

KÜRZERE ABHANDLUNGEN  
SHORT ARTICLES AND COMMENTS

**Basic Principles of Japanese Family Law**

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I. INTRODUCTION

After the end of World War II and the coming into effect of the new Japanese Constitution in 1946, the provisions of the fourth book on family law of the Japanese Civil Code (CivC)<sup>1</sup> were completely rewritten.<sup>2</sup> Besides the abolition of the “house system” (*ie seido*) and the enforcement of equal rights, the clear priority of individualism was declared the legislative goal.

Since then, there is no longer the concept of a head of family who enjoys a privileged legal position. The head of the family was the head of the “household” (*ie*), which was the basic unit of Japanese law and state until the end of World War II. Most civil and criminal matters were considered to involve families rather than individuals. The authority was concentrated in the head of the family. Other family members were protected by the head without having any formal rights against him. The relationship between the head and the family members corresponded to the relationship between ruler and subject –

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1 *Minpô*, Law No. 89/1896 and No. 9/1898, as amended by Law No. 78/2006; Engl. transl. available at <http://www.japaneselawtranslation.go.jp>.

2 *Minpô no ichibu o kaisei suru hôritsu*, Law No. 222/1947 (effective from 1 January 1948).

family relationships were strictly hierarchical. No family member could marry or have their own family without the consent of the head of the family, and the head decided where the family members should live. Women were considered inferior to males. Under the provisions of the CivC of that time, they had no legal capacity. The household was considered to consist of the parents, the son and his wife and their children, although even in 1920, 54% of Japanese households already consisted only of nuclear families.<sup>3</sup> After World War II, the house inheritance law was abolished. Nowadays, all members of the family and both sexes are treated equally. Yet some elements of the house system still linger on in Japanese civil law as it is today.<sup>4</sup>

The rules on Japanese family law are divided into the following chapters: General Provisions, Marriage, Parent and Child, Parental Authority and Guardianship. This paper focuses on the Japanese law of marriage, engagement, divorce, parent and child relationship and adoption. In parts, Japanese family law will be compared to German family law.

## II. MARRIAGE (*KON'IN*)

### 1. *General*

The principle of compulsory civil marriage is the basis for the regulation of marriage in Japan. To get married, a man has to be at least 18 and a woman must be at least 16 years of age (Art. 731 para. 1 CivC). Minors – i.e. persons under the age of twenty – require the consent of both parents (Art. 737 para. 2. CivC). If, however, the parents disagree, consent of one parent is sufficient (Art. 737 CivC). With marriage they are treated as adults by law (Art. 753 CivC).

As in Germany, bigamy or polygamy is prohibited (Art. 732 CivC). Differing from Section 1306 BGB,<sup>5</sup> this is applicable only to civil marriage because (same sex) civil partnerships are not recognized by statute or case law.<sup>6</sup> In practice, same sex partnerships are often “legalized” by way of (adult) adoption (*yôshi engumi*).

Corresponding to Section 1307 BGB, marriage between lineal relatives by blood or between collateral relatives by blood up to a third degree of kinship is prohibited (Art. 734 para. 1 CivC).

Article 733 para. 1 CivC, which prohibits women from remarrying within six months after divorce, is often criticized as being discriminatory against women. If the woman

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3 The proportion of nuclear families against all Japanese households over a period of 50 years is shown in ALLIANCE ONE INTERNATIONAL (AOI) - Annual Report (1974) 67.

4 See J. WESTHOFF, *Das Echo des ie* (München 1999).

5 Bürgerliches Gesetzbuch (BGB) = Civil Code of the Federal Republic of Germany.

6 Art. 24 of the Constitution of Japan (3 November 1946) provides that “marriage shall be based only on the mutual consent of both sexes (husband and wife).” See also Saga Family Court, 7 January 1999, in: *Katei Saiban Geppô* 51 (1999) 71.

was pregnant before the dissolution or recession of marriage, this provision does not apply from the date of birth of the child (para. 2). In a famous decision, the Supreme Court of Japan held that this rule does not violate the constitutional principle of equality as it is based on the intention of the legislator to prevent disputes regarding the paternity of the child.<sup>7</sup>

Registration of a marriage that is contrary to the provisions of Articles 731-736 CivC can be rejected by the local city or ward office that maintains the family registration book (*koseki*). If, however, the marriage is registered, it is not void but can be rescinded by each of the spouses, their relatives or by the public prosecutor at the family court (Art. 744 CivC). The public prosecutor may no longer rescind the marriage if one partner has died.<sup>8</sup> If one partner had not reached marriageable age at the time of marriage (Art. 731 CivC), that partner may no longer rescind the marriage for this reason after he or she has reached marriageable age (Art. 745 CivC).

