due from medium-grade fields. This was in effect a crime against the three treasures of Buddhism.25 The tato answered, saying that the classification was made long ago, and there was no desire to default on his part, and no crime was thus committed. The inspector insisted that even though he might not be bright, he could not allow the mistakes to continue, and it was incumbent upon the tato to make the correct assessment and treat his fields as of high-grade. The tato answered that he could not go against this reasoning, and would consider the fields as of high-grade, and would pay his rent accordingly. . . .

First year of Jokan [859], twelfth month, 25th day.

b) Respectfully Submitted for Your Consideration on the Matter of the Land Belonging to the Tojaji [temple].

Altogether the tract contains two chô five tan and 140 bu, located in the village of Minase, district of Shima-no-kami, Province of Settsu.

The petitioner holds sakute shiki (rights of cultivator) to the above-mentioned estate. Therefore, he makes this formal petition [to reconfirm these rights]. Concerning the amount of rent (jishi) to be paid, a request is made that you examine the proceeds from the land which can serve as the basis of determination. These items are written here for your consideration.

Fifth year of Kanji [1091], fourth month, 5th day.

14 Management of Shôen by Tato26 The husband of the third daughter is a man by the name of Tanaka Hoeki. He is diligent in his farming occupation and entertains no other ambition. He owns several chô of land, and is called the daimyô-tato.27 He provides his own spades and hoes to cultivate rich and poor fields, and prepares ahead for dry seasons. He repairs his own domestic-style and Chinese-style plows. He is skillful in handling his workers. He provides recompense for work done by farmers in fixing dikes and embankments, digging ditches, or preparing foot-paths between rice fields. He also rewards the work of those men and women who come to help in busy planting seasons. Whatever he plants, such as the late crops, rice, and glutinous rice, he harvests far more than other people. The amount he realizes from pounding the crop at the millstone also increases year after year. This is, however, only part of the story. When he plants barley, wheat, soy bean, cowpea, millet, buckwheat and sesame, they grow in number and become ripe for harvest. In spring he wastes not a single grain of seed, but in the fall, he receives ten thousandfold in return. From the time he begins planting in the spring to the time he completes his harvest in the fall, he commits not a single faulty step. . . .

25 The holder of this shô is a Buddhist temple, Gangôji.
26 Ibid., pp. 271–272. This is taken from Shin Sarugaku Kî, an exaggerated story about people who came to the Sarugaku theater.
27 Here note the word "daimyô" appearing alongside the word "tato."
nomic relationship of the shōen controlled by the shiki of the land. This mentality also eased the process of conversion of former provincial governors and former Kyoto nobles into samurai.

The tado's contribution to the emergence of the samurai class must not be overlooked. As Document 14 above demonstrates, the tado were independent cultivators who owned their own farm implements and had strong claims over the land they cultivated. They utilized the labor of semi-slave workers. However, in the eleventh century, the semi-slave workers increasingly assumed postures of independence, rendering the tado's position vulnerable and forcing them to seek a new profession by becoming samurai.

In the preceding section, we discussed that the myō in the process of its development created a concept of freely disposable property, and that a ryōshu could not legally prevent the sale of lands to persons other than members of the family. However, there was a countervailing force at work to preserve the landholdings of a specific family. That was by the application of a modified form of primogeniture. It was not a pure form of primogeniture in that the eldest son did not have the exclusive right of inheritance, nor did he always enjoy preferential treatment over all other heirs. However, at the death of a ryōshu, all of his property was often added together and the major portion was given to the eldest son. In this manner, the economic and even military power of the family could be preserved.29 A Japanese term, ienoko, which appears in Document 1882, denotes members of the household who are from the families of children other than the first born and other relatives distinguished from the family of the firstborn. It gives proof to the practice of this modified form of primogeniture.

The relationship between the samurai lord and his followers resembled that of the master-servant relationship, whose ties were presumed to be as close as those of kinsmen. When Minamoto no Yoritomo attained power, he codified this relationship by giving his followers the title gokenin (vassals, literally, members of the household) who had to subordinate themselves and were tied to him by the personal bond. And symbolic of their subordination was the submission of their names (Document 19). In return the vassals were rewarded either by the confirming or awarding of landholdings (Document 20). The feudalistic lord and vassal relationship was thus complete.

29A commentary to the Yorō Code's Koryō or household registry regulations section contains the following passage: "Question: Is there any restrictions as to the assigning of the legal heir (chakushi)? Answer: If one is of the eighth rank or above, he may assign a legal heir. Others are not permitted to do so, and his property must be divided evenly among his heirs. However, those who have accumulated great wealth over generations may be permitted to be treated as if they were of the eighth rank or above." Ryōhōge, Book 10, in Kokushi Taikei, op. cit., Vol. 23, p. 293.

If the above can be accepted at its face value, Japan practiced a modified form of primogeniture among its nobility and the wealthy as early as 718.

