



The History of Law in Japan, Through Historical Sources

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Lecture 9: The Process of Three Claims and Three Defenses in Medieval Courts

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The *Izayoi nikki* is an exemplary diary and travelogue from medieval Japan. It is the record of travels by Abutsu-ni (1222?-83), the nun-widow of the grand councilor Fujiwara Tameie (1198-1275), who went from the Kyoto capital to Kamakura in the 10th month of 1279. It is written in *kana* script. Abutsu went to Kamakura because her son, Tamesuke (1263-1328), was in conflict with Tameie's eldest son over the military stewardship (*jitō shiki*) of Hosokawa Estate in Harima (in modern Hyōgo) and the right to inherit Tameie's poetic writings. Abutsu had tried to settle the matter in a royal court in Kyoto but had met with no success. She decided therefore to try again in the court of the Kamakura shogunate, which wielded authority over military stewardships. Abutsu wanted Tamesuke's inheritance rights confirmed so that he could establish a new poetic lineage, that of the Reizei house (Tamesuke came to be known as Reizei Tamesuke). Her hopes were eventually realized, but sadly the decision confirming Tamesuke's inheritance did not come until 1289, after Abutsu's death—indeed the case was not fully finished until 1313.¹ While the lawsuit is not typical, it is useful for considering court procedures and the adversarial nature of the Kamakura-era (1185-1333) legal system.

“Even if there is a corpse in front of the jail, if no one complains, there will be no investigation.” The first to argue the significance of this idea was the legal historian Nakada Karou (1877-1976). Using Western law as a basis for comparison, he found a strong likeness to the legal concept, “*nemo iudex sine actore*” (“Where there is no complainant, there is no judge”). He also argued that in the medieval Japanese court system, courts did not in any way pursue new cases. Here is the full document cited by Nakada:

Document 1

It is said that even if there is a corpse in front of the jail, if no one complains, there will be no investigation. Truly, as there is no plaintiff, there can be no guilty verdict.²

Nakada argued from this that Japan's medieval judiciary was a system in which courts were dependent on an outside party making a complaint—the court would not initiate an investigation on its own concerning a criminal act. Since then, Japanese scholars have shown that this applied to civil suits as well. As a result, it has become common to refer to the medieval Japanese legal system as “adversarial.”

The procedure for conducting suits in the Kamakura shogunate was more or less routinized by the late Kamakura period. Specifics were recorded in a book called the *Sata mirensō* (*Book for Those Unversed in Lawsuits*), presumed to have been compiled in 1319.³ As its title indicates, the book presented itself as a primer for inexperienced magistrates. In this chapter, we will use its contents to get a sense of the procedures used for lawsuits at the time.

¹ On Abutsu-ni's lawsuit in English, see Paul Atkins, “Nijō vs. Reizei,” *Harvard Journal of Asiatic Studies* 66.2 (2013), 495-529; and on Abutsu-ni's life and oeuvre, see Christina Laffin, *Rewriting Medieval Japanese Women* (2013).

² *Tōji hyakugō monjo* 1385 04/ (Box “Mu,” Shitoku 2). See Tōji hyakugō monjo Web <hyakugo.pref.kyoto.lg.jp>. The collection of records from the official temple Tōji in Kyoto includes almost 25,000 documents stored in 100 boxes.

³ For an English translation, see C. Steenstrup, “Sata Mirensō,” *Monumenta Nipponica* 35.4, 405-35. To make this important legal compendium more accessible in English, a research group at the University of Tokyo's Historiographical Institute led by Professor Endō Motoo and Professor Joan Piggott has been retranslating the text with full annotation. Completed sections can be found in the History of Law resources on the USC Project for Premodern Japan Studies website.

