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COMPARATIVE REVIEW OF PRIVATE INTERNATIONAL LAW IN JAPAN

The year 2019 marks the 100th anniversary of the establishment of diplomatic relations between Poland and Japan,[1] and with great pleasure this memorable year also became the initial year of the conclusion of the agreement on academic cooperation between the Faculty of Law and Administration at the University of Gdańsk and the Faculty of Law, Graduate School of Law and School of Law at Kyushu University. In June 2019, an academic event "About Japanese Law" ("O prawie japońskim") was organized at the University of Gdańsk as the opportunity for lectures and staff seminar for discussing some aspects of Japanese law. This article summarizes my lecture there introducing some features of Japanese private international law with a brief comparison with Polish private international law.[2]

Private international law generally includes rules on international jurisdiction, choice-of-law rules, and rules on recognition and enforcement of foreign judgement. Among these, this article specifically focuses on choice-of-law rules. In the next section, as general information, the legislative history and its basic feature of Japanese and Polish private international law are contrastively explained (2. General Comparison). Then, in the latter section, specific choice-of-law provisions in Japan and Poland will be reviewed to show some comparative features (3. Some Comparative Reviews on Specific Rules).

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[1] See, for example, the website of the Ministry of Foreign Affairs of Japan, "Japan-Poland Relations," https://www.mofa.go.jp/region/europe/poland/data.html (accessed: 31.12.2019).

[2] This article is based on my lecture "Comparative Review of Private International Law in Japan," presented at the academic event "*O prawie japońskim*" held at the University of Gdańsk on 5 June 2019. I would like to express my sincere gratitude to Prof. Kamil Zeidler who kindly organized this event and to all participants for their suggestive comments during the lecture and staff seminar.

General comparison

1. Historical background

This section starts with a brief introduction to the legislative history of private international law in Japan with a comparative perspective.[3] It is said that private international law has been unknown in Japanese society until the end of the Tokugawa feudal era.[4] During the Tokugawa feudal era, private legal relationships with international elements were hardly formed due to not only the geographical condition of the island country, but also the national isolation policy (1639–1854).

The Tokugawa shogunate ended in 1867,[5] which resulted in beginning of the internationalization of Japanese society, or so-called "opening-up of Japan (*Kaikoku*)." Also, in the latter term of the Edo shogunate, with the Japan-US Treaty of Peace and Amity in 1854 for a start, Japan began to conclude treaties of international trade with other counties. However, with respect to the extraterritoriality and the tariff autonomy, the treaties concluded during that period are seen as unequal treaties.

Thus, it became a significant challenge of Meiji government to revise these treaties searching for fair trade agreements between Japan and Western countries. For such a challenge, the modernization of Japanese legal system was inevitable. For example, on 16 July 1894, Japan concluded a treaty with Britain to abolish the extraterritoriality on condition that Japanese law should be reformed in line with European systems. The codification of private international law was one of the essential part of law reform in this period.[6]

Binzo Kumano (1855–1899) as an official of the Ministry of Justice played a role in drafting the first code of private international law in Japan. Also, Gustave Émile Boissonade de Fontarabie (1825–1910) stayed in Japan from 1873 to 1895 as an adviser to the Ministry of Justice, presumably his guidance has been effective in the first codification process. The bill of the first code of private international law in Japan was passed as the Act No. 97 of 1890, and titled *Horei*, named after a Chinese term. However, in 1892,

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[3] For the legislative history of Japanese private international law, see, for example, J. Yokoyama, *Private International Law in Japan*, Kluwer Law International 2017, pp. 15 et seq.; Y. Sakurada, *The Origin and Evolution of Private International Law in Japan*, "Japanese Yearbook of International Law" 2013, vol. 56, pp. 164 et seq.; M. Dogauchi, *Historical Development of Japanese Private International Law* [in:] *Japanese and European Private International Law in Comparative Perspective*, eds. J. Basedow, H. Baum, Y. Nishitani, Mohr Siebrek, Tübingen 2008, pp. 27 et seq.

