Finding the Law in Japanese

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Scholars and students in the humanities and social sciences occasionally wish to consult Japanese legal sources but sometimes find it difficult to locate the information they need. This is due in part to basic problems with the use of legal reference materials, an insufficient understanding of the Japanese legal system, and, in some instances, to a lack of relevant library resources in the field of Japanese law. Given these seemingly formidable obstacles, one may well ask if it is at all possible for East Asian librarians in mid- to large-size nonlegal collections to provide reference assistance locating Japanese laws. The answer is definitely yes.

This article is intended for librarians with little or no knowledge of Japanese law and legal reference. It includes a brief outline of the Japanese legal system and an introduction to the use of selected reference sources which can be found in many East Asian collections. It concludes with six sample reference questions.

Electronic sources have not been included in this paper since they are essentially unavailable in North American research libraries as of this writing.

Legal Systems

The legal structure of modern Japan belongs to a system of jurisprudence known as the civil law system which originated with the Corpus Juris Civilis of the Roman empire. The legal systems of Europe and most parts of the world which were not under British influence belong to the civil law system. The other major legal system is called the common law system and is based on the customs and ancient unwritten law of England. The common law system is used in the United Kingdom, the United States, and most countries which were once controlled by Britain or the U.S., including Canada, India, and the Philippines. Common law is also known as Anglo-American law in contrast to the civil law system of continental Europe.

The differences between the common law and civil law systems are numerous and in many areas very complicated and involved. There is no monolithic civil law system which applies equally to all countries. Each country has adopted and modified the basic civil law idea to meet its own needs. It is sufficient for our purposes to understand that statutes (commonly referred to as "laws") occupy a prime position in the civil law system while judicial precedents ("court decisions") based on statutes are considered central to the common law system.
In a civil law jurisdiction, law originates from the statutes rather than from court decisions. Statutes are enacted by legislative bodies and function as a general guide for behavior in society. The courts and administrative bodies apply the law to specific situations as they occur in the belief that every matter is unique and that no number of statutes could deal with every possible contingency. Courts in civil law countries may and certainly do consider judicial precedent when deciding a case, but they are not legally bound by precedent (the doctrine of stare decisis) as are courts in a common law jurisdiction. This is not to say that judicial precedents are not observed by Japanese courts. If a series of decisions confirm a certain interpretation or a given point of law, the court would most likely not deviate from the established pattern without good reason. It should be noted that legal scholarship, while not a source of law, has considerable influence on the judicial process in Japan. Consequently, textbooks, journal articles, and commentaries on the law are valuable sources of information on judicial trends and legal problems.

Some Definitions

In English the word "law" is used in common law terminology to include the constitution and amendments, statutes passed by legislative bodies, and court decisions. When applied to civil law jurisdictions, law does not encompass court decisions. A statute designates a law passed by a legislative body and does not include court decisions (so-called "judge-made law") and customary law. The term "act" is essentially another word for statute. In common usage, law, act, and statute are interchangeable. Thus, the Saibanshoho has been translated as "Court Organization Law" and "Courts Act."

The term "code" has two meanings. In general, it refers to a systematic collection of current laws and regulations on one or more subject areas. Examples of this are the United States Code and the Roppō zensho. The word "code" is also used to refer to a law which is intended to encompass basic legal issues in a given area. An example of this usage of code is the Minpō, which is translated as "Civil Code of Japan."

Hōritsu Statutes, Acts of the Diet

This is the term most commonly used to indicate statutes which have been enacted by the Diet. Next to the constitution, they comprise the highest law of the land. Statutes are distinct from orders and rules enacted by administrative or judicial organs of the government. Hōritsu also refers to "the law" as a generic concept.

Kisoku Rules, Regulations

This term includes rules or regulations issued by the Diet, local public entities, courts, and public commissions. For example, Kaikei Kensain kisoku (Rules of the General Accounting Office) and Saikō Saibansho kisoku (Supreme Court Rules).
Hōki

Laws and Regulations

In the broad sense, hōki refers to legislation in general. In more closely defined situations, it means laws and regulations (rules): laws being hōritsu and regulations being kisoku. This term can also include local regulations (jōrei) and rules of local governmental bodies as well as court rules.

