

a relationship going between them already. Japanese society prefers informal but real agreements with people, over formal official paper-exchanges.⁹⁰

The rarity with which the Japanese go to law is well-established. It has been attributed to the absence of a legal tradition analogous to Roman law and more particularly to the preference for harmony and conciliation in a Confucian culture. Japan is a non-litigious society. Legal action is used rarely and as a last resort. Few suits are brought if there is a breach of contract.⁹¹

5.5.1 Private informal dispute resolution

The existence of Japanese lawyers, law suits and courts show that the cultural barrier is not all-powerful, however. It may be a higher first hurdle to cross, but it is still only a hurdle. A kind of cost-benefit analysis is taken when anyone considers litigation. Potential litigants sue only when the amounts they may recover, multiplied by their probability of success, exceed their litigation costs. One cost component in this calculus that is more important in Japan than in the West, however, is the risk of jeopardizing the relationship at the heart of the dispute.

Other hurdles have been institutionalized: the dearth and expense of lawyers, high court filing fees and a limited class action capability, all chill formal dispute resolution. The AML itself also limits the right of private action. The result: between 1947 and 1985, only seven private antitrust actions were

⁹⁰The following offer excellent, real-life descriptions of the Japanese approach to negotiation and agreements: Zimmerman, *How to Do Business with the Japanese*, Tokyo: Tuttle, 1985; Athos and Tanner, *The Art of Japanese Management*, New York: Warner, 1981; Vogel, ed., *Modern Japanese Organization and Decision-making*, Tokyo: Tuttle, 1975; James C. Abegglen and George Stalk, *Kaisha: The Japanese Corporation*, Tokyo: Tuttle, 1985; March, *The Japanese Negotiator: Subtlety and Strategy Beyond Western Logic*, Tokyo: Kodansha, 1989.

⁹¹For example, a study of Tokyo taxicab companies showed that of a total of 2,567 accidents causing physical injury or property damage, only 2 cases were filed. See Zimmerman, *op.cit.*, p. 93, and Wilks, *op.cit.*, p. 15.