## 2. *Name*<sup>9</sup>

Under the former provisions of the Civil Code the family name was the husband's name, but nowadays the birth name of either husband or wife can be chosen as the family name (Art. 750 CivC). However, the partners have to agree on one name; it is not possible for the spouses to each keep their own birth name. Previously, upon divorce the spouse who had changed his or her name upon marriage – usually the wife – had to assume his or her birth name again. However, after a reform in 1976 the name taken on at marriage can now be retained. Registration has to be filed within three months from the date of divorce (Art. 767 CivC). When the marriage is terminated by the death of a spouse, the remaining spouse may choose to carry the family name he or she used before marriage.

## 3. *Mutual support and cooperation*

Section 1353 para. 1 BGB, Article 752 CivC provides that the spouses have a duty to live together and to provide mutual support and cooperation to each other. This also includes that the spouses have to share the expenses of married life, taking into account their assets, income and other circumstances (Art. 760 CivC). While fulfillment of this obligation cannot be legally enforced,<sup>10</sup> a breach of the duty to mutual support and cooperation without a justifiable reason is a ground for divorce. Issues related to the duty of mutual support and cooperation can be settled by decision of the family court. The constitutionality of these procedures – as opposed to procedures before an ordinary

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7 Supreme Court, 5 December 1995, in: Hanrei Jihô 1563 (1996) 81.

8 Inserted by revision of Art. 744 CivC in 2005.

9 The issue of names has been under intense discussion for the last 20 years. Cf. polls carried out by the government: <http://www8.cao.go.jp/survey/h18/h18-kazoku/index.html>.

10 Imperial Court, 30 September 1930, Minshû 9, 929.

court – has been challenged in the Supreme Court. However, because the final determination of the rights and obligations referring from this provision are in the hands of the courts, the Supreme Court denied a violation of constitutional law (Artt. 82, 32 Japanese Constitution).<sup>11</sup>

#### 4. *Matrimonial property*

If the spouses intend to make an arrangement concerning the matrimonial property, they have to do this before the marriage (Art. 755 CivC). However, in practice marriage contracts are only rarely concluded. Such contractual agreements (pre-nuptial agreements) that deviate from the statutory matrimonial property regime can only be asserted against the successor in title of the husband or wife or a third party if registered prior to registration of marriage (Art. 756 CivC). A change of matrimonial property after marriage is entered into is not possible (Art. 758 CivC).

Article 760 CivC states that husband and wife have to share the expenses of married life, taking into account their assets, income and all other circumstances. A similar provision to Section 1357 BGB is contained in Article 761 CivC: If one spouse enters into a contract with a third party regarding everyday household matters – including the purchase of everyday goods, rent and contracts for medical treatment – the other party is jointly and severally liable for obligations arising from this contract. According to case law, the definition of such everyday household matters differs from one couple to another.<sup>12</sup> Nevertheless, in each case an objective standard referring to the nature and content of the contract has to be applied.

The statutory matrimonial property regime is separation of property. Property that a spouse owned before the marriage or acquired later in his or her own name is exclusively owned by this spouse (Art. 762 para. 1 CivC). If it is not possible to attribute property to one spouse, joint ownership of both spouses is presumed (Art. 762 para. 2 CivC).

Usually the husband – as the family's principal earner – will acquire more property than his wife during the marriage. Because of that, Article 762 para. 1 CivC was viewed by many as perpetuating the subordinate status of women in marriage. However, the Supreme Court rejected a complaint of unconstitutionality based on Article 24 of the Japanese constitution, taking the view that the division of property upon divorce was not intended to specifically protect the interests of women.<sup>13</sup> Incidentally, case law refers to mutual support as the basis of marriage. This problem was an important issue in the discussion concerning the reform of succession law in 1980. A balance of interests was reached by increasing the wife's share of inheritance from one-third to one-half.