A Survey of Procedures for Lawsuits

Bringing a Lawsuit

As an example, we will look at a case involving Akanabe Estate in Mino Province (modern Gifu). A Tōdaiji holding, Akanabe found itself embroiled in a conflict over two issues: the sale of silk cloth that it was to send to the proprietor as rent, and when the rent was to be collected. Tōdaiji and its agent (*zasshō*) Kenshun met in the shogunate's court at Rokuhara in Kyoto with the military steward Nagai Yasushige and his deputy, Itō Yukimura. As the temple's agent, Kenshun was entrusted with overseeing legal work for the temple. He would have been highly literate, conversant with the various kinds of required documents, and knowledgeable about how to assemble everything needed to negotiate for the temple's interests. Kenshun had to depend on this broad array of skills to ensure that his role as the temple's legal representative was carried out successfully. He was therefore a vital member of the management at the royal temple of the Daibutsu in Nara.

Officially the Akanabe case began in the 4th month of 1267 (Bun'ei 4), when Kenshun and Tōdaiji submitted their two letters of complaint. In fact, Kenshun had actually tried to initiate the suit a year earlier, in the 7th month of 1266, but the defendant, Itō Yukimura, had failed to respond. So Kenshun composed a new letter and had the abbot of Tōdaiji append his own missive. This demonstrated to Rokuhara that Tōdaiji stood by its agent's account, bolstering its claims. The shogunal court then treated the two documents as a single complaint that initiated the suit.

So what was the content of these letters? They asserted 1) that the defendant must immediately pay the cloth due as rent from the estate; and 2) that the collection contract (*ukesho*) that the military steward had negotiated with the temple had not been approved by the shogunate—it had been granted to the steward by the temple in gratitude for service, meaning it could be terminated at any time; and 3) that the steward's deputy had conspired against and done violence to the temple as the estate's proprietor.

The Letter of Inquiry

Having received the two letters of complaint, the shogunal court at Rokuhara made them the basis for a letter of inquiry (*toijō*) to be sent to the defendant. It also issued a copy to the plaintiff. That copy is extant and it reads:

Document 2

The agent of Tōdaiji's Akanabe Estate in Mino complains about the matter of rents and various other illegalities. The letter of the Temple Director, Senior Prelate (Jōzai)...is attached. Quickly send a letter stating your defense. So ordered.

1267 7th Month 26th day

Courtier-without-post [Hōjō Tokisuke] seal

First Lieutenant of the Left Inner Palace Guard [Hōjō Tokimochi] seal

To the Military Steward's Deputy [Itō Yukimura]⁴

⁴ Reflecting this stage in the suit, see two documents from Tōdaiji's archives in *Gifu kenshi Shiryōhen* 3, #172, 173 (1971). The volume contains the collected records of Akanabe and Ōi estates of Mino Province, which are numerous. Additional documents concerning the case here include #176, #177, #180. The editors call Rokuhara's orders to respond and appear *migyōsho*, often translated as "directive"—they were issued by high ranking figures of the court or shogunate.

Rokuhara ordered here that in response to the complaint, a defense statement (*chinjō*) should be submitted. A copy of the complaint would be delivered to the defendant's spokesman (*ronnin*), in this case the steward's deputy.⁵

As a response, the defendant sent up his acknowledgement of receipt (*ukebumi*) of the inquiry, and he promised to journey to the court at Rokuhara with the defense statement outlining his side of the case—that acknowledgment was indeed sent on 8/12, 1267. Nevertheless, he did not follow through. On 9/4, Rokuhara therefore sent another inquiry. The defendant again sent up his acknowledgement on 9/13, but he did not send the letter of defense.

The Defendant's Response

It was in the 10th month when the defendant finally submitted his statement responding to each of the plaintiff's points.⁶ First, he submitted a letter written by a former director of Tōdaiji, identified as “the late Kajūji prelate.” It stated that the collection contract was guaranteed for the steward's family as long as they collected rents without negligence.⁷ As such, argued the steward's deputy, the temple's claims that the steward and his deputy were infringing on the temple's property in some way were baseless.

Second, as to the charge of nonpayment of rents, the defendant argued that when he had been told in the previous year that the temple had complained of non-payment, he had gone to Nara and proved that there was no nonpayment. At that time, however, the temple refused to provide him with a document acknowledging the proof, causing needless continuing suspicion.

