

Mediation/Conciliation

Purpose:

This lesson is designed to enable students to compare methods of achieving justice in the United States and Japan.

Target Grade Level: 12

Topic:

Dispute resolution in Japan

Concepts:

- Adversarial system
- Mediation/conciliation
- *Kenri* (right)
- *Wa* (harmony)

Key Ideas:

In Japan, civil suits are rarely filed in cases involving victims of accidents. The company usually accepts responsibility and settles out of court. The company negotiates with the families of the victims.

Skills:

Comprehension: Given a story about the victims of the Minamata disease, students will state the facts of the case and identify the issues involved.

Application: Students will apply the concept of *wa* to resolve the dispute.

Analysis: Students will compare the methods of achieving justice in both Japan and the United States.

Materials:

- Reading: "The Case of the Minamata Victims" (Handout A)
- Teacher Background: "The Role of the Law and Lawyers in Japanese Society."

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Activities:

1. Involve the students in the lesson by asking them to assume the roles of the family and friends of the victims of an air crash. Would they file a suit against the airlines. Explain why? Why not? If they knew that the pilot had a history of mental illness, would they sue? Discuss?
2. Explain that the American system of justice is an adversarial system. The relatives of the victims will file a civil suit against the airlines. Attorneys will represent the victims and the company. Each attorney will be protecting the client's interests. Sometimes, the case is settled out of court. Often the company will not admit responsibility because of the possibility of criminal charges.
3. Tell the students that between 1977 and 1982, Japan Air Lines had two crashes of its planes, with 57 people killed. One crash involved a pilot with a documented history of psychological problems. Have the students apply the principles they have learned about dispute resolution in Japan to these cases. Students correctly understand the way in which disputes are resolved if they indicate that the company assumes responsibility and settles out of court according to the age, salary, and family obligations of the victim.
4. Give students "The Case of the Minamata Victims" (Handout A). After they read the case, ask them to state the facts of the case and identify the issues involved. Locate the area on a map and discuss the importance of the sea to Japanese life. According to the way in which disputes are resolved in Japanese society, what should the Chisso Chemical Corporation have done?
5. Have the students read Part Two of the case. Ask students to explain why this case was unusual in Japan.
6. Discuss how Japanese dispute resolution might change if criminal charges could be filed against polluters. In the United States, individuals and corporations will plead "no contest" in order not to admit guilt in a civil case.

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Evaluation:

Debate the topic: Pollution, a crime against humanity.

Enrichment:

Have a student read the case of "The Sinking Village" in *As the Japanese See It: Past and Present*. Michiko Y. Aoki and Margaret B. Dardess, eds. (Honolulu: University of Hawaii Press, 1988), pp. 283-296. Ask students to report to the class.

The Japanese have a proverb: "Master and servant are in the same boat." Explain how this proverb would illustrate the way in which disputes are resolved in Japan. Do problems become the responsibility of all the people working together? Discuss.

Relationship to Social Studies Standards:

Grade 12, People in Societies, Grade-level Indicator 1

I identify the perspectives of diverse cultural groups when analyzing current issues.

Grade 12, People in Societies, Grade-level Indicator 5

Evaluate the role of institutions in guiding, transmitting, preserving and changing culture.

This lesson was originally developed by Dr. Betty Barclay Franks, teacher, Maple Heights City Schools and were revised by Dr. Kent J. Minor, Director, Ohio Japan Project.

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Handout A

POLLUTION DAMAGE: WHO PAYS?

"THE CASE OF THE MINAMATA VICTIMS"

Part One: The Problem

In the fishing town of Minamata in southern Japan twenty years ago, cats began dancing in the streets and fell dead, writhing in pain. Dogs and pigs went mad. Crows dropped from the sky.

Then the mysterious malady struck human beings. It destroyed their control over their arms and legs, made them blind and deaf, and killed them. It hit babies in their mothers' wombs and condemned them to live after birth as mental and physical vegetables.

Last week (mid-March, 1973) the storm stirred up by this phenomenon culminated in a court decision that underscored the growing concern about pollution in Japan.

Medical researchers had determined by the late 1950s that the victims had been poisoned by mercury. They traced the mercury to fish and shellfish eaten by the victims. The mercury, in turn, was traced to sludge at the bottom of Minamata bay dumped by the chemical plant of the Chisso Corporation.

Discussion:

Explain how you would handle this case.

What are the rights of the victims?

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Part Two: The Decision

The company denied it was responsible, and some of the victims eventually went to court in 1969.

The case ended last week when a district judge ruled that Chisso was at fault and ordered it to pay \$3.6 million in damages to 138 persons in 30 families. It was the highest industrial-pollution claim yet awarded in Japan. The company accepted the decision and agreed to compensate other victims who had not gone to court.

The Minamata decision was the last of four major court tests here. All ended in favor of the victims. Together, the decisions set a legal precedent holding industrial companies liable for the effects of their pollution and gave new stimulus to demands that Japan be cleaned up.

Note: This case established a principle of responsibility without guilt. The company was liable for damages, but not for criminal action. In 1971, a law was passed by the Diet of Japan which made it possible to prosecute industries which endanger human life or health.

