

- ⑤ Kanagawa Pref. Police, Illegal Smoking Lawsuit, Yokohama District Court, January 26, 2011, Amicable Settlement
In this case, a section manager and three others continued to secretly smoke in violation of the rules at a workplace in Kanagawa Prefecture where smoking had been banned, and in response to being exposed to secondhand smoke, a subordinate police officer (the plaintiff) sued his three superiors (the defendants) for pain and suffering stemming from an illegal act.
An amicable settlement was reached in court requiring the three defendants collectively to pay ¥500,000. The lawsuit was constituted not on the obligation to consider workplace safety but on the illegality of the act of smoking on the part of individual employees.
- ⑥ Case Invaliding Denial of Formal Hiring During Trial Period, Tokyo District Court, August 23, 2012
In this case, a new employee (the plaintiff) joined a company (the defendant) with a president and three employees, and after joining experienced symptoms that included palpitations, coughing, insomnia, headaches, dizziness and nausea in reaction to the president's smoking; when the employee requested that the president smoke on the balcony, the company recommended to the employee that he quit and ruled out formal hiring before the trial period ended.
The ruling clearly acknowledged that the employer has an obligation to make safety considerations to protect the lives and health of workers from the dangers of secondhand smoke and invalidated the denial of formal hiring (dismissal), and it ordered that the company pay wages (salary) during the period employment had been refused

and pay the plaintiff ¥4.75 million. There have been past cases of disputes involving firing workers as an act of retaliation for their request for protection from secondhand smoke exposure. These have included cases settled amicably in court, but in this case the Court ruled in favor of the plaintiff.

- ⑦ Balcony Secondhand Smoke Exposure Lawsuit, Nagoya District Court, December 13, 2012
In this case, a female resident of a condominium (the plaintiff) sued the man living below her (the defendant) for damages stemming from an illegal act as a result of suffering health difficulties caused by smoke from the defendant smoking on the balcony wafting in to the plaintiff's condo unit. The Court ruled that "if continuing to smoke despite knowing that it adversely affects other residents to a significant degree and not taking measures to prevent this, smoking constitutes an illegal act," and awarded the plaintiff ¥50,000 for pain and suffering sustained over a period of approximately 4.5 months. The Court's ruling also stated: "Even in a building that one owns, it does not follow that any action is permitted; if an action adversely affects a third party to a significant degree, there will inevitably be cases in which restrictions are applied;" "That tobacco smoke may adversely affect not only the health of the smoker but also the health of people nearby who inhale the smoke and that in general there are many people who dislike tobacco smoke are both widely known facts;" and "The defendant's action in continuing to smoke on his own balcony without making considerations for the plaintiff can be said to constitute an illegal act with respect to the plaintiff."

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How has secondhand smoke exposure been interpreted under the Penal Code?

(1) Criminal assault

- Criminal assault (Penal Code Article 208) refers to the exercise of illegal tangible force against another person's body. "Tangible force" is understood to include physical force in the narrow sense (dynamic action) as well as force from sound or light and energetic action from heat, cold or electricity, etc. Theoretically, there are also numerous liberal interpretations including odors or chemical action. Court rulings have affirmed criminal assault using sound (Supreme Court August 20, 1954, Osaka District Court May 13, 1967), and the act of scattering salt has been judged as constituting assault "even though it is an act that simply arouses the feeling of disgust" (Fukuoka High Court, October 11, 1971).
The theoretical interpretation of "blowing tobacco smoke at someone" as constituting assault would be in line with past rulings and the theoretical majority reasoning.
- In considering the cases, they are interpreted as follows.
 - The act of blowing tobacco smoke in another person's face can be interpreted as constituting criminal assault.
 - Blowing tobacco smoke and fleeing in response to police questioning could constitute criminal obstruction of performance of official duty.
 - An immediate physical response to smoke blown at a person could constitute a legitimate act of self-defense.

(2) Criminal injury

- Criminal injury (Penal Code Article 204) is interpreted, based on precedent and prevailing opinion, as a form of physiological impediment or a negative change in health condition. Criminal injury is recognized in precedent even if the degree of the injury is extremely minor, and is sufficiently established by an internal bodily change; it does not require a change in physical appearance. If a negative change in health condition caused by perceived physical suffering is recognized, it constitutes criminal injury.

- Also, a negative change in mental health due to psychological impairment from psychological stress, etc. can also be understood as constituting injury.
For example, in the Supreme Court decision of March 29, 2005, sleep disorder, chronic headaches and tinnitus were affirmed as criminal injury and a one-year prison sentence was handed down in a case involving the perpetrator opening the windows facing the neighboring house, placing a radio and multiple alarm clocks in the windowsills, etc. and playing the radio and sounding the alarm clocks at a loud volume in the direction of the victim in the neighboring house from morning until late at night every day for 1.5 years. The crime of non-assault-related injury (injury from intangible means) was also affirmed.
- Presuming the understanding of precedent and prevailing opinion, it is possible that the immediate effects of secondhand smoke exposure (eye symptoms, coughing, wheezing, nose and throat pain, headache, dizziness, vomiting) and stress-related disorders (psychological breakdown, anxiety and depression, PTSD, sleep disorders, chronic headaches, tinnitus, etc.) could be recognized as constituting criminal injury.
- In considering the cases, they are interpreted as follows.
 - Cases of smoking on a balcony, such as Civil Court case (7) above, in which it can be said that the other person's psychological health was intentionally damaged could constitute criminal injury, even in cases other than the act of directly blowing smoke at someone at a close distance (criminal assault).
 - Also, even in cases of secondhand smoke exposure at the workplace such as Civil Court cases (1), (3), (4), (5) and (6) above, if it can be said that the worker's health was damaged intentionally, it could constitute criminal injury.

This study considered the theoretical aspects of the Penal Code theories. Punishable illegality theory and suspension of indictment disposition at prosecutor discretion, etc. will be left to separate, future discussions.

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Ⅱ. 研究成果の刊行に関する一覧表

研究成果の刊行に関する一覧表

書籍

著者氏名	論文タイトル名	書籍全体の編集者名	書籍名	出版社名	出版地	出版年	ページ
中村正和	第1部 特定健康診 査・特定保健指導に おける禁煙支援の意 義と方法	大井田隆、 中村正和、 尾崎哲則(編 集)	特定健康診 査・特定保健指 導における禁 煙支援から始 めるたばこ対 策	一般財団 法人日本 公衆衛生 協会	東京	2013	103-123
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Ⅲ. 研究成果の刊行物・別刷

研究成果の刊行物・別刷

「研究成果の刊行に関する一覧表」の中から本研究班の成果に特に関連したものを選択した。

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