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11 Supreme Court, 30 June 1965, Minshû 19, 1089.

12 Supreme Court, 18 December 1969, Minshû 23, 2476.

13 Supreme Court, 6 September 1961, Minshû 15, 2047.

### III. ENGAGEMENT AND DE FACTO MARRIAGE

#### 1. *Engagement*

The Civil Code does not contain any express regulations relating to engagement (*kon'yaku*). Nevertheless, case law has developed some principles. Thus, both partners have to agree “sincerely and honestly” on entering the state of matrimony.<sup>14</sup> An engagement with someone who is already married was held to be void for violation of public decency.<sup>15</sup> The exchange of gifts (engagement rings etc.) is not considered decisive for the conclusion of engagement or its effectiveness.<sup>16</sup> In the case of rescission of the engagement by one party without justified reason (*kon'yaku futô haki*), the other party can claim compensation for pain and suffering as well as financial losses.<sup>17</sup> In assessing whether a reason was justified, courts apply a less strict standard than in the case of divorce. For instance, it has been held not to be justified if the engagement is broken because of marriage with a person other than the fiancé/fiancée, or if the separation is related to discrimination because of race, origin or religion. If the engagement is dissolved because of illicit activities by a third party, this party is liable to pay damages.<sup>18</sup>

#### 2. *De facto marriage (nai'en)*<sup>19</sup>

Alternative ways of living together achieved late acceptance in Western countries. As a result, traditional marriage experienced a setback. However, in Japan there has not been a major change in the number of marriages, even though de facto marriage (*nai'en*) has always been treated very benevolently, both by case law and doctrine. This positive attitude towards de facto marriages dates back to the Japanese family and society structure of the Meiji era. At the end of the 19<sup>th</sup> century, the Civil Code introduced formal marriage by registration. The majority of Japanese people did not support this system, and many held on to traditional forms of marriage. In addition, under the house system (*ie seido*), men up to 30 and women up to 25 years of age required approval of their parents and the head of the family for marriage. Because of that, many people could not get married. Based on a concrete intent to marry (*kon'in yoyaku*), courts began to award damages if a de facto marriage was dissolved for unfair reasons.<sup>20</sup> Later on, Japanese case law extended the scope of protection whereby de facto marriage (*nai'en*) was

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14 Imperial Court, 20 February 1931, Hôritsu Shinbun 3240 (1931) 4.

15 Imperial Court, 28 May 1921, Minroku 26, 773.

16 Supreme Court, 5 September 1963, Minshû 17, 942.

17 Supreme Court, 11 April 1958, Minshû 12, 789; Supreme Court, 20 December 1963, Minshû 17, 1708.

18 Cf. Tokushima District Court, 21 June 1982, in: Hanrei Jihô 1065 (1982) 170.

19 Cf. F. TOKOTANI, Nichtehele Lebensgemeinschaften in Japan, in: ZJapanR / J.Japan.L. 10 (2000) 165 f. S. auch den Beitrag von T. HAYASHI / K. SAHIN in diesem Heft, Der Versorgungsausgleich in Japan, S. 191, 202 f.

20 Imperial Court, 26 January 1915, Minroku 21, 49.

treated almost equally to legal marriage in many respects.<sup>21</sup> Nowadays this doctrine is called quasi-marriage (*junkon riron*). Many provisions of the Civil Code concerning legal marriage are applied to quasi-marriage. However, Article 725 on kinship, Article 750 on the surname of the spouses, Article 753 on majority by marriage, and Article 772 on the presumption of paternity of a child born in wedlock still apply exclusively to legal marriage.

For a long time it was controversial in doctrine and case law whether and what claims arise from a *de facto* marriage (*nai'en*) in case one partner dies. This has now been clarified by a decision of the Supreme Court,<sup>22</sup> according to which the provision on the division of property upon divorce cannot be applied by analogy in this case. The Supreme Court argues that the application of such a provision would reflect the relationship of privity resulting from the quasi-marriage, but that such application would substantially change the structure of the inheritance law in a way neither prescribed nor intended by law:

Regarding the settlement of property upon dissolution of marriage of a legally married couple and the issue of alimony after dissolution of marriage, the Civil Code distinguishes dissolution by divorce and dissolution resulting from the death of either spouse, and provides for distribution of property in the former case and transfer of property by inheritance in the latter case. In light of such difference, [...] applying the provision, [...] would bring a strange factor into the system of transfer of property by inheritance.<sup>23</sup>

Therefore, the surviving partner could not claim the division of property against the inheritors.

