with objective and rational ways whether or not the act or calculation in question is unreasonable or unnatural as those of real businesspersons from the point of view of exclusively economical and substantial considerations. In addition, it is appropriate to think that in the case of the lack of economic rationality there may be transactions which are different from arm's length transactions in the light of the aim of this provision, which is to hold the equity of the burden of tax between family and non-family corporations. Furthermore, the court held that it is inconsistent with not only the terms of the provision but also the sequence of law amendments to assume that the intention of tax avoidance, other than business purposes or reasonable grounds, is always imperative and exclusive to apply this provision.

Although Act.132 was not applied to the plaintiff's transaction in the IBM Case even considering those conditions above-mentioned, the judgement shown in this case is controversial, since the applicable range of the criteria in that judgement may be wider.

4. Recently complex tax schemes to reduce the burden of corporation tax made by enterprises are hotly disputed. Under such circumstances, the Supreme Court gave a meaningful judgement in terms of making a judgement concerning the concept and the method referred to in Art.132-2.

However, there has not been established a definite interpretation about this judgement yet, and the scope of its application still remains uncertain, the same as the scope of application of Art.132. Therefore, how to apply the provisions against a corporation's act or calculation deemed to avoid the tax burden, considering of the meaning of unreasonability, is thought to be left to further cases and studies.

3. Family Law

X v. Y

Chiba Family Court Matsudo Branch, March 29, 2016

Case No. (*Ka Ho*) 19 of 2012

2309 Hanrei Jihou 121

Summary:

Divorce the plaintiff and the defendant. Parental authority shall be granted to the defendant. The plaintiff shall bring the daughter to the defendant. The defendant shall let the plaintiff visit the daughter in compliance with the attached "Visitation Guideline".

Reference:

Civil Code, Articles 766, 770, 771, 810, Personal Status Litigation Procedure Act, Article 32

Facts:

Y, who was a national government official, and X, who was an United Nations official, were married in 2006, and X returned to Tokyo suspending from work to live with Y. X entered a graduate school. Since Y was ordered a secondment, X moved with the daughter to Y's workplace in 2009, being forced to undertake a long-distance commute. While X had been failing to be reinstated in United Nations, Y was appointed to a new role. As both X and Y are stubborn to pursue his/her own ambitions, both were frustrated with the other disrespecting the other's work. Their relationship deteriorated with fierce quarrels accusing the discordance of their values. On 6th May 2010, Y found after his work that the daughter was missing as X left home with the daughter, and since then the daughter has been living with X. In July, X claimed a protection order for the domestic violence against Y, but withdrew it in September. Though Y enthusiastically requested X to bring the daughter back and several visitations were realized, X came to refuse the visitation of Y after Y exposed the daughter on a TV program. In 2011, Y claimed designation of custodian of the child and the return of the child, together with the provisional order prior to the trial. Likewise, X claimed designation of custodian of the child. In February 2012, the family court decided the custodian of the daughter as X. Y requested twice to change the custodian but both petitions were dismissed. Later X claimed divorce and solatium etc. against Y, with granting solo-parental authority to X. X asserted that she had been the main care taker of the daughter and no problems were found in the health and growth of the daughter, who was having a stable

life with X. X's parents were supportive and the environment was well-arranged for nurturing her. On the other hand, Y denied all factors of divorce insisted by X, stating divorce is not desirable considering the interests of the daughter. In case of divorce, Y alleged as a secondary claim that parental authority should be granted to Y, with ancillary dispositions for delivering the daughter to Y and for planning the details of the visitation of X in compliance with 'the joint caring plan' submitted by Y. Y explained the suitability of Y's residence for the daughter and expected assistances of his families. Admitting the interest to maintain contacts between X and the daughter, Y guaranteed 100 days of visitation per year in the plan, and suggested a possible shift of parental authority to X when he failed to follow the agreed plan. X, besides, insisted that support of a third party organization was dispensable to conduct the visitation, and the frequency of the visitation should be about once in a month, for two hours. The daughter was adopted to the school life near X's residence, and gained proper growth. There was no particular problems in the mother-child relationship, and the father-child relationship before the separation was also satisfying.

Opinion:

The petition shall be partially upheld, partially dismissed.