Meirei

Order

This term describes an order issued by a court or administrative agency. Examples of orders are: seirei (cabinet orders), Sōrifurei (Prime Minister's Office orders), and shōrei (ministerial orders). These orders are often issued to provide details regarding the implementation of a law passed by the Diet.

Hōrei

Laws and Ordinances

This word is a combination of hōritsu and meirei and is usually translated as "laws and ordinances" or "laws and orders." Along with statutes, orders such as Sōrifurei (Prime Minister's Office orders), shōrei (ministerial orders), and seirei (cabinet orders) are also included in this category. The term meirei is usually translated as "order."

Jōrei

Local Ordinances

Ordinances and rules issued by local governments and public entities such as prefectural assemblies and cities are referred to as jōrei. The term jōrei is often translated as "local regulations" or "local law."

Japanese Legal Research

American legal sources are extensively indexed, cross-referenced, and annotated to facilitate access to a myriad of cases and very specific points of law once a problem has been analyzed and properly placed into the subject schemes used in finding aids. This process requires a good familiarity with the structure of the American legal system and the organization of reference materials. Japanese sources, on the other hand, are organized so that one goes first to the relevant codes and statutes which, in turn, lead to very broad indexing systems which may or may not be of help in finding specific topics. The lack of subject indexes in the American sense often necessitates starting a search with periodical articles, annotated commentaries, or a major textbook in the field under investigation.

The Nature of Legal Sources

Major collections of statutes and judicial decisions are published chronologically. During a given legislative session, the Diet may enact statutes on any given number of subjects. For example, a law on bank regulation may follow a law on transportation which could be
followed by a law on civil rights. Statutes published in the order in which they were enacted are called "session laws." In this arrangement, the statutes have no subject relationship to one another. Judicial precedents are also published chronologically and have no subject relationship to one another.

Statutes and precedents are generally published in both official and commercial ("unofficial") editions. Official editions are issued by the Japanese government and contain what is known as the official text of a statute or decision. Depending on the format in which they are published, commercial editions of laws and precedents may appear earlier or later than the official editions. They sometimes include annotations, supplements, and references to related laws and orders. They often provide valuable leads to information which cannot be easily found elsewhere. Moreover, many commercial editions rearrange statutes or precedents into a kind of subject arrangement with indexes and cross-references of various kinds.

Finding Statutes

Statutes and orders are promulgated by publication in the Kansō (Official Gazette). They are each assigned a sequential number upon promulgation. The numbering starts over each year with no. 1. Therefore, there is a law no. 1 for 1985, a law no. 1 for 1986, and so on. It is this numbering, in conjunction with the year, that enables one to easily locate laws in a chronological compilation. There are usually two dates associated with a law: the date of promulgation, kōfu, and the date of enforcement, shikkō. Promulgation is the official act of announcing a statute. The date of enforcement indicates when a statute takes effect. If there is no date of enforcement, a law is deemed to be in effect twenty days after the date of promulgation.

Every law has a name in addition to a date and number. In some cases, the official name of a law may be long and very precise in its meaning. Such names are often the subject of abbreviations and short titles. Abbreviations (hōmei ryakugo) are usually formalized shorthand devices used to refer to laws in bibliographies, indexes, essays, or certain types of citations. For example, a law called Kashitsuki shintakushō can be abbreviated as kashishin. Such an abbreviation would always be keyed to an appended list of abbreviated terms as it would be meaningless without an explanation. The short title or popular name (hōmei ryakusho) is quite a different matter. In this case, the name of a law is contracted or totally changed for the sake of convenience or brevity. A law concerned with crime prevention and rehabilitation of criminals called Hanzaisha yōbō kōseihō may be popularly referred to as the Kōseihō. Similarly, the Ippanshoku no shokunin no kyūyō ni kansuru hōritsu is commonly known as the Kyūyohō. When a statute is referred to by a short title, it can sometimes be very difficult to identify.

