

influence will be exerted on resident movements against urban reconstruction enterprises.

### 3. Law of Property and Obligations

**X v. Y**

Supreme Court 1<sup>st</sup> P.B., April 24, 2008

Case No. (ju) 1632 of 2006

62 (5) MINSHU 1178; 1458 SAIBANSYO JIHO 5; 2008 HANREI JIHO 86; 1271

HANREI TAIMUZU 86; 227 SAIKO SAIBABSHO SAIBANSHU MINJI 685

#### **Summary:**

1. Where an operation is performed in the course of team-approach medical care, the person who is generally responsible for team-approach medical care has, under the rule of reason, the obligation to give consideration to ensure that the patient and his/her family are given an adequate explanation on the necessity, content, risk, etc. of the operation.
2. Where an operation was performed in the course of team-approach medical care and the person generally responsible for team-approach medical care entrusted the doctor in charge of the patient to give an explanation to the patient and his/her family about the operation, if the doctor in charge had sufficient knowledge and experience for giving the explanation, and the generally responsible person instructed and supervised the doctor as appropriate, the generally responsible person should not be held liable for a tort of breaching the obligation of explanation even where the explanation given by the doctor in charge was inadequate.

#### **Reference:**

Art. 709 of Civil Code

#### **Facts:**

At the hospital affiliated with the school of medicine of University A (hereinafter: the Hospital), a patient B, who was hospitalized for aortic valve insufficiency, received an operation for aortic valve replacement

(hereinafter: the Operation) and died on the day following the Operation. In this case, Xs, B's heirs (3 persons, X1: B's wife, X2 and X3: B's children), sought damages for a tort from the appellant Y (the doctor who was generally responsible for team-approach medical care for the Operation and actually performed the Operation), on the grounds that Y breached the obligation to give an explanation of the Operation.

The outline of the facts determined by the court of prior instance is as follows:

January 1999, B was diagnosed, at a nearby hospital, as having aortic valve stenosis and aortic valve insufficiency and needing aortic valve replacement. B decided to receive an operation, and on September 20 of the same year he was hospitalized at the department of cardiac surgery of the Hospital. At the Hospital, Doctor C was in charge of B. The department of cardiac surgery of the Hospital, at the conference held based on the results of various preoperative tests, confirmed the surgical indication for aortic valve replacement and appointed Doctor D to perform an operation for B. On September 27, Doctor C explained to B and Xs about the necessity, content, risk, etc. of the Operation scheduled for the following day. After that explanation, Y told Doctor C that Y him/herself would perform the Operation. Y him/herself had not given any explanation to B or the Xs about the Operation.

On September 28, the operation was performed. After the start of the Operation, it turned out that B's blood vessels were more fragile than expected. Bleeding continued from the sutured part for a long time, it was difficult to wean B from extracorporeal circulation and B was suspected of suffering myocardial infarction due to occlusion of the right coronary artery. Therefore an aortocoronary bypass operation for B was performed.

After the bypass operation was finished, B was weaned from extracorporeal circulation but was unable to overcome circulatory failure, and died on September 29.

The court of prior instance found Y to have breached the obligation of explanation, and partially upheld Xs' claim against Y based on Art. 709 of the Civil Code, mentioning the following: Y, who was generally responsible for team-approach medical care at the Hospital and actually took charge of performing the Operation, had the obligation to explain to B and Xs, B's family that B's case was a serious case and that due to a relatively

high possibility of fragility of B's aortic wall, severe bleeding might occur and a serious situation might occur such as to require a bypass operation. Y admits that he never explained about the fragility of B's aortic wall, and because of such a failure to give an explanation, Y should be deemed to have breached the obligation of explanation under the principle of good faith.