[4] Y. Sakurada, *The Origin and Evolution*…, *supra* note 3, p. 164.

[5] In 1867, Yoshinobu Tokugawa (the 15th shogun of Tokugawa) has returned political power to the Emperor. This historical event is called "*Taisei Hokan*" and known as a landmark showing the end of Tokugawa shogunate.

[6] For the law reform in this period, it was also essential to codify the Civil Code and the Code of Civil Procedure.

it is decided to postpone the implementation of *Horei*, together with that of the Civil Code and the Commercial Code, by the Act No. 8 of 1892, until the end of 1896. At that time, the government intended to draft a new Civil Code and new statutes of private international law, which resulted in the fact that the first *Horei* was never put into force.

In 1896, the Cabinet established the Legal Research Council [*Hoten-chosa-kai*], of which the chairperson was Hirofumi Ito (1841–1909), the prime minister at that time. Nobushige Hozumi (1855–1926) and Saburo Yamada (1869–1965) conducted a comparative law survey, before proceeding to the drafting of the second *Horei*.

The bill of the second *Horei* and the bill of the Civil Code were submitted to the parliament in December 1897. Finally, the second *Horei*, as the Act No. 10 of 1898, was passed into law on 21 June 1898, and came into force on 16 July 1898.

The second *Horei* experienced a significant amendment in 1989 (Act No. 27 of 1989).[7] Before the amendment, for matters relating to marriage or the parent-child relationship, there were connecting factors such as the "husband's" or "father's" nationality. However, the Act No. 27 of 1989 abolished these connecting factors by paying more attention to the importance of gender equality.

In the 21st century, with a comparative study on recent legislative efforts in private laws, the government decided to renew its code of private international law. In 2006, the Act on General Rules for Application of Laws (hereinafter "2006 Japanese PIL Act") was enacted.[8] This act entered into force on 1 January 2007, replacing the old PIL statute of 1898.[9]

In Poland, private international law has been developed from a different background. The legislative history on private international law in Poland dates back to the mid-1920s. Similar to Japan, Poland has codified its private international law as

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[7] For the English translation of the *Horei* of 1898 made by Masato Dogauchi, Yoshiaki Nomura, Jun Yokoyama, see: J. Torii, *Revision of Private International Law in Japan*, "The Japanese Annual of International Law" 1990, no. 33, pp. 67 et seq.; The Study Group of the New Legislation of Private International Law, *Draft Articles on the Law Applicable to Contractual and Non-Contractual Obligation (1)*, "The Japanese Annual of International Law" 1996, no. 39, pp. 186 et seq.; K. Anderson, Y. Okuda, *Horei, Act on the Application of Laws: Law No. 10 of 1898*, "Asian-Pacific Law and Policy Journal" 2002, vol. 3, no. 1, pp. 230 et seq.

[8] For the English translation of the 2006 Japanese PIL Act, see: Kent Anderson, Yasuhiro Okuda, *Translation of Japan's Private International Law: Act on the General Rules of Application of Laws* [*Ho no Tekiyo ni Kansuru Tsusokuho*]: *Law No. 10 of 1898 (as newly titled and amended 21 June 2006)*," "Asian-Pacific Law and Policy Journal" 2006, vol. 8, no. 1, pp. 138 et seq. Also, for the overview of this Act of 2006, see, for example, N. Iguchi, N. Kamimura, *Japan* [in:] *Asian Conflict of Laws: East and South East Asia*, ed. A.C. Leyda, Kluwer Law International 2015, pp. 67 et seq.; *Appendix: Act on General Rules for Application of Laws*, "The Japanese Annual of International Law" 2007, no. 50, pp. 87 et seq.