Searches for statutes and orders can be divided into three types:

1. Searches by law number (with corresponding year)
2. Searches by the name of a statute  
3. Searches by topic

Bibliographic Sources

Compilations of Laws

*Kanpō* (Official Gazette) 　Tōkyō: Ōkurashō Insatsukyoku, 1883-

Daily except Sunday.

The *Kanpō* constitutes the daily record of the Japanese government. In addition to numerous official announcements, it also includes statutes, cabinet orders, ministerial orders, Prime Minister’s Office orders, rules, instructions, and notices. These are all published chronologically and are accessible to a certain degree through the monthly classified index. Consequently, the *Kanpō* can be most advantageously used to locate a statute when one knows the year and preferably the month of promulgation. It is regarded by many as the official source; however, its sheer size make it inconvenient to use and there are several other more efficient sources which will often suffice for locating statutes and orders.

*Hōrei zensho* (Compendium of Laws) 　Tōkyō: Naikaku Insatsukyoku, 1885-

Monthly.

This is an official chronological publication which includes all imperial edicts, statutes, cabinet orders, treaties, Supreme Court rules, ministerial orders, Prime Minister’s Office orders, rules, instructions, and notices which have appeared in the *Kanpō* or have been announced by the government. Each volume contains a brief outline of the month’s important legal events. The annual table of contents volume also includes an index to the names of laws, orders, and rules arranged according to the *gojūonjun* (fifty sounds order) of the *kana* syllabary. (Indexes in *kana* order are hereafter referred to as GJO indexes.)

*Roppō zensho* (Compendium of Six Codes). 　Tōkyō: Yūhikaku, 1948-

Annual.

Important statutes and orders currently in effect are arranged systemically in this annual publication. The term "systematic" refers to the grouping of statutes and orders into codes. This is similar to a subject arrangement. The six codes are constitution, civil code, commercial code, code of civil procedure, criminal code, and code of criminal procedure. The *Roppō zensho* has a GJO index to the names of laws (*hōreimei sakuin*), a general GJO index for each major section, and a GJO index to abbreviated law names (*hōreimei ryakugo sakuin*). Subject indexes for some sections are appended at the end of each major division. There is no index by law number or date of promulgation. Citations to related legislation
are provided. This is not a complete or official compilation of statutes and orders. For exhaustive coverage, one must turn to the Hōrei zensho or the Kanpō. However, the Roppō zensho is perfectly acceptable for checking the text of a law. In fact, this work and others like it are the ones legal professionals in Japan use in their everyday work.


Major statutes are arranged systematically in this compilation of the "six codes." Each volume has a GJO index to the names of laws (hōrei sakuin) and a complete table of contents by category (sōsakuin), although there is no subject index or list of abbreviated law names. The contents of this work and the Roppō zensho are virtually identical; however, there are a number of statutes which can be found in one but not the other. For example, the law concerning the reorganization of the Japanese National Railways is included in this collection, but not in the Roppō zensho as of the 1993 edition. The Iwanami dairoppō also includes citations to related legislation. The primary difference between this title and the Yūhikaku publication is one of format and editorial policy.


This loose-leaf set is the only comprehensive collection of Japanese laws and regulations in English translation and is included in this list because of its unique value to English-speaking scholars and students. The organization of this series roughly parallels the various six codes compendiums in Japanese but does not include indexes. However, an extremely valuable index to this set has been independently compiled as an in-house reference tool:


Indexes

Nihon hōrei sakuin (Index to Japanese Laws and Regulations in Force). Tōkyō: Kokuritsu Kokkai Toshokan, 1951-

Annual.

This is a cumulative index to important Japanese laws, orders, statutes, and selected treaties currently in effect. It does not include every statute passed. Entries consist of the name of a law or order, date of promulgation, law or order number, Diet session in which the legislation was passed, and a list of amendments. The entries are organized in a classified arrangement which can be easily discerned from the table of contents. There is a
chronological index by year of promulgation, a GJO index for names of statutes and orders, a subject index, and a list of short titles (hōrei mei ryakushō ichiran). This work provides quick access to many laws and orders not in the Roppō zensho. It also includes a convenient list of recently abolished laws and orders. A companion set, entitled Nihon hōrei sakuin kyū hōrei hen (Index to the Repealed and Expired Laws and Regulations in Japan), was published 1983-1985 in three volumes.

