

## The Concept of Wa

The following lessons illustrate the concept of dispute resolution in Japanese culture. These lessons introduce students to the concept of "wa" as they read about cases decided by Judge Ooka who lived in Tokugawa Japan. The tales are mythical, but each one helps students understand a different aspect of Japanese culture. Teachers can use the lessons separately or as a unit on Dispute Resolution in Japanese Society.

The lessons are designed to involve students in a variety of ways. Each lesson contains a key idea and introduces students to an important concept about dispute resolution in Japanese society. Cases are provided for the students and background materials have been suggested for the teachers.

The lessons on Japan can be used in various social studies classes at the secondary level. Teachers of gifted and talented students have used "The Judge Ooka Tales" with elementary students. The lessons have been written so teachers can adapt them to meet the needs of their students.

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Lesson 1 - The Concept of Wa The Tatami-maker v. The Cabinetmaker (p.231)

Lesson 2 - The Concept of Wa The Case of Hanshichi, The Carpenter (p.239)

Lesson 3 - The Concept of Wa The Case of Jizo the Bound (p.243)

*These lessons were 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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### Purpose:

Students will compare how disputes are resolved in Japan and the United States.

### Target Grade Level: 12

### Key Idea:

Preserving harmonious relationships is more important in settling disputes in Japan than it is in the United States.

### Rationale:

By comparing how disputes are settled in both Japan and the United States, students will develop a better understanding of both cultures.

### Skills:

Comprehension: Students will read the case, state the facts of the case, and identify the issues involved.

Application: Students will use the principles of Japanese society to resolve the dispute.

Analysis: Students will compare the resolution of the dispute with the way a similar dispute would be handled in the United States.

### Materials:

- Reading: "The *Tatami*-maker v. The Cabinetmaker" (Handout A)
- Teacher Background: "Dispute Resolution in Contemporary Japan" (Included in pages following this lesson.)

### Procedures:

1. Introduce the lesson by asking the students how problems are settled in the United States. After they describe a few examples ask them if they think the Japanese solve problems in the same way.
2. Before having the students read about a problem in Japan, explain that

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the Judge Ooka Tales were written in the eighteenth century. These tales were based on decisions handed down by a Tokugawa official named Ooka Echizen-no-kami who lived between 1677 and 1751. The authors are unknown and the accounts are fictional, but the tales do illustrate the concept of dispute resolution in Japanese society.

3. Have the students to read Part One of "The *Tatami*-maker vs. The Cabinet Maker" (Handout A).
4. Have the students state the facts of the case and identify the issues involved.
5. Divide the students into groups of three. Ask each group to resolve the dispute as a judge would in the United States:
6. After the students share their decisions, read the decision developed by Judge Ooka. Ask the students to compare their decision with that of Judge Ooka.
6. Explain to the students that an important principle in settling disputes in Japan is "to establish harmonious situations with which both parties are neither satisfied nor dissatisfied, where there is no loser or winner"—to preserve *wa*, harmony.
6. Ask students to explain how Judge Ooka satisfied the principle of achieving *wa* or harmony among all parties involved in the case.
9. Compare the principle of maintaining harmony with the way disputes are resolved in the United States.

### Evaluation:

Have the students write a one-page paper comparing dispute resolution in Japan and the United States.

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### Enrichment:

Prepare a report comparing Judge Ooka with Solomon and with Judge Roy Bean, the American folk hero.

### 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 2

I identify causes of prejudice and demonstrate ways in which legal protections (including constitutional amendments and civil rights legislation) prevent and reduce discrimination.

Grade 12, People in Societies, Grade-level Indicator 3

Analyze ways countries and organizations respond to conflicts between forces of unity and forces of diversity (e.g., English only/bilingual education, theocracies/religious freedom, immigration quotas/open immigration policy, single-sex schools/coeducation).

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

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

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## Handout A

### THE JUDGE OOKA TALES

#### "THE TATAMI-MAKER V. THE CABINETMAKER"

The following tale is from a contemporary version of popular stories known in Japan as the *Ooka Seidan* or *Judge Ooka Tales*. Originally written sometime in the eighteenth century by unknown authors, the tales have aroused widespread admiration ever since. They are largely fictitious accounts of judicial decisions attributed to a Tokugawa official named Ooka Echizen-no-kami who did, in fact, live between 1677 and 1751. Above all, they illustrate the principle of traditional Japanese law that reason should prevail over custom and precedent.

#### Part One: The Dispute

There was a *tatami*\* maker named Saburobei at Reiganjima in Edo. Toward the end of one year, he borrowed three pieces of gold in order to prepare for the new year. On the way home from the moneylender, however, Saburobei lost the money.

