



The History of Law in Japan, Through Historical Sources

Murakami Kazuhiro & Nishimura Yasuhiro eds.

Translated and Interpreted by Dan Sherer

Lecture 4: The Legal World in the Medieval Age 中世における法の世界

How did the two parties to a trial in medieval Japan make their case? In the modern system, the plaintiff has a lawyer do the bulk of the work as his or her representative. That lawyer depends on applicable law and precedent and puts to work legal know-how and experience to plead the case. Can we find evidence of such a system in medieval Japanese law? Here we will examine this question from two perspectives, that of the adversarial legal system and the efficacy of law. As a case study we will look at a suit concerning Ategawa Estate in Kii Province, fought between its supreme proprietor (*honjo*), the Enman'in on Mount Kôya, its proprietor (*ryôshu*), Jakurakuji, and the Yuasa family of military stewards whose members resided locally on and around the estate. These suits were decided at the shogunal court at Rokuhara in Kyoto and by the shogunate in Kamakura.

The Adversarial Legal System

The most important aspect of the medieval Japanese legal system was that it was adversarial. After we explain this, we will look at how the participants in suits could know the law.

A modern observer might find processes in the medieval legal system difficult to imagine. In the first stage of a case, the plaintiff would send a letter of complaint, and the defendant a letter of defense. After that this process would be repeated two more times—three rounds of letters in total. In modern law, we would ask how the parties could ascertain the facts of the case or determine which laws were applicable given this system, and how they might be interpreted. And in cases where the applicable law clearly existed, who would prove it and how?

To answer these questions, we need a practical understanding of the process by which a suit was filed and the nature of the adversarial the legal system, specifically the laws of evidence in it. The answer is, the parties provided evidence to the court on their own, or the court would specify evidence to be submitted as per one party's request. In other words, the court did not collect the evidence using authority of its own. In this same vein, regardless of whether one party claimed that a document was forged, the court did not investigate the claim. Rather, the court decided the matter based on an exchange of complaints and questions submitted by both sides. In this sense, medieval trials were fundamentally adversarial. The plaintiff submitted proof documents detailing the legal basis for the claim—submitting clear proof and the appropriate legal basis for a claim was the heaviest responsibility of the plaintiff, the one who lodged a suit.

The Efficacy of Medieval Law

Considering the above, how was the law enforced? And how did plaintiffs prove that something was “the law?” In the following section we look at this problem through a consideration of the efficacy of medieval law. Specifically, if it was the plaintiff who argued for applicable law, how were such arguments handled in shogunal courts? And if the decisions of the court were treated as a source of the law, were they preserved in a way that allowed people to consult them as needed?

To answer these questions, in the give and take between the plaintiff and the defendant there were cases in which the substance of shogunal law was cited in appended documents. These might be actual copies of an original document that contained a relevant decision. This fact likely means that there was no expectation that magistrates were expected to preserve the law for reference. There was no standard archive of legal precedents for searching. But those involved in suits—magistrates as well as plaintiff and defendants—often made and preserved decisions from which “standard (previous) practice” might be gleaned. In particular, in the later Kamakura period, lineages (*ie* 家) of magistrates began preserving copies of documents for their reference and that of descendants. A shogunal archive was also established for preserving and organizing many kinds of documents related to suits. At first the process was not systematic, but in the fourteenth century when Ashikaga shoguns reigned in Kyoto, their officials made document preservation more routine. This second shogunate established offices specifically for the preservation of documents concerning lawsuits. And since “applicable law” was to be determined based on established law and precedent, interpretation and application of relevant

elements of older cases recorded in these documents led to new legal thinking and brought new laws into being. The results were very different from the Kamakura shogunate's more restrained system of legal practice. Understanding this change is vital to the understanding of legal history from the fourteenth century on.

Parties to Lawsuits and Responsibility for Collecting Various Sorts of Evidence: Conflicts over Truth and Falsehood

It should be stressed again that the parties involved were responsible for arguing the applicability of any given source of law to their case. They were also responsible for determining that documents used as legal sources were authentic or forged. This was a major problem for the parties involved, comparable to the fundamental issue of finding the legal basis for the case.

