

**Private Use of Public-Use Objects : A Recent Decision
Concerning the Publicly Owned Water Surface Reclamation Act**

Summary of, and Comment on, the Decision of the Osaka High Court, 28th February 2001

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I. SUMMARY OF THE DECISION

1. *Facts*

The claimant, the Land Development Public Corporation X, obtained a reclamation license based on Art. 2 of the Publicly Owned Water Surface Reclamation Act¹ (hereinafter “the Act”²) for a part of the Aioi Harbor Area by the Governor of Hyôgo Prefecture as the pertinent Harbor Administrator.³ The defendant, Y, is the owner of pleasure boats moored at a breakwater pier in the licensed zone.

X claimed that the boats prevented the work from starting and, on the grounds of its reclamation right, demanded that Y permanently remove the boats from the licensed area. Y refuted X’s authority for exclusive domination or occupation of that zone, claiming that Y’s previous free usage was not restricted by the license, since the license itself could not be regarded as an official notice of recission of usage rights (*Entwidmung*).

2. *Holdings*

The authority to dominate and administer publicly owned water surface originally belongs to the state. However, the right to turn a certain part of water surface into land can be conferred to a third person by a reclamation license.

Since such a person’s authority is derived from the state’s right to administer publicly owned water surface, the reclamation right grants him an ownership-like authority to

1 *Kôyû suimen umetate-hô*, Law No. 517/1921 as amended by Law No. 91/2000. The Law allows the granting of licenses to private persons to reclaim a certain part of the publicly owned water surface – almost all marine surface – and to obtain private ownership over the new land on the condition that the authority approves the completion of the work.

2 Articles cited hereinafter without specific mention of a law are those of the Act.

3 Art. 58 II of the Harbor Act.