On the matter relating to the recruitment of the kondei (physically able).
Thirty people from the province of Yamato.
Thirty people from the province of Kawachi.
Twenty people from the province of Izumi31.

Previously [on the seventh day of this month], the Minister of the Right [Fujinwara Tsugunaga] declared that in obedience to the imperial command [all military divisions consisting of] conscript soldiers stationed in the provinces should be abolished with the exception of those in the important border areas. The munitions depots, outposts, and governmental offices which were previously defended by them should be defended by the kondei to be sent to those positions. We now order that you select those physically able from among the sons of district chiefs (kōri no tsukasa), and place them to serve on these posts on a rotating basis.

Eleventh year of Enryaku [792], sixth month, 14th day.

17 Proscription Against Helan Nobility's Becoming Local Samurai, 89132 An Order of the Council of State.
On prohibiting people from Kyoto to reside outside of the capital region (kina).

Lately, those people whose domiciles are in the capital city [of Heian], and who are children and heirs of princes and of important court officials, reside outside the capital region. Some intermarry [with people from outer provinces], and others engage in agriculture or commerce and are no different from the people in the provinces. There are also reports that vagabonds form gangs and treat villages as if they were their own possessions. They oppose provincial governors and local officials and make threats on poor people. They not only hinder normal functioning of provincial affairs, but also create a climate detrimental to public morality. The Minister of the Right [Minamoto Tooru] therefore declares: "In obedience to the imperial command, an order must be given to supervise strictly [their activities]. They must withdraw from the outer provinces before the seventh month of the coming year. If they persist in their disobedience and do not mend their ways, regardless of any connection they may have, they must be banished to distant places. There shall be no exception made to our previous order that no governmental official be permitted to remain in his post

30Okubo, op. cit., p. 278. This and the following documents are from the Ruiju Sandai Kyoku.
31Levies from 48 other provinces omitted from the translated version.
32Okubo, op. cit., p. 282.
after expiration of his present term. If the governmental officials in charge of this matter do not indict those who commit this offense, they must also be dealt with as if committing the similar offense....

Third year of Kanhe [891], ninth month, eleventh day.

18 Master of His Retainers, 1114:

a) on the third day of the eighth month, I went to the Prime Minister's Office. I was commanded by the widow of the late Prime Minister (Dajō-daijin) Kujō [Fujiwara Nobunaga] that there were two shō officials in the province of Shيمotuke, who served as arresting officers (shimobe) for the police commissioner (keibiishi). They became rōto (followers, or members of a group or household) of Minamoto no Tameyoshi. They must be called in [to account for their indiscretion], and be expelled from the shō.33

b) On Matters Relating to the Business of Province34

1. Preventing riotous behavior.

When a newly appointed governor travels to the province to which he is assigned, some of his rōto and other followers either rob things from other persons or engage in quarrels among themselves. It is therefore ordered that a newly appointed governor must select from among his rōto, pure and strong persons who can engage in the task of stopping this kind of behavior.

2. Do not permit members of your household (ienoko) to speak ill of others, and prevent unruly actions of your high ranking rōto.

If on reflection one does not stop those conditions which lead to the use of foul language, and permit one's rōto to engage freely in plundering or heaping abuse on others... as these things continue to multiply, people will start ridiculing you. When you take the responsibility of serving the public, you are really performing something good for yourself too. But if you do not put a stop to the abuse that some of your followers—whether they be your most beloved children or rōto—heap on others, and let this continue [those who are the object of abuse will not serve you]. In this way, you may not be able to collect taxes and send them to the central government. You will then gain the reputation of being an ineffectual governor. If your children and rōto cannot uphold one another and also help you, your term of office will be one of emptiness. If all your followers will pursue their own follies, you will be left with no followers day and night. Then what benefit is there [of becoming a governor]?

33Okubo, op. cit., Chuseihen, p. 11. This document comes from Chiu Yu Ki, the diary of Middle Counsellor Nakamikado Munetada, which gave accounts of festivals, rituals, social and political conditions between the reigns of Emperors Horikawa and Suotoku (1087–1138).
34Ibid., p. 15. This selection comes from Choyagunsai, being a compendium of official documents and poems and prose writings completed in 1116 by Miyoshi Tameyasu.

19 Establishment of Relationship Between Lord and Vassals (Gokenn), 118435 [First year of Genreki, 1184] ninth month, 19th day. [Yoritomo sends Tachibana Kiminari to Sanuki to secure the support of local lords.]

Following the destruction of the Ichinotani fortification in Settsu Province in the Second Month, members of the Heike have been plundering the various provinces in the west, and Genji troops have been sent into the region to check the Heike. One of the means employed has been the sending of Tachibana Kiminari and his men as an advance column into Sanuki Province to secure the support of local lords. They have since submitted to the Minamoto, and a roster containing their names has been transmitted to Kamakura. Today, His Lordship has sent instructions to the local lords of Sanuki to take their orders from Kiminari.