[9] H. Wanami, *Background and Outline of the Modernization of Japanese Private International Law* [in:] *Japanese and European Private International Law in Comparative Perspective*, eds. J. Basedow, H. Baum, Y. Nishitani, Mohr Siebrek, Tübingen 2008, pp. 61 et seq.

an independent set of code. The first PIL statute in Poland was enacted on 2 August 1926.[10] Afterwards, under the initiative of Professor Kazimierz Przybyłowski, the effort to further develop principles of private international law in Poland resulted in the Act of 12 November 1965 on Private International Law, which was enacted in replacement of the previous statute of 1926.[11]

In the 21st century, Poland joined the European Union in 2004, and its national laws, including private international law, were also affected by this historical event. Firstly, as Poland became a member state of the EU, its national laws are applied to matters which are not regulated by EU legislation.[12] Secondly, some principles in its national legislations needed to be adjusted in line with the harmonized legislative effort in the EU, and private international law was no exception.[13] As a result, Act of 4 February 2011 on Private International Law (hereinafter "2011 Polish PIL Act") was enacted.[14]

For the purpose of highlighting a few features of Japanese law, the following sections will compare some aspects of Polish and Japanese choice-of-law rules.

2. General comparison between Polish and Japanese private international law

If we overview the Polish and Japanese statute on private international law, in either country, most of the choice-of-law rules are designed to be bilateral. In other words, foreign laws are applicable on equal terms with the forum law.

Speaking of this similarity in their bilateral structure of choice-of-law code in principle, Poland and Japan also show similar exceptions on this point, as shown in table 1. For example, if the issue of incapacitation is decided in the Polish court, "Polish law shall apply" (Article 13 of the 2011 Polish PIL Act). Similarly, if the Japanese court makes a ruling for commencement of guardianship, curatorship or assistance, such ruling shall be made "under Japanese law" (Article 6 of the 2006 Japanese PIL Act).

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[10] M. Pazdan, *Das neue polnische Gesetz über das international Privatrecht*, "Privat- und Verfahrensrechts [IPRax]" 2012, Heft 1, p. 77.

[11] *Ibidem*, p. 77. In Japan, the Polish Act of 1965 is introduced by H. Matsuoka, *New Polish Private International Law* [*Shin Poland kokusai-shiho*], "Osaka Law Review" [*Handai Hogaku*], 1967, vol. 61, pp. 39 et seq.; T. Kawakami, *New Private International Law in Poland* [*Poland shin kokusai-shiho*], "Journal of the Japanese Institute of International Business Law" [*Kaigai Shoji Homu*] 1966, vol. 54, pp. 24 et seq. See also: Y. Tameike, *Draft Act of 1961 on Private International Law in Poland* [*1961-nen Poland kokusai-shiho soan*], "Kyoto Law Review" [*Hogaku Ronso*] 1963, pp. 73 et seq.

[12] A. Frąckowiak-Adamska, A. Guzewicz, Ł. Petelski, *Poland* [in:] *Cross-Border Litigation in Europe*, eds. P. Beaumont, M. Danov, K. Trimmings, B. Yüksel, Hart Publishing 2017, p. 221.

[13] A. Mączyński, *Polish Private International Law* "Yearbook of Private International Law" 2004, vol. 6, pp. 203 et seq.

[14] Journal of Laws 2011, No. 80, item 432. English translation is available at: http://pil.mateuszpilich.edh.pl/New_Polish_PIL.pdf (accessed: 31.12.2019). In Japan, the 2011 Polish PIL Act is introduced by T. Kasahara, *The Revision of Polish Private International Law* [*Poland Kokusaishiho No Kaisei Ni Tsuite*], "Toyo Law Review" [*Toyo Hogaku*] 2012, 56(1), pp. 203 et seq.

In the issue on declaration of death, a similar comparison can be made between Article 14 of the 2011 Polish PIL Act and Article 6 of the 2006 Japanese PIL Act.