#### IV. DIVORCE

As in many other countries, the Japanese divorce rate increased significantly after World War II – especially in the last 45 years, rising from 75,000 divorces in 1955 to 251,000 divorces in 2008.<sup>24</sup> During this period, the number of marriages remained stable at about 750,000 per year. However, since 2002 the divorce rate has been constantly decreasing, and is now below two per one thousand inhabitants – compared to 3.4 in the United States<sup>25</sup> and 2.3 in Germany.<sup>26</sup> The proportion of the age groups has been

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21 Imperial Court, 5 October 1932, Minshû 11, 2023.

22 Supreme Court, 10 March 2000, Minshû 54, 1040 [Available online at: <http://www.courts.go.jp/english/judgments/text/2000.03.10-1999.-Kyo-.No..18.html>].

23 Supreme Court, 10 March 2000, Minshû 54, 1040.

24 Japan Statistical Yearbook (2011)

[Available online at: <http://www.stat.go.jp/data/nenkan/zuhyou/y0222000.xls>].

25 National Vital Statistics Reports 58 (2010) no. 25 [Available online at: [http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58\\_25.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_25.pdf)].

reversed: in the past, about 80 per cent of divorcees were in their twenties or thirties; nowadays 40-year-olds are in the majority. Because of this, many children are affected by divorce; their number has more than tripled in the past 55 years.

### 1. *The dissolution of marriage*

The dissolution of marriage can generally be accomplished in four different ways:

First, the divorce can be based on mutual agreement out of court (*kyôgi rikon*, Art. 763 CivC). Divorce is effective with registration in the family register (*rikon todoke*).

Second, if the parties fail to reach an agreement, they can apply for conciliation at the family court (*chôtei rikon*). Even if the parties intend to proceed with the case in a formal procedure, they first have to undergo the conciliation procedure.

If consensual divorce and divorce by agreement in a conciliation fail, divorce can, third, be effected by a decision of the family court (*shinpan rikon*). In such case, the conciliation committee – consisting of one family court judge and two arbitrators – is entitled to grant divorce in the case of mediation failure after a careful weighing of interests. For instance, this happens when the marriage has irretrievably broken down but the parties fail to reach an agreement because of emotional reasons.

Finally, if the conciliation procedure fails, the parties may file a divorce suit with the local district court (*saiban rikon*). Article 770 para. 1 CivC stipulates five reasons for which a divorce suit may be filed: (1) if a spouse has committed an act of unchastity; (2) if he or she has been maliciously deserted by the other spouse; (3) if it is not clear whether a spouse is dead or alive for not less than three years; (4) if a spouse is suffering from severe mental illness without prospect of recovery; or (5) if there is any other grave cause making it impossible to continue the marriage. A divorce based on ground (5) includes cases such as a criminal conviction, alcoholism or severe incompatibility. In these cases the marriage has irretrievably broken down. Even in cases where any or all grounds mentioned in number (1) to (4) are given, the court may dismiss the suit for divorce if it deems the continuance of the marriage adequate in view of all the circumstances (Art. 770 para. 2 CivC). Japanese courts have developed a couple of basic principles to determine whether the marriage has irretrievably broken down. In the first instance, the court considers the principle of guilt.<sup>27</sup> In a second step, the unreasonableness standard follows the disruption principle.<sup>28</sup> The divorce is to be refused in cases where a spouse suffers from a mental disease and no specific efforts for the future treat-

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26 Federal Statistical Office Germany (2009)

[Available online at: <http://www.destatis.de/jetspeed/portal/cms>].