[Yoritomo's monogram]

"Ordered to: Immediate vassals of Sanuki Province

"To submit forthwith to the command of Tachibana Kiminari and to join in the Kyushu campaign.

"At this time when the Heike are plundering your lands, you have submitted your submission to me. A roster of your names has been submitted to me. It is indeed a most loyal act on your part. Submit forthwith to the command of Kiminari and conduct yourselves in a loyal and meritorious manner. Thus ordered."

Genreki first year [1184], ninth month, nineteenth day. "Immediate vassals of Sanuki Province:

"The following is a roster of immediate vassals of Sanuki, in which province, at Yashima, the Heike are presently established, who have renounced the Heike for the Genji and who are now in service in Kyoto. They are Tō no taifu Sukemitsu [thirteen others including his sons, younger brother and others]. The aforementioned, having served the Genji in Kyoto, are vassals of the Lord of Kamakura, as indicated."

First year of Genreki [1184], fifth month.

20 Rewarding the Vassals, 118036 Fourth year of Jishō [1180], tenth month, 23rd day. [Yoritomo rewards his vassals for their services.]

His Lordship has arrived at the provincial capital of Sagami [Kamakura] and,
for the first time, he had made awards to his men for meritorious services rendered in his behalf. The men whose present holdings were confirmed or to whom new grants were made were: Lord Hōjō, Takeda Nobuyoshi, Yasuda Yoshisada, Chiba Tsunetane, Miura Yoshizumi, Taira Hirotane, Tada Yoshimori, Doi Saneyori, Adachi Morinaga, Tsuchiya Munetō, Okazaki Yoshizane, Kudō Chikamitsu, Sasaki Sadatsuna, Sasaki Tsunetaka, Sasaki Morisuna, Sasaki Taketsuna, Kudō Kagemitsu, Amano Tōkage, Ōba Kageyoshi, Usami Sukemochi, Ichikawa Yukifusa, lay priest Katō Kagetsuzo, Usami Sanemasu, Ōmi Ichide, and Iida Ieyoshi. In addition Yoshizumi was confirmed as vice governor of Miura and Yukihira as shō official of Shimokōbe.

RULE BY THE KAMAKURA SHOGUNATE

Minamoto no Yoritomo’s assertion of power over Kantō came in different stages. While he was still a minor power in Izu, he successfully captured a shrine estate, and denied continuation of commission to the previous corrupt holder. In this, he skillfully used a secret edict issued by Prince Mochihito to impress on others the legitimacy of his claim (Document 21). He won his victory over the Heike in 1183, and the following year he established his capital in Kamakura. The establishment of Samurai-dōkoro (which was charged with the task of controlling the gokein, and had jurisdiction over military and police affairs, Document 22), Kumon-jo (which kept public documents, and had jurisdiction over political affairs, Document 23, renamed Mandokoro in 1191), and Monchō-jo (court of judicature, Document 24) followed. These were at first his private house organs, but eventually developed into the core of the bakufu organization.

Kamakura successfully extended its sway over the entire country by gaining the right to appoint Protectors (shugo) and Stewards (jito) outside of Kantō (Document 25). In this way, Kamakura could administer or otherwise interfere in the affairs of shōen across the country, giving the former both a stronger economic base and greater political power.

One of the most outstanding achievements of the Hōjō regents was the issuance in 1232 of a code of judicature, called either Goseibai Shikimoku or Joeri Shikimoku (Document 26). About the Shikimoku, its main author Hōjō Yasutoki wrote two letters to his brother in Kyoto, Shigetoki, explaining its intent.37

“We have decided to record the detailed procedure in order to render impartial verdicts without discriminating between the high and the low. These rules may deviate from the teachings of the existing laws in some minor points. However, the ancient codes and regulations (ritsu-ryō and kyakushiki) are like complicated Chinese characters, understood only by a very few people. They are rendered useless to those who understand only Japanese syllabary (kana). This

37 Ōkubo, op. cit., pp. 131-132.

shikimoku is presented in such a way that the great majority of the people can take comfort in it—just as there are many people who can understand Japanese syllabary, so must this shikimoku be uniformly known.”

In another passage of the letter Yasutoki stressed the importance of dōri, which means practical reason or sensible solution to matters, over the application of old codes or customary laws. There was a clear rejection of the values that the nobility in Kyoto cherished, and a host of questions were answered from the new perspectives of the feudal samurai.

Articles 3 through 6 dealt with the functions of Protectors and Stewards. The succeeding two articles dealt with the tenure of fiefs (shōryō) by vassals. Of special interest to historians are the provisions of Article 8 which confirmed the right of a holder if the property remained in his hands for twenty years. Articles 18 and 26 granted to the father the right of revoking an assignment to his son or daughter, and Article 23 gave women the right to adopt their own heirs. Article 42 gave under certain circumstances, an option to a farmer to continue to live in the fief or go elsewhere—a far more enlightened measure than the practice prevalent in the Tokugawa period. These provisions (Articles 18, 23, and 42), incidentally, went counter to those of the ancient codes (ritsu-ryō).