Table 1. Incapacitation etc. and Adjudication of Disappearance under Japanese and Polish PIL Act

2006 Japanese PIL Act	Article 5 The court may make a ruling for commencement of guardianship, curatorship or assistance (hereinafter collectively referred to as a "Ruling for Commencement of Guardianship, etc.") under Japanese law where a person who is to become an adult ward, person under curatorship or person under assistance has domicile or residence in Japan or has Japanese nationality.
2011 Polish PIL Act	Article 13 1. Incapacitation is governed by the law of nationality of the person concerned. 2. If the Polish court decides on the incapacitation of a foreigner, Polish law shall apply.
2006 Japanese PIL Act	Article 6 (1) The court may make an adjudication of his/her disappearance under Japanese law where an absentee had domicile in Japan or had Japanese nationality, at the latest point of time when he/she was found to be alive. (2) Even in the case where the preceding paragraph does not apply, if an absentee's property is situated in Japan, or if an absentee's legal relationship should be governed by Japanese law or is connected with Japan in the light of the nature of the legal relationship, the domicile or nationality of the party and any other circumstances concerned, the court may, by applying Japanese law, make an adjudication of the absentee's disappearance only with regard to said property or said legal relationship, respectively.
2011 Polish PIL Act	Article 14 1. Declaration of death of a person lost shall be subject to his or her national law. The same rules shall apply to the determination of the death or of the time of one's death. 2. Where Polish court decides on the declaration of death, or on the determination of the death (of the time of death) of a foreigner, then Polish law shall apply.

In addition to the common basis of bilateral structure of choice-of-law rules, both the 2011 Polish PIL Act and the 2006 Japanese PIL Act follow the principle to apply "the most closely connected law." For the adoption of this principle, it goes without saying that the contribution by Friedrich Carl von Savigny (1779–1861) has been so influential. Savigny focused on "legal relationships" and sought to identify the state in which each relationship had its "seat." Legal questions in the field of private law are divided into categories of legal relationships, and in each category, its seat is identified through "connecting factor." This approach established by Savigny is still considered as the traditional basic approach to design choice-of-law rules not only in Europe, but also in the rest of the world.[15]

[15] See, for example, S.C. Symeonides, *Choice of Law*, Oxford University Press, Oxford 2016, pp. 50, 51.

In both jurisdictions this principle functions as a way to implement specific choice-of-laws being a general fall-back rule. For example, in Poland this role can be observed in Article 8 (2), Article 9 (2), Article 10 (1), and Article 51 (2) in the 2011 Polish PIL Act. In Japan, the similar role of this principle can be observed, for example, in Article 8, Article 25, Article 38, and Article 40. Besides, the principle to apply the most closely connected law also works to provide exceptional choice-of-law rules.[16]

Some comparative reviews on specific rules

1. Nationality

As a general tendency, while most common law countries adopt "domicile" as the traditional personal connecting factor, most civil law countries traditionally adopt "nationality" as the basic connecting factor in relation to legal capacity and family law issues.[17] Poland and Japan commonly show the legislative attitude to take "nationality" as the fundamental connecting factor in issues of legal capacity and family law, as listed in table 2.

Table 2. "Nationality" as a connecting factor in issues of legal capacity and family law under Japanese and Polish PIL Act

2006 Japanese PIL Act	Article 4. (1) The legal capacity of a person to act shall be governed by his/her national law. (2) Notwithstanding the preceding paragraph, when a person who has performed a juridical act is subject to the limitation of his/her capacity to act under his/her national law but has full capacity to act under the law of the place where the act is done (lex loci actus), that person shall be deemed to have full capacity to act, only in cases where all the parties were present in a place governed by the same law at the time of the juridical act. (3) The preceding paragraph shall not apply to a juridical act to be governed by the provisions of family law or inheritance law, or a juridical act relating to real property situated in a place governed by a different law from the law of the place where the act was done.

[16] In the 2011 Polish PIL Act, see, for example, Article 32 and Article 43. In the 2006 Japanese PIL Act, see, for example, Article 12.

[17] See, for example, J. Hill, *Domicile, nationality and habitual residence* [in:] *Clarkson and Hill's Conflict of Laws*, eds. J. Hill, M. Ní Shúilleabháin, 5th edition, Oxford University Press, Oxford 2016, pp. 315 et seq.

