killed in the accident, took a tight curve at an excessive speed, the public prosecutor indicted the most senior person responsible for safety measures with respect to JR West Japan’s railway operations (in this case, the safety director) for professional negligence resulting in death and injury under Article 211 of the Japanese Penal Code. The public prosecutor claimed that had there been an Automatic Train Stop (ATS) system on the curve, the fatal accident could have been prevented. The curve where the accident occurred was constructed with a reduced turning radius, and JR West was operating an increased number of trains on a revised timetable. Further, because there had already been an accident involving a freight train that derailed and overturned at the curve of another JR West-managed railway, the prosecutor claimed that the danger of the curve where the accident occurred had already been identified and therefore, the accused owed a duty of care to the victims of the accident to install the