The reader’s attention is also called to the solemn oath attached to the shikimoku. It swore that the decisions rendered should be the decisions of the “whole council in session.” It also affirmed the superiority of the council as against that of an individual, no matter how bright or well-intended one might be.

The shikimoku was, in effect, a declaration by the Hōjō regents to provide equal justice to their vassals. Questions such as the rights on land remained one of the fundamental issues, and the success of the Kamakura government depended on its ability to protect the interests of its gokein, whose feudal services were the cornerstone of the power of the shogunate.

21 Proclamation of Yoritomo’s Rule over Kantō, 118038 The clerk fifth rank Tomochika, a relative of Kanetaka, has been inclined to commit unwarranted outrages on the people at Uraya estate (mikuri) where he resides. Yoritomo commanded him through Kunimichi to cease such acts. This is the beginning of His Lordship’s administration of Kantō. His Lordship’s directive reads:

“Ordered to: The local gentry of Uraya shrine estate (mikuri):

“That the commission of the clerk fifth rank Tomochika cease forthwith. It is manifestly clear in the language of Prince Mochihito’s pronouncement that the public and private domains in the provinces in the east are within His Lordship’s jurisdiction. The attention of residents of this region is directed to this order and

38 Shinoda, op. cit., pp. 163-164.
they are advised to take steps to have their holdings confirmed. Thus ordered, in accordance with His Lordship’s instructions."

Fourth year of Jishō [1180], eighth month, 19th day.

22 Establishment of the Samurai-dokoro, 1180\(^{39}\) [Fourth year of Jishō, 1180], eleventh month, 17th day... Wada Tarō Yoshimori has been appointed president of the Samurai-dokoro. Yoshimori had requested the office in the eighth month during the flight from Ishibashi Mountain when His Lordship’s safety was uncertain. Now His Lordship has given his consent and has issued instructions today to reserve this office for Yoshimori.

23 Building for the Kumon-jo, 1184\(^{40}\) [First year of Genreki, 1184], eighth month, 24th day. A new building is to be constructed for the Kumon-jo. Today the ceremony of the raising of the pillars and beams was held. The commissioners in charge are the lay priest clerk Yasunobu and the secretary of the Bureau of Statistics Yukimasa.

Tenth month, 6th day... At 9 A.M. the ceremony of the first writing for the newly constructed Kumon-jo was held. The scribes for the occasion were the secretary of the Bureau of Statistics Fujiwara Yukimasa, the secretary of the Right Horse Bureau Adachi Tomo, Kai Shirō, Onakatomi Akiie, and the secretary Kunimichi. The first document, which was opened before His Lordship by Hiromoto, was written by Kunimichi. Then matters pertaining to shrine lands and to Buddhist temples were attended to, following which a banquet was given by the vice governor, Chiba. His Lordship, who attended, presented gifts of horses to the higher officials and swords to the lower officials.

24 Establishment of Monchū-jo, 1184\(^{41}\) [First year of Genreki, 1184], tenth month, 20th day. With the assistance of Toshikane and Moritoki, His Lordship attended to rendering decisions on cases brought by various persons. The writing of the decisions was assigned to Miyoshi Yasunobu. Two rooms on the east side of His Lordship’s residence have been set aside for this purpose and designated the Monchū-jo.

25 Appointment of Protectors (Shugo) and Stewards (Jitō), 1185\(^{42}\) [First year of Bunji, 1185], eleventh month, 12th day. [Ōe Hiromoto proposes the posting of Protectors and Stewards.]

... Because of the seriousness of Kantō of the present developments, and because the constant attention which these developments require is a source of great inconvenience, the ex-official of Inaba, Ōe Hiromoto has addressed Yoritomo as follows: "The country has fallen into decadence. Men possessed of the devil run rampant. There are rebels in our land whom it has not been possible to destroy. But in the eastern provinces peace and order have been achieved because of Your Lordship’s presence. Elsewhere, however, violence is apt to occur. It would be a detriment to the people and an expense to the provinces if, in each instance, soldiers from the east must be sent out to restore order. Accordingly, if, on this occasion, Your Lordship could take action in the provinces and appoint Protectors and Stewards for each provincial office and shōen, there would be nothing to fear. Such a request should be made immediately to the throne." Yoritomo was greatly pleased, and it was decided to pursue this proposal. This wise counsel has strengthened the bond between His Lordship and his minister.

28th day. [The right to post Protectors and Stewards and to levy a commissariat rice tax is requested of the ex-sovereign.]

The evening Lord Hōjō made a representation to the court through Yoshida Tsunafusa, regarding the appointment of Protectors and Stewards uniformly in all provinces, and the levying of a commissariat rice tax of 5 quarts (shō) per tan on all lands [i.e., 0.05 of a bushel on every 0.245 of an acre], whether public or private. As for the latter, the levy would apply irrespective of their ownership by powerful officials or influential families.