To illustrate an extreme case of the responsibility for proving the applicability and authenticity of legal sources, we can analyze elements of a case that started in 1265 and that was heard at the shogunal court of Rokuhara in Kyoto. It involved the agent (*zassho*) of a temple, Jakurakuji, and the military steward (*jitō*) Yuasa Munechika of the upper village at Ategawa 阿氏河 Estate in Kii Province. Specifically, we will examine the defendant's second statement of defense, dating from the twelfth month of 1275, that argues against claims by the plaintiff's agent, the monk Jūren. As context, in the eighth month of the same year, at the recommendation of the Rokuhara magistrate Saitō Motoshige Yuisō, Jūren had been appointed custodian (*azukari dokoro*) of the estate for Jakurakuji. After Jūren was appointed, however, the land stewards of the upper and lower villages chased Jūren's representative out of the estate. As a result, in the tenth month of the same year Jūren petitioned Rokuhara with his own complaint. And on the twenty-eighth day of the tenth month, the cultivators of the estate sent their own famous petition written in *kana* to the supreme estate proprietor (patron). The case, therefore, is well known.

Document 1 – Munechika's Second Statement of Defense

The houseman Yuasa Saburō Saemon Jirō (also called Fujiwara no Munechika) of Kii Province makes his second defense, saying: "The rent collector for Ategawa Estate in this province, the Inspector Preceptor, has not only violated generations of agreements with the supreme proprietor but also has committed all manner of evil deeds..... As to shogunal rules on equal land division [that I claimed as evidence], he asked the magistrates (the Hyōdō Zusho initiate and the Sudō Tarō Hyōe initiate) to approve his claim that this is a forged document, and they have done so. Even before I could make my report about his many crimes, the proprietor's agent has already been confirmed in his office on the estate. As for the rest of his claims, it should now be made clear that his suit is a false one that lacks reason. ...

As the above documents [that I have listed and submitted] show, since the contract with the supreme proprietor, the position of custodian on this estate has been held by the steward due special merit. I argued in my [previous] defense that this has held true for more than sixty years, through four generations—those of Munemitsu, Jūshin, Jōbutsu, and Munechika. As for the crimes of the azechi monk Ninkai, I sent up my defense statement.

Arguments of Munechika's second statement of defense are as follows....

First, as for whether or not the post of custodian being held by the steward as well as the (prior) agreement for the steward to collect rents [as the proprietor's agent] should continue: given the origin of that post and generations of precedent, as well as the contract with the supreme proprietor and the custodian's letter of settlement, while serving as steward Munechika should also continue to perform as custodian. The position of custodian has been held by the steward for four generations and more than sixty years—how is it that there should now be a complaint that Munechika should be replaced? The agent's letter even states that a letter in *kana* dated Bun'ei 10 (1273) notes that the post of custodian was given to the steward as a token of gratitude and should be according to [the proprietor's] will, such that he cannot ignore the order removing me from that post. That is unreasonable—his attitude is not at all as expected. In past, during the frivolous suit of Dharma Eye Togai, I submitted the eleven letters of Komemochi Ō and the agent's suit was set aside....

From now on, you should keep to the two-generation contract, and as before, the military steward should act as custodian. As it says in the rules on land division, if there is an agreement to yield collection duties to the steward and there is no disagreement for twenty years, the agreement can not be cancelled.

What I, Munechika, state as the crux of my evidence is this: since this post was assigned, the years and months of four generations have gone by, and for sixty years we have held this post. Our frequent merit and generations of service are nothing other than faithful service. Surely it is difficult to remove us! Furthermore, the shogunate's rules on land division are abundantly clear. And since I, Munechika, cannot but support virtuous government (*tokusei*), how could I not defend my ancestors' legacy? The agent complains that the rules document is a forgery, and he has had his statement approved by the magistrates. There is, however, a procedure for such suits, and he should not have asked for their approval—it is customary to request a shogunal order. And to claim that a legitimate document is forged is a crime for which it is hard to escape punishment.