2011 Polish PIL Act	Article 11. 1. Legal capacity of the natural person and his or her capacity to effect juridical acts (legal transactions) shall be subject to the law of his or her nationality. 2. […] 3. […]
2006 Japanese PIL Act	–
2011 Polish PIL Act	Article 15. 1. The name of the natural person is subject to his/her law of nationality. 2. The acquisition or change of the name or surname shall be governed by the law applicable to the assessment of events which led to the acquisition or change of name or surname. The choice, however, of the names at the conclusion or termination of marriage shall be governed by country of nationality of each of the spouses. Article 16. 1. The rights of personality of a natural person shall be governed by the law of his/her nationality. 2. […] 3. […]
2006 Japanese PIL Act	Article 24. (1) The formation of a marriage shall be governed by the national law of each party. (2) The formalities for a marriage shall be governed by the law of the place where the marriage is celebrated (lex loci celebrationis). (3) Notwithstanding the preceding paragraph, the formalities that comply with the national law of either party to a marriage shall be valid; provided, however, that this shall not apply where a marriage is celebrated in Japan and either party to the marriage is a Japanese national.
2011 Polish PIL Act	Article 48. The ability to conclude marriage shall be determined for each of the parties by the law of his or her nationality at the time of concluding the marriage. Article 49. 1. The form or the marriage is subject to the law of the country in which it is celebrated. 2. Where the marriage is celebrated outside the territory of the Republic of Poland, it shall be sufficient to comply with the form required by laws of the nationality, of the permanent or habitual residence of both spouses.
2006 Japanese PIL Act	Article 25. The effect of a marriage shall be governed by the national law of the husband and wife if their national law is the same, or where that is not the case, by the law of the habitual residence of the husband and wife if their law of the habitual residence is the same, or where neither of these is the case, by the law of the place most closely connected with the husband and wife.

2011 Polish PIL Act	Article 51. 1. Personal and property relationships between spouses shall be subject to the law of their current common nationality. 2. In the absence of the common nationality, the law of the country in which both spouses have their place of permanent residence – or, in the absence of the latter, of their common habitual residence – shall apply. Where the spouses are not habitually resident in the same country, the law of the country with which both are otherwise most strictly connected shall apply.
2006 Japanese PIL Act	Article 27. Article 25 shall apply mutatis mutandis to divorce; provided, however, that if either husband or wife is a Japanese national who has habitual residence in Japan, their divorce shall be governed by Japanese law.
2011 Polish PIL Act	Article 54. 1. Dissolution of marriage shall be governed by the common law of the nationality of spouses at the time of the dissolution request. 2. In the absence of the common nationality, the law of the country in which both spouses at the time of requesting the dissolution of the marriage have their place of permanent residence – or, in the absence of the latter at that moment, of their last common habitual residence, provided that at least one of them is still habitually resident in that latter country – shall apply. 3. Where the requirements of paragraphs (1) and (2) are not met, the dissolution of marriage shall be governed by Polish law. 4. Provisions of paragraphs (1) to (3) apply mutatis mutandis to the legal separation of spouses.
2006 Japanese PIL Act	Article 28. (1) If a child shall be treated as a child born in wedlock under the national law of either the husband or wife at the time of the child's birth, the child shall be deemed to be a child born in wedlock. (2) If a husband has died before his child's birth, the husband's national law at the time of his death shall be deemed to be the husband's national law set forth in the preceding paragraph. Article 29. (1) In case of a child born out of wedlock, the formation of a parent-child relationship with regard to the father and the child shall be governed by the father's national law at the time of the child's birth, and with regard to the mother and the child by the mother's national law at said time. In this case, when establishing a parent-child relationship by acknowledgment of parentage of a child, if obtaining the acceptance or consent from the child or a third party is required for acknowledgement under the child's national law at the time of the acknowledgement, such requirement shall also be satisfied. (2) Acknowledgement of parentage of a child shall be governed by the law designated in the first sentence of the preceding paragraph, or by the national law of the acknowledging person or of the child at the time of the acknowledgement. In this case, if the acknowledging person's national law is to govern, the second sentence of the preceding paragraph shall apply mutatis mutandis.