Twelveth month, 21st day. [Yoritomo elaborates on the role of Stewards.] It has been declared that private domains in the various provinces shall come entirely under the control of Kantō. Previously those who called themselves Stewards were probably retainers of the Heike who had assumed the role without imperial approval. Or they had been given this title by the Heike and were stationed on the lands of the Heike. Also, civil governors and ryōke have been known to station Stewards on their lands as a personal favor to their retainers. As a result the governors and ryōshū who have dispensed private favors are now emptied-handed and dismayed. Now that the control of shōen is uniform throughout the provinces, there need be no anxiety among ryōshū and legal guardians of shōen.

26 Gosaihai Shikimoku—Formulary for the Shogun’s Decision of Lawsuits, 1232\(^{43}\)

1. The shrines of the gods must be kept in repair; and their worship performed with the greatest attention...
2. Temples and pagodas must be kept in repair and the Buddhist services diligently celebrated...

3. Of the duties devolving on Protectors (shugō) in the provinces. In the time of the august Right General [Yoritomo's] House, it was settled that those duties should be the calling out and dispatching of the Grand Guard for service at the capital, the suppression of conspiracies and rebellion and the punishment of murder and violence (which included night attacks on houses, gang robbery and piracy). Of late years, however, deputies (daikan) have been taken on and distributed over the districts (kōri or gun) and counties (go) and these have been imposing public burdens (kujiri or all forms of taxation) on the villages. Not being Governors of the provinces (kuni no tsukasa or kokushi), they yet hinder the work of the province: not being Stewards (jito) they are yet greedy of the profits of the land. Such proceedings and schemes are utterly unprincipled.

Be it noted that no person, even if his family were for generations vassals (gozenin) of the august House of Minamoto, is competent to impress [people] for military service unless he has an investiture [to the land] of the present date.

On the other hand, it is reported that inferior officials (geshi) and managers of shōen in various places make use of the name of vassals (gozenin) of the august House as a pretext for opposing the orders of the Governor of the province or of the ryōke. Such persons, even if they are desirous of being taken into the service of the Protectors, must not under any circumstances be included in the enrollment for service in the Guards. In short, conforming to the precedents of the time of the august General’s House, the Protectors must cease altogether from giving directions in matters outside of the hurry-up of the Grand Guards and the suppression of plots, rebellion, murder and violence.

In the event of a Protector disobeying this article and intermeddling in affairs other than those herein named, if a complaint is instituted against him by the Governor of the province or the ryōke, or if the Steward or the folk aggrieved petition for redress, his downright lawlessness being thus brought to light, he shall be divested of his office and a person of gentle character appointed in his stead. Again, as regards deputies, not more than one is to be appointed by a Protector.

4. Of Protectors confiscating the property of persons on account of offenses, without reporting cases of crimes.

When persons are found committing serious offenses, the Protectors should make a detailed report of the case [to Kamakura] and follow such directions as may be given them in relation thereto; yet there are some who, without ascertaining the truth or falsehood of an accusation, or investigating whether the offense committed was serious or trifling, arbitrarily pronounce the escheat of the criminal’s [fields, gardens, houses and other property] and selfishly cause them to be confiscated. Such unjust judgments are a nefarious artifice for the indulgence of license. Let a report be properly made to us of the circumstances of each case and our decision upon the matter be respectfully asked for, any further persistence in transgressions of this kind will be dealt with criminally...

5. Of Stewards in the provinces detaining a part of the assessed amounts of the annual rent (nengu).

If a plaint is instituted by the holder of the rights to shōen (honjo), alleging that a Steward is withholding the annual rent (nengu) payable to him, a statement of account will be at once taken, and the plaintiff shall receive a certificate of the balance that may be found to be due to him. If the Steward be adjudged to be in default, and has no valid plea to urge in justification, he will be required to make compensation in full. . . . If the amount be greater than he is able to pay at once, he will be allowed three years within which to discharge completely his liability. Any Steward who, after such delay granted, shall make further delays and difficulties, contrary to the intention of this article, shall be deprived of his post.

6. Governors of provinces and ryōke may exercise their normal jurisdiction without referring to the Kantō [authorities].

In cases where jurisdiction has heretofore been exercised by the Governor’s office, by shōen, by Shintō shrines or by Buddhist temples on behalf of the holder of the rights to shōen (honjo), it will not be necessary for us now to introduce interference. Even if they wish to refer a matter to us for advice, they are not permitted to do so . . . .

The proper procedure in bringing a suit is for the parties to come provided with letters of recommendation from their own honjo. Hence persons who come unprovided with such letters, whether they be from a province, a shōen, a shrine or a temple, have already committed a breach of dōri (propriety or practice), and henceforth their suits will not be received in judicature.

