

***HOREI*, ACT ON THE APPLICATION OF LAWS**
Law No. 10 of 1898

Translation by Kent Anderson* and Yasuhiro Okuda⁺

INTRODUCTION TO TRANSLATION

Typical of a civil law system, Japan's conflict of laws or private international law rules are primarily self-contained in a single act—the *Horei*.ⁱ The law was modeled on a draft German law and has remained the central prescription on conflict of laws rules for over 100 years. Of course, it has been amended a number of times over the years, most recently in 1999.ⁱⁱ Further, there are a number of other conflict of laws rules provided for internally in other statutes and through a variety of international treaties that Japan has ratified.ⁱⁱⁱ Nonetheless, the *Horei* provides the heart and structure for most conflict questions. In short, it simply is Japan's private international law.

According to bibliographies of Japanese laws in translation and other sources,^{iv} there are already a number of English translations of the

* Associate Professor, Hokkaido University School of Law, Sapporo, Japan.

⁺ Professor of Private International Law, Hokkaido University School of Law.

ⁱ *Horei*, Act on the Application of Laws (General), Law No. 10, 1898, *as amended*. Following the practice of the Japanese Association of International Law and the Private International Law Association of Japan, the law is referred to herein as “the *Horei*.”

ⁱⁱ See Law No. 7, 1942; Law No. 223, 1947; Law No. 100, 1964; Law No. 84, 1986; Law No. 27, 1989; Law No. 151, 1999.

ⁱⁱⁱ See, e.g., Fuyō gimu no junkyo hō ni kansuru hōritsu [Act concerning the law applicable to maintenance obligations], Law No. 84, 1986 (adopting the Convention on the Law Applicable to Maintenance Obligations of 1973); Igon no hōshiki no junkyo hō ni kansuru hōritsu [Act concerning the law applicable to form of testamentary dispositions], Law No. 100, 1964 (adopting the Convention on Conflict of Laws relating to the Form of Testamentary Dispositions of 1961).

^{iv} See, e.g., BIBLIOGRAPHY ON ENGLISH-TRANSLATED TEXTS OF JAPANESE LAWS AND REGULATIONS 3/741 (Nat. Diet Libr. ed., 1998).

Horei.^v Thus, an obvious question is why produce another. The easiest answer is that none of the existing translations contain the most recent amendments from 1999. More significant for us, however, is the fact that we had minor dissatisfactions with the other translations. Most of these were quite insignificant, the kind only translators and lawyers worry about, but some of them were more considerable such as inconsistency in internal word usage and mistranslation of words with technical legal meaning within the narrow field of private international law.^{vi} Thus, in what some might call stereotypical Japanese behavior, we set out to improve on a good thing. We did not, however, “reinvent the wheel” and we openly and sincerely thank those translators and lawyers who preceded us and

^v See BASIC JAPANESE LAW 441-451 (Hiroshi Oda & Sian Stickings eds., 1997); Study Group of New Legislation of Private International Law, *Draft Articles on the Law Applicable to Contractual and Non-Contractual Obligations*, 39 JAPANESE ANN. INT’L L. 186, 186-191, n.4 (1996) (noting translation was a compilation of partial translations appearing in EHRENZWEIG, IKEHARA, & JENSEN, AMERICAN-JAPANESE PRIVATE INTERNATIONAL LAW 115 (1964); Sueo Ikehara, *Nationality in the Private International Law with Some Modifications*, 7 JAPANESE ANN. INT’L L. 20 (1963); Masato Doguchi, Yoshiaki Nomura, & Jun Yokoyama, *Revised Provisions of Horei—A Translation: International Family Law and General Provisions*, 33 JAPANESE ANN. INT’L LAW 67 (1990)); EHS L. BULL. SERIES, Vol. 1-AB, No. 1001 (Eibun Horei Sha ed., 1993), *amending translations from* (1958), (1975), (1986); DOING BUSINESS IN JAPAN, Statute Volume, App. 3B, 1-11 (Zentaro Kitagawa ed., 2000) (translation through 1989 amendment); MINISTRY OF JUSTICE, THE CIVIL CODE OF JAPAN 221-226 (1972) (translation through 1947 amendment); ANNOTATED CIVIL CODE OF JAPAN I-VII (J.E. DeBecker, trans., 1909) (translation through 1898 version).