"Pollution Damage: Who Pays?" in *Through Japanese Eyes*, Vol. 2, Rev. Ed., Richard H. Minear, ed., (New York: A Cite Book, 1981), pp. 33-35.

TEACHER INFORMATION

THE ROLE OF LAW AND LAWYERS IN JAPANESE SOCIETY

Tanaka Hideo

Japan has a system of courts no less refined than those of Western nations, at least so far as its formal structure is concerned. Nor is she deficient in the system governing her legal profession. The manner in which these systems function in Japan, however, is quite different from that of their counterparts in Western nations. Put simply, many matters in Western nations that are dealt with within the frame work of the regular machinery of law are left in Japan to work themselves out outside this machinery. This peculiarity has been pointed out time and again by lawyers from foreign countries while visiting in Japan.

Number of Lawsuits

The number of civil suits brought before the Japanese courts is far smaller than those of other countries. The number of civil suits brought before the courts of a country is determined by a number of factors, chief among which are the ways the country's social system functions and the substance of the various rules incorporated into its legal system. Nevertheless, the fact is that the number of civil suits per capita brought before the courts in Japan is roughly between one-twentieth and one-tenth of the figures for suits per capita in the common law countries of the United States and Great Britain. Even if we also include the number of cases brought to conciliation proceedings in Japan, the difference remains large, between one-sixteenth and one-eighth. These figures serve to show the extent to which the courts are remote from the everyday life of the populace.

It is significant that there is an even larger difference in the number of cases per capita involving small claims. This dramatizes the fact that Japanese people resort to court actions to protect their rights far less easily and readily than people in other countries.

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Limited Sphere of Activities of Practicing Attorneys

Even where a large number of disputes are settled out of court in a given system, one would have less cause to worry if these disputes were settled in a manner not repugnant to the policies embodied in the laws, through the intermediacy of qualified attorneys. But the situation prevailing in Japan is a far cry from such a system of dispute resolution. In Japan, the role of attorneys is confined, with a few isolated exceptions, to lawsuits and areas directly related to lawsuits. They play a minor role in the area of preventive law. Even among those corporations which retain attorneys on a general retainer basis, few seek the advice of their attorneys on matters not directly related to lawsuits, such as the drawing up of contracts. Indeed, not very many seek an attorney's advice even when drafting a standard-form contract. Even rarer are ordinary private citizens who go to an attorney for his advice before drawing up a will or who consult an attorney on the purchase or sale of a piece of real estate.

In fact, the activities of attorneys in Japan do not even cover the entire range of areas directly associated with lawsuits. Even in relatively serious cases, which are heard in the first instance by district courts, the number of cases in which both the plaintiff and the defendant were represented by an attorney accounted for only about 40 percent. Furthermore, in about one-third of the appellate hearings, either the plaintiff or the defendant elected to argue his own case without resort to the advice of an attorney.

By contrast, there are countries where representation by an attorney is mandatory in all lawsuits (except in minor cases). Even in the United Kingdom and the United States, where representation by an attorney in civil cases is not mandatory, all cases except minor ones are in fact presented and argued by attorneys, so much so that cases in which parties to appellate hearings are not represented by attorneys are extremely rare. It is indeed peculiar to Japan that a large number of cases are argued by the party himself without the benefit of the expert advice of an attorney. Lack of legal knowledge on the part of the parties not only hampers the efficient conduct of trials and hearings but also gives rise to a deplorable situation where the parties fail to protect their interests sufficiently.

Law-Consciousness of the Japanese People

In order to put these phenomena into a proper perspective, one must delve into the law-consciousness of the Japanese people.

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When a dispute arises between two parties, not very many Japanese view the dispute in terms of rights and obligations. Nor does it occur to them, when they fail to work out a solution between themselves, that the best approach to the dispute is to take the matter to the court. Instead, the traditional value of "harmony" (*wa*) prevails upon them. To their minds, settlement of disputes without arguing their points of view in a reasoned way and without fighting out their cases to the finish in court is of supreme virtue. (Compromise in the Japanese political world is another manifestation of this spirit. In reaching a political compromise, Japanese often shelve their principles and work out a compromise by "adding their contentions and dividing the sum by two.")

Of course, the smaller the number of actual disputes, the better. Few would praise a suit-happy person who insisted on continuing to dispute with others for the sake of disputing, even when there was room for a reasonable compromise. The traditional Japanese spirit of harmony, however, does not inculcate a concept of settlement based on a reasoned compromise between the parties and incorporating a clear notion of one's rights. By the same token, only in a few very small number of instances is a detailed arrangement made between parties in advance for the purpose of preventing disputes from arising later. Even corporations, which are supposed to embody the modern rationalistic spirit, often fail to consult their attorneys until a dispute reaches a stage where it defies solution short of litigation in the courts. Even today, there are many Japanese who would hesitate to knock on the door of a law office, even after circumstances have led them there and left them little alternative.

Hideo Tanaka, "The Role of Law and Lawyers in Japanese Society," in *The Japanese Legal System*, Hideo Tanaka, ed., (Tokyo: University of Tokyo Press, 1976), pp. 254-61.