7. Whether the fiefs (shoryō) which have been granted since the time of Yoritomo by the successive Shōgun and by Her Ladyship the Dowager Masako are to be revoked or exchanged in consequence of suits being brought by the original owners.

Such fiefs having been granted as rewards for distinguished merits in the field, or for valuable services in official employment, have not been acquired without just title. And if judgment were to be given in favor of someone who alleged that such was originally the fief of his ancestors, though one face might beam with joy, the many comrades could assuredly feel no sense of security. A stop must be put to persons bringing such unsettling suits.

In case, however, one of the grantees of the present epoch should commit a crime, and the original owner, watching his opportunity, should thereupon bring a suit for recovery of possession, he cannot well be prohibited from doing so . . . .

8. Of fiefs which, though deeds of investiture are held, have not been had in possession the actual right (chigyo) through a series of years (nenjo).

With respect to the above, if more than twenty years have elapsed since the present holder was in possession, his title is not to be inquired into and no change can be made, following herein the precedent established by the Yoritomo House. And if anyone falsely alleging himself to be in possession, obtains by
deceit a deed of grant, even though he may have the document in his possession it is not to be recognized as having validity.

11. Whether in consequence of a husband's crime the estate (shoryo) of the wife is to be confiscated or not.

In cases of serious crime, treason, murder and maiming, also banditry, piracy, night-attacks, robbery and the like, the guilt of the husband extends to the wife also. In cases of murder and maiming, cutting and wounding, arising out of a sudden dispute, however, she is not to be held responsible.

14. When a crime or offense is committed by deputies, whether or not the principals are responsible.

When a deputy is guilty of murder or any lesser one of the serious crimes, if his principal arrests and sends him on for trial, the master shall not be held responsible. But if the master in order to shield the deputy reports that the latter is not to blame, and the truth is afterwards found out, incriminating him, the former cannot escape responsibility and accordingly his fief shall be confiscated. In such cases the deputy shall be imprisoned. . . .

Again, if a deputy either detains the annual rent (nengu) or contravenes the laws and precedents even though the action is that of the deputy alone, his principal shall nevertheless be responsible. . . .

15. Of the crime of forgery.

If a samurai commits the above, his fief shall be confiscated; if he has no investiture he shall be sent into exile. If one of the lower class commits it, he shall be branded in the face by burning. The amanuensis shall receive the same punishment. . . .

18. Whether, after transferring a fief to a daughter, parents may or may not revoke (kiukaeshi) the transfer on account of a subsequent estrangement.

A group of legal scholars aver that though the two sexes are distinct as regards denomination, there is no difference between them as regards parental benefactions and that therefore a gift to a daughter is as irrevocable as to a son. If, however, the deed of assignment (yuzurijyo) to a daughter were held to be irrevocable she would be able to rely upon it, and would have no scruples about entering upon an undutiful and reprehensible course of conduct. And fathers and mothers, on the other hand, forecasting the probability of conflicts of opinion arising, must beware of assigning a fief to a daughter. Once a beginning is made of severing the relation of parent and child, the foundation is laid for disobedience and insubordination. In case a daughter shows any unsteadiness of behavior, the parents ought to be able to exercise their own discretion accordingly. When the question is understood to rest on this foundation the daughter, induced by the hope of the deed of assignment being confirmed, will be loyal [to the bakuju] and punctilious in the discharge of her filial duty; and the parents, impelled by the desire of completing their fostering care, will find the course of their affection uniform and even throughout.

19. Of persons, whether related or not, who have been reared and supported, afterwards turn their backs on the descendants of their original masters.

. . . When persons have rendered some loyal service to their masters, the latter, in their abounding appreciation of the spirit so displayed have in some cases handed them an allocation-note and in other cases have granted them a deed of enfeoffment. Yet they pretend that those grants were merely free-will gifts and take a view of things opposite to that taken by the sons or grandsons of their first master, with the result that the tenor of the relations to each other becomes very different from what it ought to be. . . . When such persons forget all at once the predecessor's benefaction, and act in opposition to his son or grandson, the fiefs which were so assigned to them are to be taken from them and given back to the descendant of the original holder.

20. Of the succession to a fief when the child, after getting the deed of assignment, predeceases the parents.

Even when the child is alive, what is to hinder the parents from revoking the assignment? How much more, then, are they free to dispose of the fief after the child has died; the thing must be left entirely to the discretion of the father or grandfather.

21. Whether when a wife or concubine, after getting an assignment from the husband, has been divorced, she can retain the tenure of the fief or not.

If the wife in question has been repudiated in consequence of having committed some serious transgression, even if she holds a written promise of the bygone days, she may not hold the fief of her former husband. On the other hand, if the wife in question has a virtuous record and was innocent of any fault and was discarded by reason of the husband's preference for novelty, the fief which had been assigned to her cannot be revoked.