	(3) If a father has died before his child's birth, the father's national law at the time of his death shall be deemed to be the father's national law set forth in paragraph (1). If the person referred to in the preceding paragraph has died before the acknowledgment, the person's national law at the time of his/her death shall be deemed to be the person's national law set forth in said paragraph. Article 30. (1) A child shall acquire the status of a child born in wedlock if the child is legitimated under the national law of the father or the mother or of the child at the time when the facts constituting the requirements for legitimation are completed. (2) If a person referred to in the preceding paragraph has died before the facts constituting the requirements for legitimation are completed, the person's national law at the time of his/her death shall be deemed to be the person's national law set forth in said paragraph.
2011 Polish PIL Act	Article 55. 1. Determination and negation of the child's origin shall be subject to the law of nationality of the child at the moment of his birth. 2. If the law of the nationality of the child at the moment of his birth does not provide for the affiliation of the child to a putative father, it shall be governed by the law of the nationality of the child at the moment of the affiliation. 3. The recognition of the child shall be subject to the law of the nationality of the child at the time of the recognition. Should this law not provide for the recognition of the child, the law of the nationality of the child at the moment of his birth shall apply, where the latter provides for the recognition. 4. Recognition of child conceived but unborn shall be subject to the law of the country of his mother's nationality at the time of recognition.
2006 Japanese PIL Act	Article 31. (1) Adoption shall be governed by the national law of an adoptive parent at the time of the adoption. In this case, if obtaining the acceptance or consent from the person to be adopted or a third party, or obtaining permission or any other decision from a public authority is required for adoption under the national law of the person to be adopted, such requirement shall also be satisfied. (2) The termination of a family relationship between an adopted child and his/her natural relatives by blood and dissolution of adoption shall be governed by the law applicable under the first sentence of the preceding paragraph.
2011 Polish PIL Act	Article 57. 1. Adoption shall be subject to the law of the country whose the adopter is a national. 2. The common adoption by the spouses shall be subject to their common law of nationality. In the absence of the common nationality, the law of the country in which both spouses have their place of permanent residence – or, in the absence of the latter, of their common habitual residence – shall apply. Where the spouses are not habitually resident in the same country, the law of the country with which both are otherwise most strictly connected shall apply. Article 58. The adoption cannot take place without observing the rules of the law of the person who is to be adopted, concerning his and his legal representative's consent to the adoption, and the permission of the competent State authority, as well as these concerning the adoption restrictions because of the change of the place of previous the permanent residence to the place of residence in the other country.

2006 Japanese PIL Act	Article 33. Family relationships or rights and obligations arising therefrom other than those provided for in Article 24 to Article 32 shall be governed by the national law of the party concerned. Article 35. (1) Guardianship, curatorship or assistance (hereinafter collectively referred to as "Guardianship, etc.") shall be governed by the national law of a ward, person under curatorship or person under assistance (collectively referred to as a "Ward, etc." in paragraph (2)). (2) Notwithstanding the preceding paragraph, in the following cases where a foreign national is a Ward, etc., a ruling of appointment of a guardian, curator or assistant and other ruling concerning Guardianship, etc. shall be governed by Japanese law: (i) where the grounds for commencement of Guardianship, etc. of the foreign national exist under his/her national law, and there is no person to conduct the affairs of Guardianship, etc. in Japan; or (ii) […]
2011 Polish PIL Act	–

It is also notable that "party autonomy" is treated as an exception to the rule of nationality in either jurisdiction. However, the ways of adopting party autonomy in international family law seem to provide a significant comparison between Polish and Japanese law (see: table 3 and table 4).

On the one hand, Article 52 of 2011 Polish Act shows a similarity with Article 26 of 2006 Japanese PIL Act (see: table 3). Both of these provisions suggest that, the idea of party autonomy is introduced in the issue of marital property regime or marriage agreement in either jurisdiction.