27 Cf. Supreme Court, 15 November 1973, Minshû 27, 1323; Supreme Court, 17 September 1964, Minshû 18, 1461.

28 Tokyo High Court, 21 June 1979, in: Tôkyô Kôtô Saiban-sho Minji Hanrei Jihô 30 (1979) 152; Supreme Court, 25 February 1958, in: Katei Saiban Geppô 10 (1958) 39; Supreme Court, 6 February 1952, Minshû 16, 306.

ment, well-being and conduct of life have been taken – otherwise the marriage shall be resolved on the base of Article 770 para. 1 no. 4 CivC.<sup>29</sup> As a corrective to an abusive divorce, courts originally developed the principle that the spouse who has caused the failure of the marriage may not file a divorce suit.<sup>30</sup> This principle was later relaxed for cases where partners had already been separated for a long time and no children under age provided hardship for the innocent party – particularly with regard to financial matters.<sup>31</sup>

In the overwhelming number of cases (about 90 per cent), the marriage is divorced by consent (*kyôgi rikon*), i.e. without court involvement. The rest of the cases are processed predominantly by conciliation in family court. In the case of a *shinpan rikon*, an objection (*igi moshitate*) can be filed against the decision of the conciliation committee. If successful, this results in the invalidity of the judgment and in the transfer to ordinary court proceedings. Only a very small percentage of divorce cases ultimately end up in ordinary court proceedings.

## 2. *Effects of divorce*

With regard to the consequences of divorce, the provisions on consensual divorce also apply to judicial divorce (Artt. 771, 776-769 CivC). Thus, custody for children under age has to be settled.<sup>32</sup> If no agreement is reached between the parties, the family court decides (Art. 766 para. 1, Art. 771 CivC).<sup>33</sup> After divorce either party may claim the distribution of property, including redistribution of matrimonial property, payment of alimony as well as damages for non-pecuniary loss (Art. 768 para. 1 CivC). In divorce cases, compensation for pain and suffering can be claimed in addition to the entitlement of division of the property.<sup>34</sup> A third party who is responsible for the failure of a marriage through his or her actions that constitute a ground for divorce may also be liable for the compensation of damages.<sup>35</sup> The distribution of property is not regulated down to the smallest detail as it is in Germany. Instead, the property is simply divided based on an overall ratio.

An important reform concerning the effects of divorce as regards pension rights and the recognition of contributions to pension insurance took place in 2008. According to

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29 Supreme Court, 15 July 1958, Minshû 12, 1823.

30 Supreme Court, 19 February 1952, Minshû 6, 110; Supreme Court, 15 October 1963, in: Katei Saiban Geppô 16 (1964) 31.

31 Supreme Court, 2 September 1987, Minshû 41, 1423.

32 See special regulation in Art. 769 CivC (Art. 897 CivC).

33 T.L.T BRYANT, *Mediation of divorce disputes in the Japanese Family Court system with emphasis on the Tokyo Family Court* (Ph.D. dissertation UCLA 1984).

34 Supreme Court, 23 July 1971, Minshû 11, 805; Supreme Court, 21 February 1956, Minshû 10, 124.

35 Cf. Supreme Court, 26 March 1996, Minshû 50, 993 (Liability of a third party having sexual relations with a married person that caused the divorce).

Articles 78-13 and 78-14 of the Pension Insurance Act,<sup>36</sup> 50 per cent of the premiums of the policyholder are automatically transferred to the divorced partner. The divorced wife also has a pro-rata entitlement to the retirement bonus (*taishoku-kin*), which is paid depending on the length of employment when an employee ends his career or leaves part-way.<sup>37</sup>

## V. PARENT-CHILD RELATIONSHIP

The legal relationship between parents and children (*oyako kankei*) is provided for in the third chapter of the fourth book of the Japanese Civil Code, which first deals with the relationship with natural children (Artt. 772 et seq. CivC) and then lays down the rules for adoption (Artt. 792 et seq. CivC). The main purposes of Japanese family law are to promote the best interests of children, to protect the interests of children in procedural law and to balance family privacy with state intervention. Although the previously existing legal discrimination between children born in and out of wedlock is largely eliminated in the current law, the question of the legitimacy of a child – as in other legal cultures – has always been a central theme of family law and society. For this reason, legitimacy and disputed paternity are provided in a very detailed manner and are treated in numerous judgments. According to Article 772 para. 2 CivC, it is presumed that a child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage has been conceived during marriage. However, this provision does not correspond to the period of six months during which remarriage is prohibited for women according to Article 733 para. 1 CivC. This discrepancy can only be explained by the different protection standards of the provisions.<sup>38</sup> Of course, it depends on the individual case whether the legally provided entitlement can be enforced with the factual requirements of the law. The assumption of Article 772 para. 2 CivC that a child who was born within 300 days after the divorce can be rebutted if no objective doubts remain that the husband cannot be the father of the child. An indication for such an impossible paternity of the husband can be that the parents were separated before the divorce for more than two years.<sup>39</sup>

An illegitimate child can be legitimized either by the father or the mother (Art. 779 CivC) – nevertheless, according to established case law, the acknowledgment of the mother is not required.<sup>40</sup> A legitimized child has the same rights as other children, except for inheritance. The share of the illegitimate child is half that of a legitimate child.