Third, as to suggestions that the defendant should be punished severely, the defendant cited a letter from the same late prelate to the initiate Nagai Tokihiro in 1223, the steward at that time. It stipulated that the contracted collector was responsible for sending 100 *hiki* of silk and 1000 *ryō* of cotton. The defendant pointed out that ten tenures (代) and forty years had passed, during which rents had always been paid. On the other hand he charged that the agent Kenshun had ordered estate dwellers not to pay rent for the steward's portion, and that Kenshun had been the one who had caused trouble among the cultivators. The defendant therefore demanded that the plaintiff's frivolous lawsuit be dismissed.

The Plaintiff Makes Additional Claims

Having received this statement, the plaintiff's side immediately sent a second letter of complaint. And having received it, Rokuhara began sending the defendant a new series of three orders calling for yet another defense letter, as evidenced by the following document dated 1268.

Document 3

The agent of Tōdaiji's Akanabe Estate in Mino charges new illegalities, and a letter from the Prelate Director states likewise.⁸ Even though you said in a previous acknowledgement that you would appear in court in the previous month, you have not yet come. There is no excuse. Quickly come to the capital by the twenty-eighth of this month, and make your case clear. So ordered.

⁵ Item 51 of the Jōei Formulary issued in 1232 states that when a defendant received such an inquiry, he was to immediately cease illegal activities. For an English translation of the Formulary, see John Carey Hall, “Institutes of Judicature,” in *Feudal Law*, 1906 (republ. 1979).

⁶ A published version is in *Gifu kenshi Shiryōhen* 3, #180.

⁷ A list of Tōdaiji directors (*bettō*), the *Bettō shidai*, actually includes “the Kajūji Bettō,” Jōhō, who served from 1222 to 1226. See the list in *Gunsho ruijū* 4 (*Buninbu*), 569-97.

⁸ It was from Seiki, director at Tōdaiji from 1263 to 1267.

1268 11th Month Second Day
Courtier-without-post [Hôjô Tokisuke] seal
First Lieutenant of the Left Inner Palace Guard [Hôjô Tokimochi] seal

To the Steward's Deputy [Itô Yukimura]⁹

This particular missive orders a response to the plaintiff's second complaint. It is different from the other letters to the defendant in that it says the defendant must come to court. If we consult later letters to the defendant, it is clear that Document 3 is the second summons. In the later Kamakura Period, the function of letters of inquiry was being taken over by directives (*migyôsho*), of which Document 3 is a classic example.

Determining the Outcome

As of the 11th month of 1270, the exchange of three inquiries (summonses) and three responses was complete. Nevertheless it required another 8 years for resolution of this lawsuit, for which Rokuhara issued its statement of verdict (*saikyôjô*) in the 12th month of 1278. By that time, the position of steward's deputy had passed to another individual. From the text of the verdict, we can surmise that there had been a hearing at Rokuhara in which testimony was given. Likely, a record was made of both sides' testimony, for the court and the parties themselves. Unfortunately it is not extant. The verdict of the shogunal court was elaborated as follows:

- 1) As to the collection contract (*ukesho*), while it was indeed a private agreement, it had lasted for more than twenty years and so could not be terminated, given shogunal protocols.
- 2) As to the rent to be paid in silk cloth, the court agreed in principle with the plaintiff's assertion that the rent should be collected and paid in cloth. However, the court also saw logic in the defendant's argument that the price of cloth had risen sharply recently, such that cultivators could not bear the cost of obtaining the needed silk. As a compromise, the magistrates ruled that for each *hiki* of silk owed, cultivators should instead pay 3000 coins in cash, with which the cloth was to be secured within the year.