^{vi} An example of inconsistent translation is the translation of 公ノ秩序又ハ善良ノ風俗 (*ōyake no chitsujo mata ha zenryō no fūzoku*) as both “public policy” (art. 2) and “public order and good morals” (art. 33) in the EHS translation. See EHS, *supra* note v. More importantly regarding this critical phrase is that none of the translations point out that this in fact refers to *ordre public*, which has a very specific technical meaning for conflicts lawyers. See *infra* note 2; European Convention on the Law Applicable to Contractual Obligations (Rome Convention), Jun. 19, 1980, art. 16 (providing in English version “public policy (*‘ordre public’*)”). Another example of inconsistency is the translation by the Study Group of New Legislation of Private International Law, which was actually pieced together from three earlier translations made at different times. See Study Group of New Legislation of Private International Law, *supra* note v, at 186 n.4. Further, regarding specific technical meanings, this translation translates 同一 (*dōitsu*) (e.g., art. 14) as “common” where a more precise term is “the same” or “identical,” which suggests a requirement of singular agreement. See *id.*; *infra* note 6 (explaining this point).

whose work we consulted frequently.

HOREI, ACT ON THE APPLICATION OF LAWS, Law No. 10 of 1898
(as amended 2001)

Article 1 [Effective Date of Statute]¹

A statute shall come into effect on the twentieth day after its promulgation, unless otherwise provided by the statute.

Article 2 [Customary Law]

Customs not contrary to public policy (*ordre public*)² shall have the force of law to the extent that they are authorized by a statute or a statutory instrument, or concern matters not otherwise prescribed by a statute or a statutory instrument.

Article 3 [Legal Capacity]

(1) The legal capacity of a person shall be governed by his or her national law.

(2) Notwithstanding the preceding paragraph, where an alien has performed a juristic act in Japan and where that person is of full capacity under Japanese law, that alien shall be regarded as of full capacity.

(3) The preceding paragraph shall not apply either to a juristic act governed by family law³ or succession law⁴ or to a juristic act regarding immovables situated abroad.

¹ The Act does not contain official Article headings. Those provided here have been added by the translators.

² This is the set phrase *ōyake no chitsujo mata ha zenryō no fūzoku* in Japanese. Often translated literally as “public order and good morals” in English, though originating from the French *ordre public* and German *öffentliche Ordnung*. See JAPANESE ASSOCIATION OF INTERNATIONAL LAW, KOKUSAI KANKEI HŌ JITEN [Dictionary of International Relations Law] 229-30 (1995).

³ See MINPŌ (Civil code), bk. IV.

⁴ See MINPŌ (Civil code), bk. V.

Article 4 [Initiation of Guardianship]

(1) The grounds for initiating a judicial declaration of guardianship shall be governed by the national law of the adult ward and the effect of the declaration shall be governed by the law of the state that issued the declaration.

(2) A Japanese court may initiate a judicial declaration of guardianship for an alien domiciled or resident in Japan where there are grounds for initiating a judicial declaration of guardianship under the alien's national law, unless such grounds are not recognized under Japanese law.

Article 5 [Initiation of Curatorship and Care]

The preceding Article shall apply with necessary modifications (*mutatis mutandis*) for initiating a judicial declaration of curatorship and care.

Article 6 [Declaration of Disappearance]

Where it is uncertain whether an alien is dead or alive, a Japanese court may declare that alien to have disappeared under Japanese law, but only with regards to property situated in Japan and legal relations to be governed by Japanese law.

Article 7 [Formation and Effect of Juristic Acts]

(1) The formation and effect of a juristic act shall be governed by the law intended by the parties.

(2) Where it is uncertain what law was intended by the parties, the law of the place where the act was done (*lex loci actus*) shall govern.