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36 *Kōsei nenkin hoken-hō*, Law No. 115/1954, as amended by Law No. 62/2010.

37 Cf. S. NISHITANI, *Vergleichende Einführung in das japanische Arbeitsrecht* (Köln 2003) 194 ff.

38 Cf. Supreme Court, 5 December 1997, in: *Hanrei Jihō* 1653 (1998) 81.

39 Supreme Court, 15 February 1966, *Minshū* 20, 202.

40 Supreme Court, 14 July 1994, *Minshū* 49, 2674.

The rescission of the parent-child relationship (paternity) that is already registered in the family register (*koseki*) as a biological child can constitute – on the basis of the circumstances and motives – a misuse of the law and be rejected.<sup>41</sup> The child or any other person who has a legitimate interest in establishing the paternity is eligible to rescind – except for the biological father (Artt. 785, 786 CivC).<sup>42</sup> In practice, it is a problem that the wife requires the consent of the divorced husband for the recognition of the legitimacy of their child. Many women do not want a reunion with their ex-husband just because of this legal requirement. In consequence, many children remained in the family register (*koseki*) without any conventional registration. Because of that situation, the Ministry of Justice introduced an administrative guidance (*gyōsei shidō*) in 2008: In cases in which the woman can plausibly explain the refusal of a reunion with her ex-husband (e.g. because of previous violence in their marriage), she herself may apply for the registration of her own child as a legitimate child in the family register.

## VI. ADOPTION

In many countries the adoption of minors is quite common, and often only this kind of adoption is provided for by law; however, in Japan adult adoption dates back to the former house system and is still the more common form of adoption. More than half of the approximately 80,000 adoptions per year are adoptions of adults. Often a male successor is adopted in the case of the “son-in-law adoption” (*muko yōshi*).

The Japanese legal system differentiates between adoption based on agreement (*futsū yōshi*, Artt. 792 to 817 CivC) and the so-called special adoption based on the decision of a public authority (*tokubetsu yōshi*, Artt. 817-2 to 817-11 CivC). The “common” adoption is effected by agreement between adopter and adoptee. In the case of adoption of a minor, permission of the family court is required. The difference between the two forms is that after common adoption the relationship with the biological relatives remains intact, but not in the case of special adoption. In the latter case, the family register does not reveal the identity of the biological parents.

Under Japanese law, an adoption by agreement is permitted if the adopter is an adult (Art. 792 CivC) – not a descendant (Art. 793 CivC) – of the adopted person and older than the adoptee. Article 797 CivC determines that children under 15 years of age can be adopted only if their parents or guardians formally agree. In addition to the parental consent for adoption, the consent of the family court is required (Art. 798 CivC). The court decides the matter from the viewpoint of whether the adoption is appropriate for the welfare of a child.<sup>43</sup> The consent of the family court is not necessary if a descendant of the adopter or his or her spouse is to be adopted (Art. 798 CivC).

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41 Supreme Court, 7 July 2006, in: Katei Saiban Geppō 59 (2007) 98.

42 Supreme Court, 29 May 1969, Minshū 23, 1064.

43 Cf. Niigata Family Court, 10 August 1982, in: Katei Saiban Geppō 35 (1983), 79.

With the adoption by agreement, the adoptee acquires the status of a legitimate child of the adopter (Art. 809 CivC). This does not change the kinship of the adopted – a link with the biological family remains. With the adoption, an entitlement of inheritance in the assets of the adopter arises. Article 810 para I CivC determines that the adopted child assumes the surname of the adoptive parent. This does not apply if the adoptee has changed his or her surname upon marriage, as long as he or she still carries this name.