In the meantime, a man named Chojuro, a cabinetmaker, happened to walk in the bank of Yanagihara and find a purse containing three pieces of gold and a letter addressed to *tatami* maker Saburobei. From the letter Chojuro had no way of knowing where Saburobei, *tatami* maker, lived. The New Year was the busiest time for everybody, but Chojuro was determined to return the money to the owner. He put aside his own business and walked around the town of Edo looking for the *tatami* makers in an attempt to find Saburobei. Chojuro spent four days searching: one day in the Kanda district, another day in the Hongo area, and so forth.

Finally, Chojuro found Saburobei, the owner of the purse, at Reiganjima. Saburobei was stubborn, however. He declined to take the money back, arguing that once he had lost it, the purse no longer belonged to him. Chojuro, on the other hand, had found it while walking. "Why not take it as heaven's gift and keep the money to yourself? It's yours."

Chojuro was not to be persuaded. He had spent four busy days looking for the owner of the purse with the intention of returning it. "I cannot take it. It's not mine." "Yes, it's yours." "No, by god, no!" The argument grew into a

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violent fight. Saburobei's landlord tried to intervene but to no avail. Neither party would listen to reason.

\*Straw matting used as a floor covering in Japan.

### Discussion:

If you were the judge, how would you resolve this dispute?

### Part Two: The Judgment

Unable to resolve the dispute, the two men went to the town court, where Ooka Echizen presided. Ooka was impressed by the honesty of the men. He therefore decreed that the pieces of gold in question would go into the government treasury. In return, he arranged for the government to reward them by giving three pieces of gold to the two men. They were happy to receive envelopes with the rewards.

When they opened the envelopes, Saburobei and Chojuro were puzzled. There were two pieces of gold in each envelope. Didn't Ooka Echizen say that the government was to give them three gold pieces? We've got two pieces of gold apiece here. Altogether it added up to four pieces. Where did the additional gold come from? Who supplied it? Ooka answered that the judge was quite happy to see such honest people as Saburobei and Chojuro and wanted to contribute one piece of gold himself. "It's a loss of one piece of gold for me, of course," said Ooka. "But Chojuro has found three pieces and is given two, so it's a loss of one gold piece for Chojuro" Ooka continued. "Saburobei has lost three and is recovering two, so it's a one gold piece loss for Saburobei, too. The case is settled by making all three, Saburobei, Chojuro, and Ooka, lose one piece each.

"The Judge Ooka Tales" in *As the Japanese See It: Past and Present*. Michiko Y. Aoki and Margaret B. Dardess, eds., (Honolulu: University of Hawaii Press, 1981), pp. 263-265.

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### TEACHER INFORMATION

#### DISPUTE RESOLUTION IN CONTEMPORARY JAPAN

Takeyoshi Kawashima and Yosiyuki Noda

In Japan, there is a strong expectation that a dispute should not and will not arise; even when one does occur, it is to be solved by mutual understanding. Thus, there is no *raison d'être* for the majority rule that is so widespread in other modern societies; instead, the principle of rule by consensus prevails.

It is obvious that a judicial decision does not fit and even endangers relationships. When people are socially organized in small groups, and when subordination of individual desires in favor of group agreement is idealized, the group's stability and the security of individual members are threatened by attempts to regulate conduct by universalistic standards. The impact is greater when such an effort is reinforced by an organized political power. Furthermore, the litigious process, in which both parties seek to justify their position by objective standards, and the emergence of a judicial decision based thereon tend to convert situational interests into firmly consolidated and independent ones. Because of the resulting disorganization of traditional social groups, resort to litigation has been condemned as morally wrong, subversive, and rebellious.

#### The Conception of Law Among the Japanese

The term "right" is generally defined as a legally protected interest. The Romans insisted on their rights as interests protected by the law. But the fact that something is protected by the law implies that it is protected by an objective standard. It therefore follows that the rights of all people are to be protected equally by an objective standard called law. So, when one asserts his right, he implicitly assumes the existence of law; therefore, he must be prepared to accept the assumption that other persons can also assert their rights on the basis of the same law. In other words, in order for a given concept of right to be valid, it must be applicable to others just as it is applicable to him.

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In Japan, the concept of right did not exist until the end of the Tokugawa period. Early in the Meiji period (1867-1912), a man named Mitsukuri Rinsho, who was commissioned to translate the French Civil Code, racked his brain to find a Japanese equivalent of *droit* and finally came up with a Japanese coinage *Kenri*. This episode serves to show that the concept of right was first introduced only in the early years of the Meiji period. The concept still has a long and tortuous way to go before taking firm root in this country.

