

# Helping law become a tool for conducting free economic activities

## Developing an interactive learning platform with legal practitioners and professionals

I specialize in business law and am currently conducting various lectures and seminars in the Business Law Program (evening course) of the Graduate School of International Corporate Strategy (ICS) at Hitotsubashi University.

The Business Law Program is a graduate school department for practicing professionals, which provides a rich curriculum specialized in “business law,” including corporate, economic, intellectual property, financial, labor, and tax law with the aim of providing advanced practical legal education. Within this program, I am in charge of lectures including “Financial Transactions and Law” and “American Securities Exchange Act,” which is primarily targeted at Japanese students, and “Japanese Securities Law” and “Legal Practice in Japan,” which are designed for international students.

The seminar students are practicing professionals who are conducting research on subjects such as banking law, financial instruments and exchange law, and trust law. As discussed in detail below, the students—some of whom are business practitioners, and some are legal professionals—have an excellent awareness of the issues. While I teach the students what I can as an instructor, they also teach me about “real-life case studies” in legal practice, which in turn inform my own research. Therefore, the seminar provides an interactive learning platform, which is highly stimulating for me.

## I entered the world of business law captivated by the beauty of legal study with its emphasis on logical consistency

I entered the world of business law after encountering the work of Professor Masayuki Kawamura (currently Professor Emeritus at Hitotsubashi University). As I was a student at the time, naturally, I had no opportunities to issue the promissory notes and checks that appeared in the textbooks. This is precisely why I was so fascinated by the collection of abstract, finely constructed theories developed by Professor Kawamura.

Law is a world in which we have to trace the original meanings of things. For example, imagine I write a prom-

issory note in my own name. It says, “Mr. Ogawa will pay 1 million yen on a given day in a given month.” Is this a one-sided proposal, or is it issued in agreement with the recipient? And what would happen if the person who wrote the note really intended to pay 100 thousand yen, but wrote the number 1 million by mistake? What would happen if the note was stolen? There needs to be a line of reasoning to serve as an anchor that anticipates the occurrence of various arguments and problems. It says that this law was originally established for this purpose, so this problem should be interpreted in this way. I was captivated by Professor Kawamura’s theories, which offered the logical consistency to guide this process, awakening me to the beauty of legal study. This motivation remains unchanged until now.

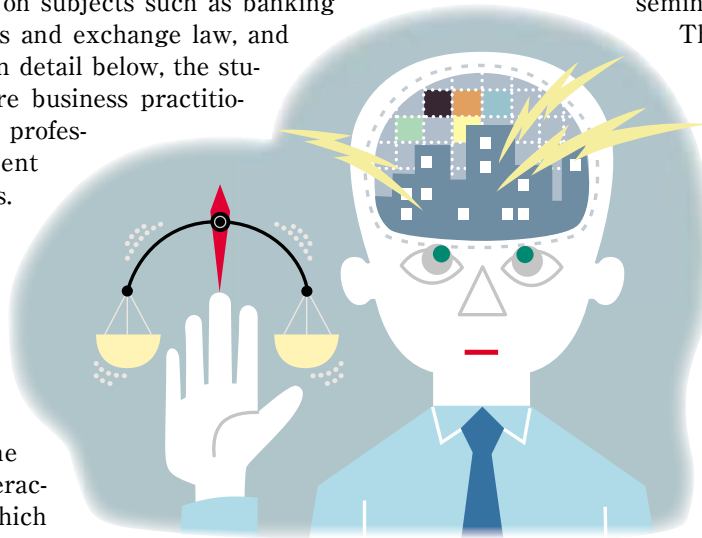
## ICS also offers plenty of opportunities to update my own research based on “real-life cases”

As mentioned at the beginning of this article, the students who attend the ICS lectures and seminars are practicing professionals.

The students largely fall into two groups: those who perform daily duties as legal representatives in businesses, and those who we call “legal professionals,” including lawyers, tax accountants, and certified public accountants. They have an excellent awareness of the issues and ask straightforward questions, such as, “What legal approaches are possible in this case?” and, “This is what I think. Can you give me your interpretation?”

On the other day, a student from a securities company asked a question about “fiduciary duty.” As the Japanese government advances policy aimed moving away from savings toward asset formation through investment, opportunities for brokerage firms to propose products to senior citizens are increasing. Many seniors are unfamiliar with financial instruments, and there are more than a few cases where their health is in a bad condition. What legal issues should entrusted securities companies resolve in order to provide advantages to the customers who, in spite of this, trust them with their assets? The class discussions are based on these kinds of ongoing “real-life cases.”