Article 8 [Formalities of Juristic Act]

(1) The formalities of a juristic act shall be governed by the law applicable to the effects of that act.

(2) Notwithstanding the preceding paragraph, formalities that satisfy the requirements of the law of the place where the act was

done (*lex loci actus*) shall be effective, unless the act is designed to establish or dispose of a right *in rem* or a right requiring registration.

Article 9 [Juristic Acts between People in Different Legal Systems]

(1) Where a declaration of intent is addressed to a person situated in a place under a different law, the place from where the notice was sent shall be regarded as the place of the act (*locus actus*).

(2) Regarding the formation and effect of a contract, the place from where the notice of offer was sent shall be regarded as the place of the act (*locus actus*). Where the offeree did not know at the time of his or her acceptance from where the notice of offer was sent, the offeror's place of domicile shall be regarded as the place of the act (*locus actus*).

Article 10 [Rights *in Rem* and Rights Requiring Registration]

(1) Rights *in rem* to movables and immovables and any other rights requiring registration shall be governed by the law of the place where situated (*lex rei sitae*).

(2) The acquisition and loss of the rights mentioned in the preceding paragraph shall be governed by the place where situated (*lex rei sitae*) at the time when the events causing the acquisition or loss were completed.

Article 11 [Formation and Effect of Non-Contractual Claims]

(1) The formation and effect of claims arising from agency by necessity (*negotiorum gestio*),⁵ unjust enrichment, and tort shall be governed by the law of the place where the events causing the

⁵ This refers to Roman law concept of *negotiorum gestio* or *jimu kanri* in Japanese, also sometimes referred to as "management of affairs without mandate" in English. That is, quasi-contractual obligations arising when one voluntarily undertakes liabilities on behalf of another who is either incapacitated or absent. See DAVID M. WALKER, *THE OXFORD COMPANION TO LAW* 874 (1980). There is no exact equivalent under the common law though in effect it is roughly similar to liability for agency by necessity. *Id.*

claims occurred.

(2) The preceding paragraph shall not apply where the events that comprise the tort occurred abroad and do not constitute a tort under Japanese law.

(3) Even where the events that occurred abroad constitute a tort under Japanese law, the injured person may not demand recovery of damages or any other remedy not available under Japanese law.

Article 12 [Assignment of Claims]

The effect on third parties of the assignment of a claim shall be governed by the law of the debtor's domicile.

Article 13 [Requirements for Formation of Marriage]

(1) The requirements for the formation of a marriage shall be governed for each party by his or her national law.

(2) The formalities of marriage shall be governed by the law of the place of the ceremony (*lex loci celebrationis*).

(3) Notwithstanding the preceding paragraph, formalities that satisfy the requirements of either of the parties' national law shall be effective, unless the marriage is celebrated in Japan and one of the parties is a Japanese national.

Article 14 [Effects of Marriage]

Where the national law of the spouses is the same,⁶ the effects of the marriage shall be governed by that national law. Where that is not the case but where the law of the spouses' place of habitual

⁶ The statute uses the term *dōitsu hongokuhō* ("the same or identical national law"). This should be distinguished from "a common national law" (*kyōtsū hongokuhō*), which is used in other translations. In the case where one spouse is a multiple national, his or her national law would be determined by Article 28(1), and for Article 14's "same" phrase to apply it would be necessary that the national law indicated by that determination was the same as the other spouse's national law. In contrast, if the phrase were translated as "common," then Article 14 might be read to apply for a multiple national even where their national law determined under Article 28(1) was different from his or her spouse's national law. See RYŌICHI YAMADA, *KOKUSAI SHIHŌ* (Private International Law) 98 (1992).

residence is the same, that law shall govern. Where none of these cases apply, the effects of the marriage shall be governed by the law of the place with which the spouses are most closely connected.

Article 15 [Matrimonial Property Law Regime and Protection of Domestic Transactions]

(1) The preceding Article shall apply with necessary modifications (*mutatis mutandis*) to the parties' matrimonial property law regime. However, that regime shall be governed by the law that the spouses select from among the following laws where such selection is made in a writing signed and dated by the spouses.

