

Same-Sex Marriage (summary)

Takami HAYASHI

Associate Professor of Law, Doshisha University

The legal recognition of same-sex partners living together as a couple has gradually emerged in the law of several European countries and the United States of America. This initially occurred through the process of recognizing, for several specific legal purposes, *de facto* cohabitation. Recently, a further step towards full legal recognition has occurred from allowing civil marriage between homosexuals and introducing a form of registered partnership. The latter can be distinguished into two types. The first is the *quasi-marriage* that results in almost all of the rights and obligations of traditional marriage. The second is the *semi-marriage* that limits the attributes to selected rights and obligations of marriage.

The purpose of this article is to examine how these new institutions for legally recognizing same-sex partners should be considered under Japanese Private International Law. In examining this issue, this article surveys and compares recent legislation from several countries. The author's main conclusions are as follows.

First, the conflicts issues concerning same-sex marriage are resolved according to the conflict of rules for marriage under the Horei. Japanese substantive law does not make available the institution of marriage to same-sex couples. However, the concept of marriage in PIL is not necessarily in accord with that of Japanese substantive law. In addition, registered partnerships cannot be classified as marriages under the Horei either. The purpose of the recent legislative acts in several countries which introduced the institution of registered partnership has been to create a legal framework to make it possible for same-sex couples to enter into a legally recognized partnership instead of a marriage, which is not available to them. Therefore, we must consider that these two institutions by their very nature are completely different from each other.

Second, Article 23 of the Horei applies to matters concerning registered partnerships. Presently, outside of Japan, legislative acts providing for registered partnerships has been enacted in just a few jurisdictions in comparison to mar-

riage. Furthermore, the contents of each legislation are varied from jurisdiction to jurisdiction. In order to meet the parties' expectations, the same law should govern all matters in respect to the formation and dissolution of a partnership and its effects.

Third, Article 33 of the Horei, which provides for the public policy, basically does not apply to registered partnerships between same-sex partners. In addition, recognizing relations between same-sex partners would not likely be considered a violation of the public policy in Japan. Similarly, Article 33 cannot apply to same-sex marriage either, insofar as the case in question does not have a close connection to Japan.

Finally, the time is not ripe enough to establish a new provision concerning registered partnerships under the Horei.