

Abstracts

Masayuki Murayama

Is There the Japanese Way of Dispute Resolution? - Disputing Process in Traffic Accident and Divorce Cases

In discussions on dispute resolution in Japan, Kawashima's argument of the Japanese 'legal' consciousness has been often cited: The low litigation rate in Japan is best explained by the traditional normative consciousness that emphasizes 'harmony' among people. We consider whether this argument can be sustained by findings from Disputing Behaviour Survey, conducted in 2005. If people cherished the norm of harmony, they would be reluctant to make a claim and also reluctant to reject a claim, and such tendencies must be stronger in Japan than in the U.S. However, in cases of accidents (traffic accidents usually), the Japanese do make claims and face disputes as often as Americans. Moreover, in cases of divorce, most people not only make claims and face disputes, but also engage lawyers and court procedures . both in Japan and in the U.S. The Japanese way of dispute resolution that Kawashima once emphasized is not proved to exist.

Tomohiko Maeda

Claiming Damages in Automobile accidents in Japan

Based on qualitative interviews with parties involved in automobile accidents, I discuss three issues. (1) Mandatory insurance system and widespread optional insurance cause an accident victim to pursue the matter with someone on the other side, usually the insurance companies. On the other hand, victims' common belief in insurance companies' impartiality and/or lack of knowledge help the companies to contain disputes over the amount of payment. (2) Lack of apologies by the offender does not deadlock negotiations for compensation, but it does complicate them. (3) Parties involved usually call the police after an automobile accident in Japan, to get certificate of the accident necessary for payment from their insurance companies.

Teiko Tamaki

“Legal Needs” of the Parties in Divorce Cases in Japan

The paper presents how parties to divorce deal with their problems in Japan. It is based on the results of the Disputing Behaviour Survey (2005) and qualitative interviews conducted as a part of its follow-up research in 2006-2008. The findings indicate that there is a

mismatch between theory and reality of the “legal needs” of divorcing parties, particularly in terms of accessibility and use of legal avenues for problem solving. The reasons for not using legal services may vary: because of the nature of problem (“family matters”) there may be more risk of invasion of privacy; disputants may feel awkward; they may know little about how to access legal assistance.

Marijke ter Voert

Divorce in the Netherlands

Divorce rates and the way divorce disputes are resolved differ over time and between countries. To understand the differences, we need information about the legal and social context. This article describes the legal and social context of divorces in the Netherlands. It gives details about legislation, attitudes towards marriage and divorce, the number of minor children involved, financial consequences, the number of legal divorce proceedings and length of proceedings, the number of legal proceedings about ancillary provisions and the use of mediation. What is striking is the growing number of non-litigious divorce proceedings in the Netherlands. There is a tendency for the parties to reach agreement about the consequences of the divorce before going to court.

Mavis Maclean

Legal needs of disputants in divorce cases in the UK

In England and Wales obtaining the decree of divorce is a simple process. But the need for legal advice arises in connection with making financial arrangements where the court has discretion, and making arrangements for the children that takes place under the Children Act 1989 which gives paramount consideration to the welfare of the children in any case. Concerning property, most couples have a house bought on a loan and pension rights to allocate. Concerning children, 90% of parents make their own arrangements, but the small group who contact lawyers experience severe conflict.

Małgorzata Fuszara

Divorce in Poland

The divorce rate in Poland is relatively low, and it is affected by a number of somewhat contradictory factors. On the one hand, many Poles are members of the Roman Catholic church. On the other hand, for decades now the law has allowed for relatively easy divorce, and the general public approves of such legislation. The paper presents the divorce rates as

well as the legal regulations on divorce and on separation, which has been an option since 1999. It discusses recent procedural changes, such as the abolition of mandatory reconciliation meetings in favour of voluntary mediation, and their outcomes. The paper is based on the author's own research as well as other research projects, pertaining in particular to the effects of divorce on childcare. One of the key findings is the differentiation between the female and male perspectives on divorce, as well as urban and rural divorce in Poland.

Jacek Kurczewski

Traffic Disputes in Poland

The paper relates the public opinion self-report survey on the incidence of the traffic collisions in Poland and ways out of the problem then encountered. The experience of such conflict is recalled within 5 years by about every tenth adult interviewed. The frequency of the traffic collision experience is not sociologically blind. It decreases with age and religiosity (most likely, however, due to that elder are more religious and drive less) and increases with education. The likelihood of collision experience is independent of gender, living standard, economic level (irregular pattern) and place of residence. There is large difference between the number of collisions experiences by the people, the number of collisions registered by the police and the number of cases brought before the court. The filtering process is related to the mechanisms of the insurance compensation schemes that almost automatically activates people involved in the incident. On the other hand, the car accidents are a good way to do legally-doubtful business. Apart from insurance companies and law firms there are other subjects interested in this kind of market and some of these like 'compensative offices' are mentioned in the paper. Thus, despite the apparent automaticity of the compensation procedure the shadow business develops in this area as well