I convey my systematic knowledge as a legal professional, but at the same time, I also have plenty of opportunities to update my own research, so the environment is very stimulating.





## In the United States, a pioneer of financial instruments, legal experts are involved from the product development stage

The United States and the United Kingdom are global leaders in the development of financial instruments. In the United States in particular, there are many cases in which lawyers and other legal professionals are involved from the development stage of financial instruments.

One example includes the derivatives and other securities that were developed by mathematicians and physicists working at NASA (the National Aeronautics and Space Administration) by making use of financial transactions. They were unable to judge the legality of the financial products that they were about to create. Therefore, legal experts were involved from the early stage of product development. And a system for dealing with legal issues was established.

In my view, the balance between such economic activities and legal regulations is important. If there is a black box surrounding the question of who developed a product under what intention, regulations will not apply when a problem arises, and this is likely to create disadvantages for consumers. However, the world of financial transactions values freedom above all else. If businesses are bound too firmly by restrictions, their subsequent economic activity may be inhibited. I believe that the involvement of legal experts from the product development stage has a certain significance in optimizing this balance.

## Helping students develop legal literacy is a rewarding experience

The Japanese Financial Instruments and Exchange Act is based on the American Securities Act. In that sense, there are many points worth referring to when developing financial instruments. As mentioned above, the Japanese government is promoting a shift “from savings to investment” with the aim of establishing a thriving financial nation. However, for financial transactions in general, it cannot be denied that legal experts still take an “ex post-facto” approach—they tend to react only after something happens. Business practitioners can also still be equipped with a higher level of legal literacy.

Legal literacy refers to the ability to capture the purpose of laws by tracing their original meanings and identify the hurdles. If the number of people equipped with this kind of literacy increases and they are prepared with theories and confident about delivering financial instruments to the world, the possibility of realizing a financially thriving nation can be realized. In other words, law is a tool for conducting free economic activity.

Finance is a very broad field that has a considerable influence on society. There are many people who accumu-

late assets as individuals even if they are not directly involved in the financial world. Because it is a compelling issue that concerns everyone, the flourishing of the financial world has an immeasurable influence on society. In times like these, helping students develop legal literacy is an extremely rewarding experience.

## Rather than being an expert in a certain business I aim to become a researcher with a broader vision

I am a member of a research group on fiduciary duty, in which I have been given the interesting topic of, “What are securities in the first place?” and I have recently compiled my findings in a report. I will avoid going into too much detail about this technical subject, but the important point is that the laws that apply vary depending on how the securities are defined.

For some financial instruments, securities are governed by the Financial Instruments and Exchange Act, insurance contracts by the Insurance Act, currency transactions by the Banking Act, and trusts by the Trust Act. However, in reality, it is not possible to clearly distinguish among these types, and the number of cases where it is difficult to ascertain which law applies has increased.

Legal theory is playing a constant game of catch with this kind of real business, and with judicial precedents set by the courts, and as researchers we are continuing to renew it while reconciling our opinions. And that is what makes it interesting. Rather than being an expert in a certain area of business, I hope to take a step back from the field and develop a broader vision. This may well be because I entered the world of law captivated by the beauty of theory. It would be wonderful if I can discover a simple theory—like “ $E = mc^2$ ” in the context of physics—in the domain of law. (Interview)



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Graduated from the University of Tokyo Faculty of Law, completed a MA by research and a PhD in law at Hitotsubashi University Graduate School of Law. Studied abroad at the School of Law at Washington University in St. Louis to learn American contract and tort law widely.

Earned LL.M. After returning to Japan, he lectured in subjects such as commercial law (its general provisions, commercial transactions law, and securities law) and Anglo-American law at Asia University Faculty of Law. He is currently in charge of lectures for practicing professionals in the Business Law Program (evening course) of the Graduate School of International Corporate Strategy at Hitotsubashi University. His major publications include *Kin'yū kisei kaikaku* [Financial Regulatory Reform] (Nippon Hyoron Sha, 2014) and *Hōgaku sōsho: Kin'yū shōhin torihikihō* [Law Studies Series: Financial Instruments and Exchange Act] (Shinsei Sha, 2012).