22. Of parents who when making a disposition of their fief, pass over a grown-up son whose relationship with the parents has not been severed.

When parents have brought up their son to man's estate, and he has shown himself to be diligent and deserving then, either in consequence of a stepmother's slanders or out of favoritism to the son of a concubine although the son's relationship has not been severed, suddenly to leave him out and without rhyme or reason make no grant to him, would be the very extreme of arbitrariness. Accordingly when the designated heir comes of age, one-fifth of his fief must be cut off and assigned to any older brother who is without sufficient means. . . .

23. Of the adoption of heirs by women.

Although the spirit of the [ancient] laws does not allow adoption by females, yet since the time of the General of the Right [Yoritomo] down to the present day it has been the invariable rule to allow women who had no children of their own to adopt an heir and transmit the fief to him. And not only that, but all over the country, in the capital as well as in the rural districts there is abundant evidence of the existence of the same practices. It is needless to enumerate the cases. Besides, after full consideration and discussion, its validity has been recognized, and it is hereby confirmed.
25. Of vassals in the Kantō who married their daughters to Court nobles (kuge) and assigned fiefs to them, thereby diminishing the sufficiency of the public services.

As regards such fiefs, although they were assigned to daughters and thus became alienated, Nevertheless the assessment for public services must be imposed thereon in accordance with the holders’ rank and standing. Even though when the father was alive the son-in-law’s fief may have been, as a matter of favor, exempted, after his death, service must be insisted on. If presuming on the dignity of his position, the holder of such a fief omits to perform personal service, the said fief must be for long withheld from him. In general, there must be no obstinacy as regards public services, which are equally required of all in the Kantō. . . . After this, if anyone still makes difficulties, he is not to have the right (chigyō) to the fief.

26. Of revoking an assignment to one son, after a bakuifu writ of assurance (ando no kudashibumi) has been granted and then making the assignment to another son.

That matters of this kind are to be left to the discretion of the parents has been already practically laid down in a preceding section. Hence even when a bakuifu writ of assurance has been granted to confirm the intent of the first deed of assignment, yet if the father changes his mind and decides to assign the fief to another son, it is the subsequent deed of assignment which is to take effect, and an adjudication for that purpose is permitted.

37. Of vassals of the Kantō applying to Kyoto for side offices such as the superintendentships (uwatsukaza) of estates.

This practice was strictly forbidden in the time of the Minamoto House. Of late years however, some persons, following the bent of their own ambitions, have not only disregarded the prohibition, but have entered into competition with others seeking to obtain the same appointment. Henceforth anyone found indulging in such ill-regulated ambition shall be punished by the escheating of the whole of his fief.

38. Of Steward General (sōjitori) hindering the functions (shiki) of the myōshū who were properly within their own domains.

When one who has been placed in general charge of a district as Steward General endeavors to encroach upon villages which are distinct and separate therefrom, under the pretext of their being within the district under his charge, will be deemed culpable. In such a case, an Instruction will be issued to him stating that . . . if the Steward forms unlawful designs against the myōshū, and places unjustifiable hindrances in the way of his performing his functions (shiki), an Instruction will be issued to the myōshū empowering him to pay the taxes to the Government directly (i.e., bypassing the Steward altogether).

39. That those desirous of obtaining office or rank [from Kyoto] must have a written recommendation from the Kantō.

That those who have performed a meritorious service and are desirous of being raised in rank therefore should be recommended [by use of the Emperor] as an established and impartial mode of proceeding; and there is consequently no need to prescribe regulations about it. . . .

40. Of Buddhist clergy within the Kamakura Domain striving at their own option to obtain ecclesiastical positions and rank.

Inasmuch as it leads to the deranging of the due subordination in the hierarchy, the practice of applying at will [to Kyoto] for preferment is a self source of confusion and furthermore entails undue multiplication of higher ecclesiastical dignities . . . .

Henceforth if anyone should in the future apply for preferment without first having received our permission he shall, if he be the incumbent of a temple or shrine, be deprived of his benefice. Even if he belongs to the clergy specially attached to the chaplaincies of the shōgun he shall nevertheless be dismissed.

Should, however, one of the Zen Sects make such an application, an influential member of the same sect will be directed to administer a gentle admonition.

41. Of slaves and unclassed persons.

[In cases of dispute respecting the ownership of such persons] the settlement established by the august Right General’s House must be adhered to, and to say, if more than ten years have elapsed without the former owner having asserted his claim, there shall be no discussion as to the merits of the case and the possession of the present owner is not to be interfered with. Concerning the children born to the slaves, although certain qualifications were established by the previous laws, the precedent set at the time of Lord Yoritomo must be adhered to, i.e., a boy is to be awarded along with his father, and a girl may be awarded along with her mother.