- (i) The law of the country of either spouse's nationality;
- (ii) The law of the place of either spouse's habitual residence; or
- (iii) Regarding immovables, the law of the place where they are situated.

(2) A matrimonial property law regime governed by a foreign law shall not be asserted against third parties acting in good faith (*bona fides*) insofar as it concerns juristic acts performed in Japan or property situated in Japan. In the case where a regime shall not be applied, the matrimonial property law regime created by Japanese law shall apply to the relations with such third parties.

(3) Notwithstanding the preceding paragraph, an ante- or pre-nuptial agreement concerning matrimonial property made under a foreign law shall be binding on any third party where the agreement is registered in Japan.

Article 16 [Divorce]

Article 14 shall apply with necessary modifications (*mutatis mutandis*) to divorce. However, divorce shall be governed by Japanese law where one of the spouses is a Japanese national with habitual residence in Japan.

Article 17 [Legitimacy]

- (1) A child shall be legitimate where the child is legitimate under the national law of one of the spouses at the time of the child's birth.
- (2) Where the husband has died before the child's birth, the national law of the husband at the time of his death shall be regarded as the law mentioned in the preceding paragraph.

Article 18 [Illegitimacy and Acknowledgment⁷]

- (1) The paternal relationship of an illegitimate child with regards to its father (paternity) shall be governed by the national law of the father at the time of the child's birth, and with regards to its mother (maternity) by the national law of the mother at that time. Concerning the establishment of parentage by acknowledgment, where the national law of the child at the time of acknowledgment requires the agreement or consent of the child or a third party as a condition of acknowledgment, this requirement must also be satisfied.
- (2) The acknowledgment shall be governed by the national law of the acknowledging person or of the child at the time of the acknowledgment, or the law designated in the first sentence of the preceding paragraph. In the case where the national law of the acknowledging person shall be applied, the second sentence of the preceding paragraph shall also apply with necessary modifications (*mutatis mutandis*).
- (3) Where the father has died before the child's birth, the national law of the father at the time of his death shall be regarded as the law designated by the first paragraph of this Article, and where the

⁷ "Acknowledgement" as used herein refers to the practice in some countries of the establishment of parentage of an illegitimate child by the formal act of a parent declaring the child to be legitimate in the family registry, a court decision, or so forth. See C.M.V. CLARKSON & JONATHAN HILL, *JAFFEY ON THE CONFLICT OF LAWS* 416 (1997).

acknowledging person mentioned in the preceding paragraph has died before the acknowledgment, the national law of that person at the time of his or her death shall be regarded as the law designated by that paragraph.

Article 19 [Legitimation]

(1) Where a child is legitimated according to the national law of the father, mother, or child, the child shall be legitimate when the events required for legitimation under that law are completed.

(2) Where a person mentioned in the preceding paragraph has died before the completion of the events required for legitimation, the national law of that person at the time of his or her death shall be regarded as the law designated by that paragraph.

Article 20 [Adoption]

(1) Adoption shall be governed by the national law of the adoptive parents at the time of the adoption. Where the national law of the adopted child requires for adoption the agreement or consent of the adopted child or a third party, or the approval or any other decision by a public authority, this requirement must also be satisfied.

(2) Termination of the relationship between an adopted child and his or her natural family (relatives by consanguinity) and repudiation of an adoption shall be governed by the law designated in the first sentence of the preceding paragraph.

Article 21 [Legal Relationship between Parents and Child]

The legal relationship between parents and their child shall be governed by the national law of the child where it is the same as the national law of one of the parents or, where one parent is lacking or otherwise absent, by the national law of the other parent. In all other cases, it shall be governed by the law of the child's habitual residence.

Article 22 [Formalities of Juristic Acts Affecting Family Relations]

The formalities of juristic acts affecting family relations covered by Articles 14 to 21 shall be governed by the law applicable to the formation of such act, without prejudice to the application of the law of the place where the act was done (*lex loci actus*).