Encyclopedias and Dictionaries


This comprehensive encyclopedia is a very valuable reference source for introductory information on Japanese law. It can be especially useful in determining which area(s) of the law relate to subjects which may be difficult to categorize.


This is an encyclopedia of public administration and administrative law in Japan. The scope is much broader than the title would seem to indicate and this work can be advantageously used to identify and understand a great variety of law-related matters. Volume six is a comprehensive index.


This is the standard dictionary of legal terminology in Japan and is an essential reference tool for the study of Japanese law.

Sample Reference Questions

Question: I would like to get a copy of the Criminal Code of Japan. It is called Keihō in Japanese.

Search Strategy: Since we know the name of the statute in Japanese, the quickest way to find it is to use the Hōreimei sakuin in the Roppō zensho. It can be found on page 2569 of the volume for 1993.

Question: I have heard that there was a law passed shortly after the war which regulated public bath houses. Can you help me find it?

Search Strategy: In this case we have no idea what the name of the statute is or in what year it was passed. One might begin by looking in the GJO name index of the Roppō zensho or Iwanami dairoppō under the words yokujō, yuya, senjō, or furo, variously meaning
bath house or public bath. This produces no results. Many native speakers and others familiar with quasi-official Japanese will think to look under the term kōshū yokujo. While this produces no results in the Roppō zensho prior to 1971, all volumes after this year include the Kōshū yokujo. The Kōshū yokujo can also be found in the GJO law name indexes of the Iwanami dairoppō and Nihon hōrei sakuin, as well as in the general index volume of the Kokumin hōritsu hyakka daijiten. In addition to providing the law number and year of promulgation of the Kōshū yokujo, the Kokumin hōritsu hyakka daijiten will also give some background on this statute and provide information on an earlier rule issued by the Metropolitan Police Board in 1879 called Yuya torishimari kisoku.

What if both the librarian and the patron both did not think to look under kōshū yokujo? There are still two alternatives which would lead to the statute; a subject search or a chronological search. Since we are not certain of the date, it might be easier to begin with a subject approach. We could begin by checking the subject indexes in the Roppō zensho. It is first necessary to decide in which division and section a law on public bath houses would be placed. It could conceivably be classed in the public law division under the section for social security and public health, or under several other possibilities too numerous to mention here. In fact, this law is placed in the public law division under the section for police and national defense. This section has no subject index. Consequently, subject access through the Roppō zensho in this case is quite restricted, unless the reader can somehow think to look under the section for police or check the entire index item by item. Fortunately, the subject index to the Nihon hōrei sakuin is easier to use. One can scan appropriate subject categories quickly and find "category Q", which is "public health." Under subcategory Q8 for "environment and health" is the heading for "inns, public bath houses and entertainment facilities." Finally, information on the bath house law can also be found under the entry for yokujo in the Kokumin hōritsu hyakka daijiten.

To do a chronological search, the best place to start is the nenbetsu sakuin in the Nihon hōrei sakuin for the years after the war. A careful search finds the Kōshū yokujo in the section for 1948. With the law number and correct name, we can check the Roppō zensho once again or go directly to a chronologically arranged source.

Question: Can you find the text of the Kunaichōhō for me?

Search Strategy: Checking the GJO law name indexes in the Roppō zensho and Iwanami dairoppō produces no result. The next step is to consult the GJO law name index in the Nihon hōrei sakuin. There is an entry for this statute on page 695 in the index section of the volume for 1992. We find that it is law no. 70, promulgated on April 18, 1947. Turning to page 17 in the main body of this volume, we will see that the law has been revised thirteen times, the latest being in January 1989. The law number and year of promulgation can also be located through the Kokumin hōritsu hyakka daijiten. In order to find the text of the law, it is necessary to go to the April 1947 volumes of the Kanpō or the Hōrei zensho. The same process must be followed in locating the revisions. If the reference sources consulted above (and other appropriate sources available in the library) had not had any
information on the Kunaichōhō, it would have been necessary to go through the Kanpō or the Hōrei zensho year by year. Another approach would be to locate a history of the Kunaichō which might refer to the law in question.