Next, let us examine the Japanese concept of adjudication. We seek to establish a harmonious situation with which both parties are neither satisfied nor dissatisfied, where there is no loser or winner. This is the ideal we expect of adjudication. In Japan, we have a story called *Sambo Ichiryō Zon* (All three lost one pound each). This is a story about a trial during the Tokugawa period that illustrates the Japanese concept of adjudication. One day, so the story goes, a plasterer picked up a purse on the road containing three *ryō*. (A *ryō* is an old Japanese gold coin.) The purse also contained a piece of paper identifying a certain carpenter as its owner. The plasterer took the trouble of locating the carpenter to return the purse. For all his pains, the plasterer was told by the carpenter: "Since the purse elected to slip out of my pocket, I don't want such ungrateful money. Go away with the money." The plasterer insisted that the money belonged to the carpenter. Thereupon a brawl started, and finally they agreed to take the case to arbitration by the Lord Ooka of Echizen. Having heard the story from both sides, the lord added one *ryō* to the three *ryō*, split the sum in two, handed two *ryō* to each party, and announced: "My good men, this is my decision. The plasterer could have gained three *ryō* if he had walked away as the carpenter told him to do. By this decision, he will end up with two *ryō*, so he is to lose one *ryō*. The carpenter could have recovered all three *ryō* if he had accepted the plasterer's kindness with a good grace. Instead, he refused to accept the purse. By this decision, he is to lose one *ryō*. I also have to contribute one *ryō*. So, each of the three of us is to end up with one *ryō* less." Of course, this is just a fiction, but still it is suggestive of a notion of the function of a lawsuit that is peculiar to the Japanese.

This is, in a sense, a really ingenious settlement of the dispute. Everybody came out as neither a winner nor a loser. Even the judge went out of his way to contribute one *ryō* in the interest of all-around amicability. The standards of



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law had no role to play here. Incoherent though it may seem to us students of law, such a decision appeals to the Japanese as demonstrating the most humane consideration. We Japanese tend to feel uncomfortable with a black-or-white type of adjudication. If a Japanese loses in a lawsuit, being of emotional inclination, he is bound to be embittered against the winner, and even against the judge. We do not want to leave the embers of a grudge smoldering. We would rather pay a small price, if such a price rounds off the sharp edges, and let bygones be bygones. This explains why a large majority of cases that are brought to court are settled through compromise. This is very indicative of the peculiar character of the Japanese.

Last, let us consider the Japanese conception of contract. Westerners view social life, basically, as a struggle. In order to resolve struggles in a peaceful manner, they need to have effective communication between holders of conflicting views and interests. They believe that social coherence has to be built on contracts. One source from which they derive their concept of contracts is the Hebrew concept, which found its way to European countries along with Christianity. For the Hebrews, the contract, or *berith* as they called it, between God and man was basic to their lives. To them, violation of the contract was tantamount to a breach of their duty to pay homage to God. Therefore, they could not violate the contract without experiencing a deep sense of guilt, and this mentality, governed their attitude toward ordinary contracts. Westerners inherited this mentality, and even today they are very serious about honoring contracts.

By contrast, the Japanese way of life has been such that we did not need the kind of contract that Westerners developed in order to form a community. From the early days of our history, we Japanese were agrarian people and settled ourselves in large numbers in a given locality as tillers of land. We therefore felt no particular need for a contract. In order to cooperate among ourselves, we did not need a contract whose violation invoked sanctions. People got together and talked things over to enlist the cooperation of their neighbors. This tradition had bred in the minds of the Japanese a very easy-going attitude toward contracts. We Japanese do not go so far as to consider a breach of contract to be a virtue, but we are certainly not very serious about honoring contracts. One might say that a breach of contract is not often accompanied by a sense of guilt. In fact, we view contracts in such a

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light-hearted manner that a contract is often regarded as a sort of tentative agreement (which may be reviewed as the circumstances change). If a party to a contract is subsequently urged by the other party to perform his contractual obligations to the letter, he considers such a demand to be an inhumane act.

Given the difference in the cultural backgrounds, it is not surprising that Europeans find it difficult to understand the Japanese concept of contract. For instance, contracts drawn up by large Japanese trading companies invariably contain a "good-faith" or "amicability" clause. Typical of these is a clause which states that "in case a dispute arises between the parties hereto with respect to their rights and obligations under this contract, the parties hereto shall discuss the matter among themselves with good faith." This seems to indicate that the contract sets forth only a tentative agreement, and if something goes wrong, the parties should renegotiate the terms and conditions of the contract. By contrast, once the parties have agreed on the specific terms and conditions of the contract, Europeans think that they are entitled to take the other party to court if the latter fails to perform his contractual obligations. This is often a source of misunderstanding between Japanese and Westerners in relation to contracts they sign. The Japanese assumes that even if he does not perform his part of the contract, it just will not happen that the other party will immediately take an action for the enforcement of the contract. The Westerner, on the other hand, thinks it simply a matter of course that he can proceed in such a manner to enforce the contract as it is written. The difference between Japanese and Westerners in their concepts of contract has caused a number of sad misunderstandings.

Takeyoshi Kawashima, "Dispute Resolution in Contemporary Japan," and Yosiyuki Noda, "The Character of the Japanese People and their Concept of Law," in *The Japanese Legal System*, Hideo Tanaka, ed. (Tokyo: University of Tokyo Press, 1976), pp. 278, 304-10.