42. Of inflicting loss and ruin on absconding farmers under the pretext of punishing runaways.

When people living in the provinces run away and escape, the ryōshū and others, proclaiming that runaways must be punished, detain their wives and children, and confiscate their property. Such a mode of procedure is quite the reverse of benevolent government. Henceforth such must be referred [to Kamakura] for adjudication, and if it is found that the farmer is in arrears as regards payment of his annual rent (nengu) and levies, he shall be compelled to make good the deficiency. If he is found not to be so in arrears the property seized from him shall be forthwith restored to him, and it shall be entirely at the option of the farmer himself whether he shall continue to live in the fief or go elsewhere.

43. Of buying and selling fiefs.

That those who have inherited a private estate from their ancestors may under stress of necessity dispose of it by sale is a settled law. But as for those persons who either in consequence of accumulated merit or on account of their personal exertions have been made the recipients of special favors from the bakuifu—for them to buy and sell such at their own pleasure is a proceeding that is by no
means blameless. Henceforth, it certainly must be stopped. If nevertheless, any
person, in disregard of the prohibition, disposes of a fief by sale, both the seller
and the buyer shall be equally dealt with as guilty.

Solemn Oath

That questions of right or wrong shall be decided at meetings of the Council
(kyōjōshū).

Whereas a simple individual is liable to make mistakes through defect of
judgment, even when the mind is unbiased; and besides that, is led, out of
prejudice or partiality, whilst intending to follow reason (dōri), to pronounce a
wrong judgment; or again, in cases where there is no clue, considers that proof
exists; or being cognizant of the facts and unwilling that another’s shortcomings
should be exposed, refrains from pronouncing a judgment one way or the other;
so that intention and fact are in discord and catastrophes afterwards ensue.

Therefore, in general, at meetings of the Council, whenever questions of right
or wrong are concerned there shall be no regard for ties of relationship, there
shall be no giving-in to likes or dislikes, but in whatever direction reason (dōri)
prevails and as the inmost thought of the mind leads, without regard for compan-
ions or fear of powerful Houses, we shall speak out. Matters of adjudication shall
be clearly decided and whilst not conflicting with reason (dōri) the sentence shall
be a statute of the whole Council in session. If a mistake is made in the matter, it
shall be the error of the whole Council acting as one. Even when a decision
given in a case is perfectly just, it shall be a constitution of the whole Council in
session. If a mistake is made and action taken without good grounds, it shall be
the error of the whole Council acting as one.

Furthermore, when suitors having no color of right on their side fail to obtain
a trial of their claim from the Court of the Council and then make an appeal to
one of its members, if a writ of endorsement is granted by him it is tantamount to
saying that all the rest of the members are wrong. Like as if we were one man
shall we maintain judgment. Such are the reasons for these articles. If even in a
single instance we swerve from either to bend or to break them, may the gods
Brahma, Indra, four Deva Kings, and all the gods great and small, celestial and
terrestrial of the sixty odd provinces of Nippon, and especially the two Incarna-
tions of Buddha (gongen) in Izu and Hakone, Mishima Daimyōjin, Hachiman
Daibosatsu and Tengu Dai Jiizai Tenjin punish us and all our tribe, connections
and belongings with the punishments of the gods and the punishments of the
Buddhas; so may it be.

Accordingly we swear a solemn oath as above.
First year of Jōei [1232], seventh month, 10th day.
(Signed by) Hōjō Musashi no Kami Taira Ason Yasutoki (and twelve
other Council members).

Kamakura Buddhism

“The sound of the bell of Gion Shōja (temple) echoes the impermanence of all
things. The hue of the flowers of the teak tree declares that they who flourish
must be brought low.” So goes the Tale of Heike in its famous opening passage.
It captures the spirit of the Kamakura period, which was preoccupied with the
thought of the impermanence of things.

With the advent of the Kamakura period, old privileges and positions waxed
and waned. The Heian patrician society was replaced by the samurai society.
And within the samurai class, many great families rose and fell. First there was
the Taira family who enjoyed a brief moment of glory only to be supplanted by
the Minamoto family. The latter, in turn, quickly lost their power to the inge-
nious device of regency begun by the Hōjō family. The establishment of feudal
institutions to replace the old order was a long and arduous process. Meanwhile,
order and social changes fostered an attitude of questioning antiquated values.
And along with this came challenges to Heian Buddhism, which was esoteric in
nature, and which in the final analysis became nothing more than an aesthetic
cult, catering to the whims of the privileged.

Even during the latter part of the Heian period, there were several discernible
tendencies toward reform of Buddhism. There was widespread belief that the
Latter Degenerate Days (mappō) had come and that it was necessary to return to
the purity of the original doctrines. Then there were some worthies who were
either called kijiri (saints) or shōnin (superior men) who departed from the
 teachings of the established sects to preach a simple gospel of faith to the
common people in cities and village huts.

The precursor to these reform movements was the monk Genshin (942–1017).
His popular work Ōjō Yōshū (Essentials of Salvation, Document 1) depicted the
horrors of hell and contrasted them vividly with the bliss of the Western Para-