Question: I need to have a copy of the Department Store Law (Hyakkatenhō).

Search Strategy: Begin by checking the usual sources for searching for the name of a law. The main indexes of the Roppō zensho, Iwanami dairoppō, and Nihon hōrei sakuin reveal nothing. (Remember to check the Hōreiimei ryakushō ichiran in the last title in case this is a short title or some kind of abbreviated title.) Next, scan the appropriate sections of the Roppō zensho for a statute that fits the description. Once again it is necessary to understand the structure of the Japanese legal system so that one knows under which category to look, although this process can be frustrating. Trying the headings for commercial law will yield some possibilities but none that appear at first glance to be directly connected with department stores.

At this point, it would be beneficial to consult either the Gyōsei hyakka daijiten or the Kokumin hōritsu hyakka daijiten. Both provide references from Hyakkatenhō to the formal name of this statute which is Daikibo kouri tenpo ni okeru kōryō no jigyō katsudō no chō ni kansuru tokubetsu sochiō. Having discovered the full name of the statute, it can be easily found in the Roppō zensho and Iwanami dairoppō.

Since the word hyakkaten does not even appear in the name of the statute, it would have been fruitless to search through any listing of law names looking for this term. A subject search based on department stores would also, to this writer’s knowledge, have produced nothing because the statute is intended to regulate large retail businesses of which department stores are only a part, although this is not openly stated. Since the main target of the law was department stores, it came to be popularly known as the Hyakkatenhō. In recent years this law has also come to be known as the daitenhō. This abbreviated name does not appear in any of our standard legal references; it does appear, however, in the 1991 edition of Asahi chiezo. A title word search in the Research Libraries Information Network on daitenhō would provide leads to several books which contain information on the law.

It might also be mentioned that the Nihon hōrei sakuin kyū hōrei hen provides a reference to two separate laws both called Hyakkatenhō. One was promulgated in 1937 and abolished in 1947 and the other was passed into law in 1956 and was abolished in 1973.

Question: I would like to get a copy of the 1928 revision to the Peace Preservation Law.

Search Strategy: If the librarian knows that the Peace Preservation Law is called Chian ijihō and that it is no longer in effect, he or she could go directly to the GJO law name index in the Nihon hōrei sakuin kyū hōrei hen. This would reveal that the 1928 revision in question was issued as chokurei (Imperial ordinance) no. 129 on June 29, 1928. The ordinance can then be located either in the Hōrei zensho or the Kanpō. Since the Chian ijihō has been a major topic of research in Japan, secondary sources, such as Chian ijihō shōshi (A Brief
History of the Peace Preservation Law) by Okudaira Yasuhiro, could also be used to obtain the text of the 1928 revision.

If the librarian and patron both did not know the Japanese name of the law, this information could be obtained from the indexes in the Kodansha Encyclopedia of Japan or scholarly works such as Freedom of Expression in Japan by Lawrence Beer. Basic information on the Chian ijihō is also available in the Kokumin hōritsu hyakka daijiten and basic legal dictionaries such as Shin hōritsugaku jiten (Tōkyō: Yūhikaku, 1989).

Question: Can you find the latest version of the Japanese abortion law?

Search Strategy: As usual, one might begin by checking in the logical sections of the Roppō zensho or the Iwanami dairoppō for a law that appears to deal with abortion. Careful searching will reveal a law dealing with contraception, but nothing on abortion. At this point one should check the subject index of the Kokumin hōritsu hyakka daijiten under the term datai meaning abortion. The entry for dataizai (criminal abortion) tells us that this topic is addressed in paragraphs 212-216 of the Keihō (Criminal Code). This means that there is no separate "abortion law." In Japanese law, abortion is a criminal rather than medical matter and is dealt with as part of the Criminal Code. Once one is aware of this, the applicable paragraphs of the Criminal Code can be quickly located through the law name index of the Roppō zensho.