**Opinion:**

*Quashed and remanded*

In general, where an operation is performed in the course of team-approach medical care, the person who is generally responsible for team-approach medical care has, under the rule of reason, the obligation to give consideration to ensure that the patient and his/her family are given an adequate explanation on the necessity, content, risk, etc. of the operation. However, the person generally responsible for team-approach medical care is not always required to give such explanation him/herself, but it can be construed that if the doctor in charge of the patient who has examined the patient until the operation has sufficient knowledge and experience for giving the explanation, the generally responsible person is allowed to entrust the doctor in charge to give the explanation, while him/herself only instructing and supervising the doctor as appropriate. Assuming so, if the doctor in charge gave an adequate explanation, the person generally responsible for team-approach medical care should not be held liable for a tort of breaching the obligation of explanation on the grounds that the person him/herself did not give an explanation. In addition, even where the explanation given by the doctor in charge was inadequate, if the doctor in charge had sufficient knowledge and experience for giving the explanation, and the person generally responsible for team-approach medical care instructed and supervised the doctor as appropriate, the generally responsible person should not be held liable for a tort of breaching the obligation of explanation. This also applies in cases where the person generally responsible for team-approach medical care performed the operation.

In this case, according to the facts mentioned above, although the appellant him/herself did not give an explanation to B or his family about the necessity, content, risk, etc. of the Operation, Doctor C, who was in

charge of B, gave the explanation to them. Therefore, if Doctor C's explanation was adequate, the appellant is not liable for a tort of breaching the obligation of explanation, and even where Doctor C's explanation is inadequate, if Doctor C had sufficient knowledge and experience for giving the explanation and the appellant instructed and supervised Doctor C as appropriate, the appellant should not be held liable for a tort of breaching the obligation of explanation.

**Report:**

The case above-mentioned is the first case where the Supreme Court presents an attitude about the obligation of explanation in the case of the team-approach medical care. According to the high-development and complication of medical skills, the organized medical care which is operated in cooperation with various specialized doctors and paramedics, what is called team-approach medical care, has become popular generally. On the obligation of explanation to a patient and his/her family in the case of the team-approach medical care of joint specialized doctors, it might be necessary to make clear not only who is responsible for the obligation of supervision to doctors or paramedics, but how to divide the obligation of explanation between various specialized doctors. Because there are possible cases that an explanation by a specialized doctor may be desirable or indispensable to a patient and his/her family for understanding the necessity, content, risk, etc. of medical care, but different explanations by different doctors and unclarity about who is responsible for the obligation of explanation could cause unnecessary anxiety and confusion to a patient and his/her family, and redundant explanation by different doctors for fear of violation of the obligation of explanation could impose a heavy burden on the team-approach medical care. Considering the high specialization of medical care, from now on, it is desirable that the responsibility for the explanation of medical care is clarified in detail, for example about the responsibility for the explanation of medical care not of the person who is generally responsible for team-approach medical care or the doctor in charge but of each specialized doctor in the team and, if the responsibility exists, its range.

This decision has an English text on the Homepage of the Supreme Court with a proviso that the translation is provisional and subject to revi-

sion. Since the above Summary and Opinion are extracts from it and the Facts are drafted with reference to it, please refer to <http://www.courts.go.jp/english/judgments/text/2008.04.24-2006.-ju-No..1632.html> for the details of the decision.

## 4. Family Law

### X v. Y (Minister of Justice)

Supreme Court 1st P.B., June 4, 2008

Case No. (*Gyo tsu*) 135 of 2006

62 (6) MINSHU 1367; 2002 HANREI JIHO 3; 1267 HANREI TAIMUZU 92

#### Summary:

Art. 3, Para 1 of the Law of Nationality accepts that a child who is born between a Japanese father and a foreign mother and recognized by his father after the birth can receive Japanese nationality on the condition that his parents legally marry each other and give notice that they want their child to receive Japanese nationality is submitted to the Minister of Justice. By the article, the distinction between receiving Japanese nationality as a child who is only recognized by his father after the birth and as one who is recognized similarly and legitimated by his parents' subsequent marriage violates Art. 14 of the Constitution; the child can receive Japanese nationality so far as all the requirements are met apart from the "marriage of his parents" and being "legitimated by his parents' marriage".

#### Reference:

Law of Nationality, Art. 2, Para. 1 and Art. 3, Para. 1; Civil Code, Art. 779, Art. 783, Para. 1 and Art. 789; Constitution, Art. 14, Para. 1

#### Facts:

X, a boy aged 6, whose mother is a Filipina and father is a married Japanese submitted notice of wanting to receive Japanese nationality to Y, because his Japanese father recognized X; Y rejected it, because all