requirements of both parties should be cumulatively applied.

2. The second issue is formal requirements for a marriage. Article 24, Paragraph 2 provides that “(t)he formalities of marriage shall be governed by the law of the place of the ceremony, and Paragraph 3 thereof provides that “(n)otwithstanding the preceding paragraph, formalities that satisfy the requirements of either of the spouses’ national law shall be effective, unless the marriage is celebrated in Japan by the parties, at least one of whom is a Japanese national.” Under Japanese law, the formal requirement is marriage registration. Since all Japanese nationals are registered with their family relations, the proviso of Article 24, Paragraph 3 represents a concern of such Japanese system which would like to keep the record of registration correct. In general, formal requirements are not treated as serious matter in private international law. This is the reason why selective application of laws which have certain relations to the issue is adopted such as in Article 10. However, the formal requirement of marriage registration should be treated seriously and there is a discrepancy between private international law and substantive law of Japan. The above proviso should be considered as a tip of the iceberg which might require reconsideration of the above-mentioned general treatment under private international law.

3. The third issue is surname. According to the practice of Japanese family registration system, Article 750 of Civil Code, which provides that a husband and a wife shall adopt the surname of the husband or wife in accordance with that which is decided at the time of marriage, cannot be applied to international marriage. Thus, the Japanese spouse’s surname is not be altered when he or she marries to a foreigner. This practice is explained that Article 750 is considered to be a non-private rule. Article 107, Paragraph 2 of Family Registration Act, which allows a Japanese who marries to a foreigner change his or her name within six months after their marriage, shows that the surname is never changed by a marriage with a foreigner.

International Child Custody
—including Hague Child Abduction Convention

Masayuki TANAMURA

International child custody disputes in Japan are growing intractable problems, the effects of which are devastating for the children, the parents and families. Courts and lawyers are confronted with many difficult international custody cases because they involved in the complicated problems of international jurisdiction, international private law, international family mediation, international child abduction, relocation and visitation. This article will examine the growing problem of international child custody cases, including international jurisdiction, conflict of laws rules, public policy in international private law, the role of Hague Child Abduction Convention in Japan. Particularly, we will consider the impact of developments of international child custody law and judgments over the internal child custody cases and law practices.

Japan is the only G8 nation that has not signed the Hague Child Abduction
Convention. But under the strong demand on accession to the Convention of the Convention’s member states, Japanese government are preparing for ratification of the Convention as soon as possible. In conclusion, recent developments of academic discussions and judicial decisions on international child custody cases and the accession to the Hague Convention have very much influenced upon the reform of domestic child custody cases practices and legal system of present parental rights law, including reconsideration on joint custody after divorce, the standard of sole custody and parental rights upon divorce, the concept of parental rights and duties, guiding principles on child abduction disputes, enforcements of decisions ordering child return, access and contact of the child, relocation, child custody mediation directly or indirectly. Japan should try to establish a Central Contact Point for international family mediation which provide information about family mediation services and promote cooperation between various experts by promoting networking, training programmes and the exchange of best practices.

Legal Parentage of Child Born Abroad through Surrogacy

Shinichiro HAYAKAWA

This report deals with the problem of legal parentage of children born by means of medically assisted proliferation (MAR), especially surrogacy, conducted abroad. Japan has not yet enacted any laws to regulate the operations of MAR. It is only by several guidelines issued by the Japan Society of Obstetrics and Gynecology (JSOG) that the operations of MAR are regulated. Although Japan has no laws, either, to specifically regulate the parentage of children born by MAR, there have been several court cases where issues of such parentage were at stake.

The guidelines of JSOG prohibit all types of surrogacy. Thus Japanese couples who seek to have a baby by surrogacy travel abroad to a country where surrogacy is permitted and have a surrogate mother give birth to their child. The couple brings the baby back to Japan and registers with the municipal office the birth of their own child. The municipal office usually does not check whether the intended mother really delivered the baby or not. However, if the municipal office somehow happens to learn that the child was not delivered by her, it refuses the registration. In a case where a couple brought a lawsuit against the municipal office that had refused the registration on such ground, the Supreme Court, in its Decision on March 19, 2007, affirmed the refusal of the registration: the Supreme Court decided that foreign judgment declaring the parentage of intended mother is against public policy in Japan and could not be recognized. Some concurring opinions suggested that the child should, and could, be adopted by the intended parents.

After giving an overview of how the parentage of child born abroad by surrogacy is treated in several countries (France, United Kingdom etc.), this report concludes as follows. Without having clear and comprehensive legislation to regulate domestic MAR operations, it would be difficult to discuss thoroughly the parentage issues.