In this decision, we see that in maintaining the collection contract on the one hand and using the rhetoric of compromise on the other, the shogunal court was trying to maintain fairness. In reality, however, they sided with the defendant, who wanted to pay the rent in cash rather than silk.¹⁰

Contempt for Summonses

In what we have seen so far, the defendant did not necessarily respond to inquiries and summonses with sincerity. What was the procedure when a defendant was unwilling to cooperate? To consider this question, the Jōei Formulary Item 35 is helpful. It states:

Document 4

On persons not coming up (to Kamakura) after being repeatedly summoned in a lawsuit. When a complaint has been made and the defendant has been thrice served with a summons to appear and plead, if he does not come and await judgment, the plaintiff, if he has reason on his

⁹ *Gifu kenshi Shiryôhen* 3, #182.

¹⁰ The verdict is in *Gifu kenshi Shiryôhen* 3, #215. On the development and effects of monetization in Kamakura times, and its impact on estate rent payments, see Ethan Segal, *Coins, Trade and State* (2011).

side, shall forthwith obtain judgment in his favor. If he does not have reason on his side, then the property in dispute shall be awarded to a third party. In addition, [the defendant's] dependent persons, horses, cattle, or miscellaneous goods, having been properly inventoried, shall be appropriated for the repair of temples and shrines.¹¹

As we see here, the 1232 Formulary provided that if three summonses were ignored, the plaintiff would win whatever was at issue in the case if his claims were reasonable. If they were unreasonable, however, whatever was at issue would pass to a third party. In the case of Akanabe Estate, it seems that this clause should have applied to the steward's deputy. Curiously, however, the clause was not invoked by Tōdaiji in this case.

The Destination of the Letters

In the *Sata mirenscho* it says that once the process of exchanging letters of claims and defenses was finished, both parties were to come to court, bringing the original documents they had invoked as evidence. These were then pasted together and both parties inscribed their cyphers on the back at the seams. In cases heard in the Kantō (at Kamakura), after a ruling was handed down to the winner, the letters from the case were archived—as a rule, original documents were not to be left with litigants. On occasion, however, documents remained with parties to the suit, as indicated in Document 5 below, which concerns a complaint from a proprietor's agent against a military steward of an estate in Mutsu Province.

Document 5

[On the back edge:] Iga Saemon Saburō Karyaku 4 [1329] 2[nd month] 8[th Day]

Shōbō, the representative of Iga Saemon Morimitsu who is the custodian (*azukaridokoro*) of Yoshima West Estate in Mutsu Province, reports with reverence:

The military steward of one section of this estate, Yoshima Hikotaro Yasuyuki [cypher on reverse of name], has been dawdling in undertaking the survey of the various villages of Kurokuzu that the custodian can require once in his term. Therefore let the steward be summoned promptly for judgment.¹²

Attached: 2 sheets; an order (*ongechi*)

It is clear from the order that there should be one survey during the tenure of a custodian. During his term, Morimitsu wishes to carry out such a survey, but for his own reasons Yasuyuki is

¹¹ See John Carey Hall's translation, "Institutes of Judicature," op.cit.

¹² *Iino-ke monjo Chuseihen* #2002. Who Iga worked for as custodian is unclear. According to Rekihaku's *Nihon shōen shiryō*, this Yoshima Nishi Estate was established in 1248, and there are documents concerning it in *Kamakura ibun*: 6986 (1248), 10543, 11703, 13206, 18695, 22983 (1308). In the latter document, there are references to problems between a military steward and a custodian, both of which posts are mentioned in the earliest extant document of 1248. At that time, Iga Mitsumune (Kōsai) passed the custodianship to a son, who was to see that rent was properly paid. From 1269 to 1274, the several military stewards of both east and west Yoshima estates joined together to contribute to costs for erecting a gate at the Yoshima Hachiman Shrine. The shogunate had an interest in the estate because in 1279 Hōjō Tokimune ordered the military stewards to pay the yearly rent to Iino (Iga) Mitsuyasu (KI 13206); and in 1322, shogunal co-signers signed the testament of 1294 that transmitted the custodianship of Yoshima (and other possessions) from Iga Yoriyasu to Mitsusada. It seems likely that the Iga family, some of whose members took the name "Iino," were intimates of the Hōjō regents. Notably both were Taira lineages.

resisting. That he opposes this order is intolerable and unacceptable. Let him be summoned and let judgment be rendered speedily, according to precedent. With great reverence.