Referring to the fact the court found, there is ground for the plaintiff's claim of divorce, there is however no ground for the claim of solatium since the plaintiff and the defendant were separated as a result of repeated collisions and mutual distrust after the disputes over the custodianship of the daughter. The plaintiff took the daughter away without defendant's consent, and she has accepted the visitation of the defendant only six times in about 5 years and 10 months. On the other hand, the defendant appealed numerous legal instruments after the separation, and he is strongly motivated to care for the daughter, offering a plan to rise the daughter thoughtfully in well-prepared environment. Regarding the visitation, the defendant proposed the visitation plan including 100 day visits par a year, understanding the importance of maintaining intimate relationships between the plaintiff and the child, while the plaintiff proposed the visitation once a month. Therefore, it is appropriate to grant parental authority to the defendant, in order to realize the sound growth of

the daughter under affection from both parents. Though the plaintiff asserts that it would violate the welfare of the daughter if she is detached from the current environment, the new environment for her would be sufficiently equipped and prepared by her own father who wishes her healthy growth. The circumstances of the daughter would not be deteriorated, and considering the expected 100-day visitations, the apprehension of the plaintiff is groundless. Thus, the plaintiff shall immediately bring the daughter to the defendant after this judgement became final.

Editorial Note:

A high-conflict case where both parties were highly educated and attacked each other by all possible means. In this case, the draft plan proposed by Y was actively taken into account. The court designated Y to hold parental authority and ordered to replace the daughter to Y. Under Japanese law, either spouse solely holds parental authority after divorce. If consultation by parents was not settled and mediation procedure also failed, the family court decides who is to hold parental authority or/and custody in a trial. While the solo parental authority can be settled only after divorce, solo custodianship to take actual care of a child can be established both before and after divorce in case of the separation of the parents, and it also possible to designate the other parent who does not hold parental authority or a third person as a custodian in exceptional cases. At the designation and change of the holder of custodianship/ parental authority, and at the judgement of the relocation of the child, the court is to examine various factors to realize the best interests of the child (Art.766 of the Civil Code). The court specifically considers 1) to maintain the main caregiver and 2) the continuity of the child's life, together with 3) conditions of each parents and 4) the child's will. If there was the fact of domestic violence, abuse, or deprivation of the child, the court negatively evaluates those. Regarding the first factor, the courts still tend to give priority to mothers influenced by the precedent mother-first practices. While it is common that the mother rejects the father and returns to her parents' house together with the child, many of those cases were not regarded as deprivation. As the conventional gender role of the mother as a care taker remains, the courts tend to justify the deprivation by mother

as she is "the main caregiver". Second, the continuity of the child's life has had the main consideration and many courts came to the conclusion focusing on this point. Especially when the case was filed at the district court using the Personal Protection Request, the court essentially preserves the present situation of the child if there is no clear impairment of the interests of the child. In the case that a disposition concerning custody was claimed at the family court under Art. 766 of the Civil Code, it has still been discussed whether to use this "clear-impairment" criteria, and it colud be rather jadged by comparing the actual situation of both parents. While it is also important to respect the child's stable life, it should be quescioned that the court could also confirm the present situation which started by the illegal deprivation by using this second criterion, namely emphasizing the continuity of the child's life. The court's de facto approval of the deprivation should be said unpreferable since the deprivation itself contains the interruption of the existing child's life which includes the other parent, thus the benefits of the continuity of the child's stable life should be concerned in balance with the assessment of the depriviation. At the lase, the child's will is heard under consideration of the child's age, gender, mental and physical condition, and degree of adaptation to the current environment, etc. The special attention would be paid not to have the child directly choose either parents, and the will of the child would be estimated by their behaviors or/and conversations. At the evaluation of the child's will, a contradicting decision could be also made considering the influence of the cohabiting parent. Though it is important for the child to have an opportunity to be involved in the procedure which decides their own future environment to live in, the child's will should be taken as not the absolute element but just one of the factors to examine, to avoid imposing a burden on the child to choose a parent.

The most important factor referred in this case was the conditions of the parents. In this criterion, relationships between the child and each parent, physical and mental conditions of each parent, and their motivation and ability to raise the child in light of their financial situation and the environment they provide for the child would be examined. The most remarkable point of this case is that the tolerance for the other parent to contact the child was given the great attention in examining the competing conditions of each parent. Though this Friendly-parent rule has