In this case the defendant's other claims were as follows:

1) In the Katei era (1235-1238), there was a contract by which the land steward would also serve as custodian, and on that basis, the Yuasa had served for four generations, 60 years (this included the custodianship, *azukari dokoro daikan shiki*, and the agent post, *zasshō shiki*, overseen by the former).

2) In response to the Bun'ei 10 (1273) letter written in *kana*, which the proprietor's side was using as evidence, the defendant claimed that the former agent Ninkai had invaded the estate office and engaged in wanton violence, in response to which a claim regarding the crime was made to Rokuhara. The defendant (Munechika) here further claimed that while his forebears had agreed to terms of the proprietor's settlement with Ninkai, they did so under duress, given that it

was their only option for settling the matter. Therefore those documents should not serve as evidence.

3) Munechika insisted too that the Bun'ei 5.4.25 (1268 CE) rules (*shikimoku*, clauses) were legitimate, and that it was well within accepted custom for parties to lawsuits to submit such documents citing applicable law.

4) The fault of withholding rent was that of the estate registrar (*kumon*).¹

All of this was intended to show that management of Ategawa Estate by the land steward was legitimate based on precedent and law. Now, let us turn to an examination of the shogunal rules of 1268 referenced in 3) above, which was appended as basic evidence for the defendant's argument.² It read:

Document 2

As to the matter of management contracts (*ukedokoro*) involving stewards in the various provinces: in the past, in the places where there had been no intercession from the Kantô, they were overturned on the basis of proprietorial agents' suits. From this time forward, however, even if it be a private contract, if there has been no disagreement for twenty years, it shall not now be cancelled. It is the Shogun's will that this order be sent. So ordered.

Bun'ei 5 (1268), Fourth month, 25th day

Governor of Sagami (Hôjô Tokimune) Seal
Provisional Director of the Left Capital Office (Hôjô Masamura)
Seal

To: the Mutsu First Lieutenant of the Left Inner Palace Guards (Hôjô Tokimochi)

In response to the plaintiff's (the temple's) claim that this document was actually forged, the defendant made the counter-argument that it was legitimate. Specifically, if we look at Document 1, we know that the plaintiff's agent has insisted that the existence of a copy of these rules (*shikimoku no an*) is unclear, that its provenance is unclear, and even more, that the document in question was not signed on the back by a superior authority as was customary. Accepting those arguments, two responsible magistrates signed the back of the plaintiff's document. On the other hand the defendant averred that for the plaintiff to claim that a real document was forged was a crime from which punishment could not be escaped. Indeed the Jôei Formulary (1232) Clause 15 provides that anyone of the warrior order who forged documents would have their holdings confiscated, a severe punishment.

¹ The registrar (*kumon*) was a member of the estate staff (*shôkan*). Frequently he (occasionally she) was its leading member, and maintained written records concerning the estate.

² *Dai Nihon Komonjo Kôyasan monjo* vol. 5 (1144) & vol. 6 (1465). See also Nakamura Ken, *Kinokawa Ategawa no shô shiryô* vol. 2 (225).

Document 3: The Jôei Formulary, Item 15

As to the crime of forgery, if a samurai commits it, his holdings shall be forfeit. If this crime is committed by someone without any holdings, they shall be exiled. If a commoner commits this crime, they shall be branded on the face. The scribe who creates the document shall receive the same punishment.

Next, if many people argue that a defendant's evidentiary documents are forged, and if inspection of same shows they are forged, he shall be punished as above. If however, the documents are shown to be without error, the plotting accuser shall be forced to pay for the refurbishment of temples and shrines. If the plotter is incapable of paying, they shall be banished.

On Discovering Legal Bases

Since the defendant in this case, Munechika, did not provide a clear answer regarding the legitimacy of his submitted evidence, initially the plaintiff (the temple and its agent) was successful in arguing about the legitimacy of the shogunal rule document. In Document 4 suspicious elements suggesting it was a forgery were elaborated.