On the original document, “Iga Saemon Saburō Karyaku 4 2 8” can be seen written in a distinct hand on the back. This not only confirms that the document followed proper form but also that it listed the plaintiff’s name and the date when a magistrate received the complaint. The cypher written on the back of the name “Yasuyuki” is believed to be that of the magistrate. This was an official court record that ended up in the hands of a litigant.

Deciding Judgment, Creation of a Judgment Decree (*Saikyōjō*)

By what process was the shogunal court’s verdict promulgated? A document dated 1301 01/11, the “Account of the Process of Judgment for Yakushōji,” from the temple on Mikami Estate in Kii Province, provides good information that helps to flesh out what the *Sata mirensho* says.¹³ We hear in the “Account” that agents (*zasshō*, the monks Ryōshun and Seikei) of the temple proprietor Yakushōji had experienced a long dispute over issues of management and policing at the estate with the military steward (Kanemochi Saburō Emonnojō Hirochika) of one section of the property, so they had complained and brought suit against him at the shogunal court at Rokuhara. Despite the exchange of complaints and defense statements between 1289 02/ and 1297 03/, the case was not decided. Then, in 1297, the matter was transferred to Kamakura for judgment. At that point, the deputy land manager (*gesudai*, Monk Seijitsu) and the reeve (*kumon*, Shimotsuke Ajari Jisshin) of the estate travelled to Kamakura as representatives of the temple proprietor to argue their claims.¹⁴

Subsequently, in Kamakura on 1/27 1299 (a year and some months had passed by then!), the co-adjudicator in charge of the case submitted his brief for the judges’ discussion (*hyōjō*). After deliberation, victory was given to the proprietor’s side, and a statement elaborating the decision was approved. It became the basis for a judgment decree, which would be sent eventually to the victorious litigant in the form of a shogunal order (*gechijō*).

Several more steps were needed before that happened, however. First, the staff magistrate who had accepted the case originally wrote a draft decree, reflecting the deliberations and the judges’ decision. When complete, that draft was checked and approved. Then the magistrate used it to prepare a final draft (*seisho*), which went to the Hōjō regent (*shikken*) and co-signer (*renshō*) for their cyphers (*kao*). Then the head of the Board of Co-adjudicators (who was also a member of the Board of Councillors) affixed his seal at seams between pages. The document was then ready for dispatch to the victorious litigant.¹⁵ In this case, however, the process was prolonged because a mistake was discovered and the order had to be rewritten. The final document did confirm the day on which the decision had been made.

¹³ *Kii zokufudoki furoku* vol. 4—this is an Edo-period gazeteer. *Nihon shōen shiryō* indicates that Mikami Estate in Nakusa District had been a royal landholding. By 1301 it belonged to Yakushōji, a temple in Kii with a long history of royal government support going back at least to early Heian times.

¹⁴ This is a case where the reeve, as a local estate manager, clearly sided with the temple proprietor against the military steward, not an infrequent occurrence. For context, see my “Estates, Their History and Historiography,” in Janet Goodwin and Joan Piggott eds. *Land, Power and the Sacred* (2019), 3-36, esp. 12, 19-20. Other examples of *kumon* duties can be found in other essays of the book—for instance, the *kumon* at Ōbe Estate in Harima has a particularly famous history.

¹⁵ In Japanese, the judgment statement is called a *saikyō no gechijō*—order of judgment resolution—or simply *saikyōjō*. Note that the court’s decision went to the plaintiff, who then had to enforce it, and keep it safe.

Only then did the reeve Jisshin leave Kamakura, to head back to Kii with the shogunal court's judgment in hand. In all, it took a year and a half after its announcement in Kamakura for the written statement of judgment to reach the Kii temple. The entire process of the law suit had taken more than a decade by then. In fact, the reeve's tenure had ended by then. Nonetheless Jisshin duly completed his "Account of the Order of Judgment for Yakushōji," from which we know about the case today.