

Preface

In 2016, the Journal of Japanese Law celebrated its 20th anniversary. The Journal is jointly published by the Max Planck Institute for Comparative and International Private Law (MPI) and the German-Japanese Association of Jurists (DJJV) and aims to serve the needs of scholars, judges and legal practitioners who are interested in Japanese law. Its goal is to make all areas of the Japanese legal system accessible in a comprehensive and methodologically structured manner. At present the Journal is the world's only western-language publication which offers a regular and timely documentation and analysis of the myriad lines of development in Japanese law.

On the occasion of the 20th anniversary of the founding of the Journal, the MPI and the DJJV initiated two academic conferences aimed at an up-to-date comparison of German and Japanese law in selected areas of law which are of special comparative interest. The first was convened in Japan and the second in Germany. The Japanese conference focused on "Information Duties under Japanese and German Private Law". It was jointly organized by the DJJV, the MPI, the Chūō University in Tōkyō, and the Tōkyō office of the German Academic Exchange Service (DAAD) and took place on 23 September 2016 in Tōkyō at the German Cultural Centre. This Special Edition of the Journal presents the contributions to this symposium in an updated and edited version for an international readership.¹

The conference brought together leading private and commercial law scholars from Japan and Germany to present a comprehensive analysis of the existence and functions of information duties in various areas of private law. Information duties in various forms have significantly increased over the last thirty years in Japan as well as in Germany. While the basic concept of information duties can be described as legal duties to provide, share, or make available certain information, the terms actually used in the various fields of law are inconsistent. In addition to information duties one can also find the terms disclosure duties, transparency obligations, and some others. Legal literature often points out the similarities among those types of duties, but it also engages in a search for functional criteria that allow for differentiating them from each other. While doing so, it has become apparent that these terms describe no clearly distinguishable legal concepts.

1 The second conference on "Self-regulation in Private Law in Japan and Germany" was convened in Hamburg at the premises of the MPI on 4–5 November 2016. The contributions to that symposium are published in Special Issue No. 10 of the Journal.

The contributions to this volume aim first at classifying the various types of information duties and shedding light on their differences and similarities. Second, they compare the extent of the information's use, its specific contents, and the involved functions that can be observed in Japan and Germany, respectively. In so doing, this volume considers all forms of existing legal duties that involve the provision, the sharing, or the making available of information, regardless of the technical terms that are actually used, and also regardless of the involved subjects and forms of information.

Correspondingly, we see a varying range of requirements with respect to form and content. Some information duties require a provision in a specified form, e.g., in writing or as an entry in a specific register. In some cases, the content of the information is formalized by law, whereas in other cases the information to be provided has to be adjusted in scope and content to the individual circumstances of the addressee. Furthermore, the information duty may be stipulated for the benefit of an individual person, a particular group of people, or for the sake of the common good.

Information duties can be found in almost all fields of law: general civil law, consumer law, trade law, company law, insurance law, capital market law, insolvency law, and others. Certainly, there is already rich literature in Japan and Germany dealing with specific types of information duties from a stand-alone perspective limited to one field of law. But only a few analyses attempt to consider the abundance of information duties in their entirety, to compare them, and to distinguish them from each other with respect to their specific functions. The same is true for a comparison of law. Until now there are only very few academic studies exploring information duties in Japan and Germany in a comparative context, and these are usually focused on one selected kind of information duty. To allow for general observations and analyses of the operation of private law system in both countries it is, however, indispensable to take into consideration numerous fields of law at the same time. This is what this volume attempts to achieve.

The volume opens with an analysis of information and disclosure duties from a law-and-economics perspective, provided by Prof. Dr. *Ulrich Schmolke* (University of Erlangen-Nuremberg), as a general introduction into the topic. The rest of the volume is divided in four parts. Section I deals with information duties in civil law. Prof. Dr. *Hisanori Nemoto* (Hokkaidō University) explores the concept of information duties in the field of property law in Japan. This involved a reflection on whether disclosure in public registers with regard to the ownership and transfer of property rights, which has been a common conventional element of property law in Japan and Germany for more than a hundred years, can be classified as a type of information duty. Thereafter, Dr. *Marc Dernauer* (Chūō University, Tōkyō) and Prof. Dr. *Carsten Herresthal* (University of Regensburg) examine in-

formation duties in the field of general contract law and consumer contract law in Japan and Germany respectively. The necessity of information duties is well acknowledged in both countries whenever there is an information disparity in a specific case or a structural information asymmetry between the contracting parties. As a further sub-field of civil law, information duties with regard to the founding and administration of non-profit legal entities are analyzed. Prof. Dr. *Makoto Arai* (Chūō University, Tōkyō) reports on the Japanese law while Prof. Dr. *Moritz Bälz* (Goethe University, Frankfurt) takes the part on Germany.

Section II deals with trade law and company law. Here, various forms of information duties with different functions could be taken into account: e.g., duties to inform specific entities, duties to inform a broader audience, and registers for the recording of specific information. Prof. *Masao Yanaga* (University of Tsukuba) reports on information duties in Japan with respect to individual and collective information as well as reporting. Three material weaknesses in the Japanese system are identified. Prof. Dr. *Ingo Saenger* (University of Muenster) distinguishes between information duties provided for in German trade law and information rights supplied by company law in Germany (the latter being duties to only a lesser extent traditionally) while acknowledging the ever extending mandatory duties to inform in the field of stock corporation law.

The subject of Section III is capital market law. Prof. *Gen Goto* (The University of Tōkyō) and Prof. Dr. *Harald Baum* (Max Planck Institute and University of Hamburg) explore the complex matrix of varying information duties in this field of law for their respective legal orders and supply a thorough overview on the surprisingly different regulatory architectures under both legal regimes. Special attention is paid to the challenges presently facing the “information model” that thus far has been regarded as the key regulatory concept of capital markets law.

Section IV, the final section, deals with insurance law, a field of contract law that features specific characteristics and an area in which information duties take on a particular relevance and assume specific functions. The Japanese insurance law is analyzed by Prof. *Yūji Ito* (Sophia University, Tōkyō), the German insurance law by Prof. Dr. *Gisela Rühl* (Friedrich-Schiller-University, Jena). Both contributions distinguish between the varying (pre-contractual) information duties of the insurers on the one hand and those of the policy-holders on the other.

This comparative analysis of information duties under Japanese and German law hopes to encourage legal academics and legislators on both sides to further reflect and (re)consider the necessity and scope of their existing information regimes especially in areas where the analyses re-

vealed that certain information duties exist only in one of the two countries or have a considerably different scope.

The organizers of the conference “Information Duties under Japanese and German Private Law” and the editors of this volume would like to express their gratitude for the generous financial support provided by the *Tokyo Club* and the *Egusa Foundation for International Cooperation in the Social Sciences*, which was essential for realizing this project. The editors would like to extend their thanks to *Janina Jentz* as well as to *Anna Katharina Suzuki-Klasen*, *Michael Friedman* and *Jocasta Godlieb* for their skillful and diligent support in editing this book.

Marc Dernaue
Tōkyō

Harald Baum
Hamburg

Moritz Bälz
Frankfurt a.M.

March 2018