The special adoption – introduced in 1987 – applies to children below six years of age whose parents have serious difficulties in bringing up the child. In these cases, the adoption is necessary for the welfare of the child. After a trial period of six months, the family court may approve the adoption.

#### SUMMARY

*The house system (ie) defined Japanese family law until the end of World War II. The head of the family was not only the decision maker but also the lowest level of the Japanese administration. In 1947 the new constitution came into effect and the law no longer privileged the head of the family.*

*Marriage (kon'in) is the first focus of the article on the basic principles of Japanese family law. The principle of compulsory civil marriage is the basis for the regulation of marriage. The Japanese Civil Code stipulates certain bars to marriage that are roughly comparable to German law. Furthermore, the issues of family name, the duty of mutual support and cooperation and matrimonial property are discussed. The statutory matrimonial property regime is the separation of property.*

*No explicit legal requirements are found in the Civil Code for the right of engagement (kon'yaku). Nevertheless, according to legal practice some important principles for engagement and its dissolution have been developed. The Civil Code also does not contain any express regulations relating to de facto marriage (nai'en). Many provisions on legal marriage can be applied analogously to de facto marriage. However, several differences still remain between both institutions.*

*The dissolution of marriage (rikon) can generally be accomplished in four different ways. In the majority of all cases, marriage is dissolved by an agreement based on mutual consent without any court intervention. The central provision on judicial divorce is Article 770 Civil Code, which enumerates five grounds for divorce.*

*The main purpose of the provision on parent-child relationship is to promote the best interests of the child. Legitimate and illegitimate children are treated almost equally, though some important differences still remain in the law of succession.*

*As far as adoption is concerned, the Japanese legal system makes a distinction between adoption based on agreement (futsu yoshi) and special adoption based on the decision of a public authority (tokubetsu yoshi). Of great practical relevance is the adoption of adults, which amounts to more than half of all adoption cases.*

## ZUSAMMENFASSUNG

*Das japanische Familienrecht war bis zum Ende des Zweiten Weltkriegs vom Haus-system (ie) geprägt. Der Hausherr bestimmte nicht nur über das Leben seiner Familie, sondern war zugleich die unterste Ebene der Verwaltung des japanischen Staates. Mit dem Inkrafttreten der neuen Verfassung im Jahr 1947 wurde der vom Gesetz privilegierte Hausherr abgeschafft.*

*Die vorliegende Abhandlung über die Grundprinzipien des Familienrechts in Japan wirft zunächst einen Blick auf die Eheschließung (kon'in), für die das Prinzip der obligatorischen Zivilehe gilt. Das japanische Zivilgesetzbuch sieht zudem diverse – mit dem deutschen Recht vergleichbare – Eheverbote vor. Es werden ferner der Familienname, eheliche Beistandspflichten und der Güterstand erläutert. Gesetzlicher Güterstand ist die Gütertrennung.*

*Für das Recht der Verlobung (kon'yaku) gibt es keine ausdrückliche gesetzliche Regelung. Die Rechtsprechung hat aber wichtige Prinzipien zum Eingehen und zur Auflösung der Verlobung entwickelt. Ebenfalls nicht im Zivilgesetzbuch geregelt ist die faktische Ehe (nai'en) eines formal unverheirateten Paares. Viele der für die Ehe normierten Regelungen sind auf die faktische Ehe anwendbar. Dennoch bestehen deutliche Unterschiede zwischen beiden Instituten.*

*Die Scheidung (rikon) kann auf vier verschiedenen Wegen erfolgen. Die große Mehrheit der Fälle wird außergerichtlich durch einvernehmliche Scheidung beigelegt. Die zentrale Vorschrift der gerichtlichen Scheidung ist Artikel 770, der fünf Scheidungsgründe normiert.*

*Im Bereich der Eltern-Kind-Beziehung stehen die Interessen des Kindes im Mittelpunkt. Eheliche und nichteheliche Kinder sind weitgehend gleichgestellt – nur im Erbrecht werden sie teilweise noch unterschiedlich behandelt.*

*Das japanische Recht kennt neben der traditionellen Adoption, die auf Vereinbarung der Parteien beruht (futsû yôshi), auch die Adoption durch Beschluss des Familiengerichts (tokubetsu yôshi). Große Bedeutung hat in Japan die Erwachsenenadoption, die etwa die Hälfte aller Fälle ausmacht.*