Article 23 [Other Family Relationships]

Family relationships and rights and duties arising therefrom not otherwise covered by Articles 13 to 21 shall be governed by the national law of the party concerned.

Article 24 [Guardianship]

(1) Guardianship shall be governed by the national law of the ward.

(2) Guardianship of an alien domiciled or resident in Japan shall be governed by Japanese law only where the guardianship should be initiated under the alien's national law but there is no one to undertake the duties of guardian and where there has been a judicially declared initiation of guardianship in Japan.

Article 25 [Curatorship and Care]

The provisions of the preceding Article shall apply with necessary modifications (*mutatis mutandis*) to curatorship and care.

Article 26 [Succession]

Succession shall be governed by the national law of the decedent.

Article 27 [Wills]

(1) The formation and effect of a will shall be governed by the national law of the testator at the time of the will's creation.

(2) The revocation of a will shall be governed by the national law of the testator at the time of the revocation.

Article 28 [National Law]

(1) Where a person has two or more nationalities, the national law

shall be the law of the place of habitual residence from among those states in which he or she has nationality. Where there is no such country, the national law shall be the law of the state with which he or she is most closely connected. However, where the person has Japanese nationality among his or her nationalities, Japanese law shall be the national law.

(2) In the case where national law shall govern but the party has no nationality, the law of that person's habitual residence shall govern, except in cases where Article 14 (including its application with necessary modifications (*mutatis mutandis*) under Articles 15(1) and 16) or Article 21 is applicable.

(3) Where a person has nationality in a state where the law differs by region, the national law shall be the law indicated by the rules of that state, and otherwise the law of the region with which that party is most closely connected.

Article 29 [Law of Domicile]

(1) In the case where a person's domicile law shall govern but the domicile of that party is unknown, the law of that party's residence shall govern.

(2) Where a person has two or more domiciles, the law of his or her domicile shall be the law of the place with which he or she is most closely connected from among those domiciles.

Article 30 [Law of Habitual Residence]

In the case where the law of a person's habitual residence shall govern but that habitual residence is unknown, the law of that party's residence shall govern, except in cases where Article 14 is applicable (including its application with necessary modifications (*mutatis mutandis*) in Articles 15(1) and 16).

Article 31 [Law Varying According to Personal Status]

(1) Where a person is a national of a state where the law differs by a person's status, the national law shall be the law indicated by the

rules of that state, and otherwise the law with which that party is most closely connected.

(2) The preceding paragraph shall apply with necessary modifications (*mutatis mutandis*) to the law of that party's habitual residence where that law differs by a person's status, and to the law of the place with which both spouses are most closely connected where that law differs by a person's status.

Article 32 [*Renvoi*]

Where a case shall be governed by the national law of a person and pursuant to the rules of that law by Japanese law, the case shall be governed by Japanese law except in cases where Article 14 (including its application with necessary modifications (*mutatis mutandis*) in Articles 15(1) and 16) or Article 21 is applicable.

Article 33 [Public Policy (*Ordre Public*)]

Where a case shall be governed by a foreign law but application of those rules would be contrary to public policy (*ordre public*), those rules shall not apply.

Article 34 [Maintenance Obligations and Formalities of Wills]⁸

(1) The provisions of this Statute shall not apply to maintenance obligations arising from marriage, parentage, or any other family relationships, except as provided by the main clause of Article 30.

(2) The provisions of this Statute shall not apply to the formalities of wills, except as provided by the main clause of Article 28(2), Article 29(1), the main clause of Article 30, and Article 31

⁸ Choice of law rules for maintenance obligations and formalities of wills are provided by special statutes that incorporate the Convention on the Law Applicable to Maintenance Obligations of 1973 and the Convention on the Conflict of Laws relating to the Form of Testamentary Dispositions of 1961. See Fuyō gimu no junkyo hō ni kansuru hōritsu [Act concerning the law applicable to maintenance obligations], Law No. 84, 1986; Igon no hōshiki no junkyo hō ni kansuru hōritsu [Act concerning the law applicable to form of testamentary dispositions], Law No. 100, 1964.