Document 4 - Bun'ei 4 (1267 CE)

... The date of the appointment of the late governor of Mutsu (Hôjô Shigemochi) was Bun'ei 4, 10/20. However, the so-called Kantô order furnished by the steward is dated [Bun'ei] 5 4/25, and it is addressed to the Mutsu First Lieutenant of the Left Inner Palace Guards. This violation of documentary procedures is a clear sign of a forgery. (1) Further, when the Sagami third-level manager of the Ministry of Personnel made the order, he did not sign it. (2) And as to the matter of the disagreement of the Numata Initiate Shigehisa and the Yoshima manager-nun of Iyo province about that island, the order from the Kantô dated [Bun'ei] 5, 2/26 is signed "the Sagami third-level manager of the Ministry of Personnel." It is abundantly clear that customarily the signer writes their name and post on the order. Can there be any argument that this is a forgery (3) Moreover, on the matter of forgery, it says in the [Jôei] Formulary that "If a *samurai* commits this crime, his holdings shall be forfeit." Is it not most proper that the steward be punished? We request that the Board of Councilors (Hyojoshu) meet in the Kantô and ask for specifics.

So, given the plaintiff's arguments here, how did the military steward defend the legitimacy of his legal source as a key basis for his argument?

Document 5

Item: As to the formulary (1268)

The earlier letter of accusation said, "this document that Munechika calls 'the shogunal formulary on land division is a blatant forgery.'" As to this point, the document was

copied from those held by Hongan, the agent of the Kazan'in Inner Minister for that household's holdings in Inaba province. So you should inquire of Hongan. If you remain suspicious, you should ask to borrow the great volume of copies of orders in his possession. If doubt remains, then perhaps you should question the initiate Shimomunakata, the initiate Shioya Shinzaburô, and the Genba initiate, Shinren, since they are aware of this formulary. If you make inquiries, matters should not remain mysterious.

Document 5 is part of the same letter dated 1275 12/ and submitted by the Yuasa defendant. A particularly interesting passage therein is the land steward's assertion that the source of the attached shogunal rule was a legal agent who served the noble Kazan'in Minister. He notes too that this agent is in possession of a great volume of formularies. Access to his collection has allowed the defendant to provide proof for his argument.

That Yuasa Munechika, a houseman and military steward, had to borrow a copy of a shogunal legal text from someone who was neither a houseman or steward, and then present it to the shogunal authorities' court at Rokuhara in Kyoto, indicates that it was neither the land steward nor housemen who spread knowledge of shogunal court decisions. Rather it was non-warrior proprietors and their agents. To do their work, such legal agents had to spend a long time at courts in Kyoto and Kamakura, and even in Hakata (near the Kyushu headquarters). They had to know the circumstances of shogunal courts and trials, and they had to be familiar with magistrates of those courts, the legal specialists of the time. We know little about budgets for such activities, but there are records showing proprietors being asked for special remittances for that purpose. Through such, we can imagine how proprietors gathered good information about legal sources and practices. On the other hand, shogunal housemen were not sitting idly by. They took advantage of the special powers of magistrates with whom they gained contact during lawsuits.

To conclude, there are three possible reasons for why the defendant, Yuasa Munechika, was able to offer this powerful evidence in a shogunal court against the temple plaintiff's charges. The first was possession of the copy of shogunal laws ("the formulary") preserved in the hands of a non-houseman (ie. the agent in Inaba named Hongan). The second was that the defendant knew of this copy and was blessed with the opportunity to obtain it. The third was that the defendant had the means to obtain the document from Hongan when he needed it. All three of these factors had to line up for our defendant to be able to use this shogunal law in his argument at the shogunal court.

The fierce battle over the authenticity of this copy of a shogunal legal text continued through the sixth and seventh months of 1276. During that time, the proprietor, Jakurakuji, had a Rokuhara magistrate named Yuijō Motoshige on its side. Because the focus of the debate was on the crime of forgery, it was [considered] a particularly important matter, so resolution of the case was transferred to Kamakura ("the Kantō"). We can presume, in any event, that both the land steward and the magistrates at Rokuhara continued to be deeply involved. Unfortunately there are no documents regarding the outcome, but we can say with some confidence that the land steward was in a strong legal position.