been already recognized in the cases concerning custody and relocation of the child, it was the first time that this rule decisively acted in a judgement to settle parental authority. The Friendly-parent rule has gained positive support among Japanese legal theories as promoting the friendly behavior could function to restore proper trust between parents. Since establishing a desirable connection among both parents and the child contributes to the child's interest, the friendliness could be deemed as a condition to be qualified as a competent parent, who can commit to establish such relationships apart from their emotional conflict as a former couple. Some however mention its negative aspect that excessive implementation of equally shared parenting may veil the fact of domestic violence and child abuse, as the Shared Parental Responsibility Act (2006) in Australia had experienced. Though this is exceptional, separately assigning parental authority and custodianship to each parent could help the parent's to compromise in dispute, and also this technique could be used as a remedy for the malfunctioning part of the solo-parental authority system by encouraging both parents to participate in child caring. The content of parental authority is regarded as the right and duty to manage properties and to supervise personally the child, and a number of theories conceptually conceive custodianship as the extract of the latter part of parental authority. However, it is still being discussed that whether parental authority should be restricted where custodianship and parental authority are separated. If dividing parental authority and custodianship is to promote joint caring of both parents, parental authority should function in parallel with custodianship. However, in case of domestic violence or/and child abuse, using such a separation to bring a compromise to both parents, parental authority should be interpreted restrictively limiting the abusive parent to exercise personal supervision over the child. In either actual judgement and the conceptual understanding of parental authority and custodianship, suitable interpretation and exercises should differ depending on whether the cooperative caring of both parents is expected, or the safety and security of a parent and child should be given priority over to contact with the harmful parent. Neither deprivation, violence or the friendliness to the other parent can be the absolutely decisive factor on its own. Comprehensive examinations of all those factors in individual cases are required. The conceptual relationship between parental authority and custody should

also be flexibly constructed according to the extent of recovery of the relationship of the parents, or inappropriateness of the parent(s). Particularly in high-conflict cases or the cases where violence is involved in, the Friendly-Parent rule must be adjusted when safety and security at visitations are threatened due to the inappropriateness of the offender as a parent.

In the Court of Appeal (Tokyo High Court. Judgement on January 26, 2017), the court gave a consideration to the first and second criteria and granted parental authority to X. The feasibility of the visitation plan was questioned in the court's opinion, and the court required a more convincing reason such as "clear-impairment" to relocate the daughter, as the relocation would detach her from her current life. The deprivation which X committed was assessed as necessary, reasoning by the situation of X and Y at the time of deprivation. Since this case is handled in the framework of "divorce" disputed between parents, there are structural limitations for the court to intervene for the child. It should be mentioned that there is a lack of opportunity to formulate the best conditions for the child where the conflict between parents comes to the fore. The court eventually has to resolve the case by a trial if both parties could not compromise on the conditions of the visitations. Even setting a conciliation beside the trial, it is practically impossible to settle the conditions if one of the parents denied to attend it. The idea of dividing the conflicts between spouses as a couple and the responsibility towards the child as parents still has not infiltrated to Japanese society. To realize proper judicial interventions, the possibility to use the framework for the child abuse [in the cases of divorce] is also suggested. It could be said in this case that the court also could refer to the possible future adjustments, such as gradually allowing more frequent, intimate visitations.

Maintaining personal relationships with both parents is important for the children to gain a healthy development of themselves, as long as it does not violate the best interests of them. With a focus on the best interests of the child, it should be comprehensively examined how and which parent would be involved in child caring to what extent. Both parents are responsible to take care of the child, and in order to take such responsibility, the conflict as a couple and the responsibility to maintain the sound development of the child must be separately conceived by the parents. While pursuing the duty of the other spouse, constructive parent-child

interactions must be established. This case was again appended, and we await a sensible judgment of the Supreme Court.

4. Law of Civil Procedure and Bankruptcy

Xs v. Y
Supreme Court 1st P.B., March 10, 2016
Case No. (*ju*) 1985 of 2014
70 (3) Minshu 846

Summary:

A Japanese corporation and its director (collectively Xs) filed an action against a U.S. corporation (Y) to seek tort damages on the grounds that their reputation, etc. had been impaired by an article posted by Y on its website. And the Supreme Court decided that given the facts indicated in the judgment such as that the said action derived from a dispute between X and its director and Y for which a separate action was already pending at a court in the United States at the time of the filing of the said action concerning matters, including the mandatory redemption of Y's shares, and that the evidence concerning the major issues that are expected to be examined during the proceedings on the merits of the said action are mostly located in the United States, it should be said that there are "special circumstances where if a court of Japan conducts a trial and makes a judicial decision on the action, it would harm equity between the parties or impede the well-organized progress of court proceedings" as prescribed in Article 3-9 of the Code of Civil Procedure.

Reference:

Code of Civil Procedure Arts. 3-3, item (viii) & Arts. 3-9.

Facts:

Appellant X1 (hereinafter referred to as the "appellant company") is a Japanese corporation which engages in, among other matters, the development, manufacturing and sale of pachinko game machines as its