On the other hand, the choice-of-law rules on succession issues highlight the different legislative developments of private international law in Japan and Poland (see: table 4). According to Article 66a of Polish PIL Act, the choice-of-law issues on succession matters shall be determined by the "Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession."[18] In the Regulation, a general rule to apply "the law of the State in which the deceased had his habitual residence at

[18] The text of the Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 can be downloaded from the EUR-Lex website, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588045243353&uri=CELEX:32012R0650 (accessed: 28.04.2020).

the time of death" is adopted (Article 21 of the Regulation (EU) No. 650/2012). However, there is a limited party autonomy which allows a person to choose "the law of the State whose nationality he possesses at the time of making the choice or at the time of death" as an applicable law on succession (Article 22 of the Regulation (EU) No. 650/2012). Also, extensive choice-of-law rules in the Regulation including Article 24 (Dispositions of property upon death other than agreements as to succession) and Article 25 (Agreements as to succession) are noteworthy as these provisions that are not found in Japanese PIL Act.

Comparatively, Japanese private international law still stands on traditional rules to apply the national law of the decedent/testator (Article 36 and 37 of 2006 Japanese PIL Act).[19] In relation with this issue, it should be noted that Japan has ratified the "Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions" in 1964 with the enactment of the Act No. 100 of 1964.[20]

Table 3. "Party autonomy" in international family law under Japanese and Polish PIL Act

2006 Japanese PIL Act	Article 26. (1) The preceding Article shall apply mutatis mutandis to the marital property regime. (2) Notwithstanding the preceding paragraph, if a husband and wife have designated one of the laws listed in the following as the governing law by means of a document signed by them and dated, their marital property regime shall be governed by the law thus designated. In this case, the designation shall be effective only for the future: (i) the law of the country where either husband or wife has nationality; (ii) the law of the habitual residence of either husband or wife; or (iii) with regard to marital property regime regarding real property, the law of the place where the real property is situated. (3) The marital property regime to which a foreign law should be applied pursuant to the preceding two paragraphs may not be asserted against a third party without knowledge, to the extent that it is related to any juridical act done in Japan or any property situated in Japan. In this case, in relation to such third party, the marital property regime shall be governed by Japanese law. (4) Notwithstanding the preceding paragraph, a contract on marital property concluded under a foreign law pursuant to paragraph (1) or (2) of this Article may be asserted against a third party when it is registered in Japan.

[19] See, for example, S. Nakano, *Party Autonomy in International Family and Succession Law* [*Kokusai-shinzoku, Sozoku-ho Ni Okeru Tojishajichi No Gensoku*], "Kobe Law Journal" [*Kobe Hogaku Zasshi*], 2015, vol. 65, no. 2, pp. 1 et seq.

[20] As to the Hague Convention of 5 October 1961, full text and status table are available at: https://www.hcch.net/en/instruments/conventions/full-text/?cid=40 (accessed: 28.04.2020).

2011 Polish PIL Act	Article 52. 1. The spouses may make their property relationships governed by the law of nationality of the either spouse or by the law of the country in which one of them is permanent or habitually resident. The choice of law may be made also before the conclusion of marriage. 2. The marriage agreement shall be subject to the law chosen by the parties according to the paragraph (1). In the absence of the law choice, the marriage agreement shall be governed by the law applicable to the personal and property relationships between the spouses at the time of entering into the agreement. 3. When choosing the law applicable to property relationships between spouses or for the marriage agreement, it shall be sufficient to comply with the form prescribed for marriage agreements either by the law chosen or by the law of the country in which the law choice was made.

Table 4. Choice-of-law rules on succession under Japanese PIL Act and Regulation (EU) No.650/2012 of the European Parliament and of the Council

2006 Japanese PIL Act	–
Regulation No. 650/2012*	Article 20. (Universal application) Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.
2006 Japanese PIL Act	Article 36. Inheritance shall be governed by the national law of the decedent. Article 37. (1) The formation and effect of a will shall be governed by the national law of a testator at the time of the formation. (2) The rescission of a will shall be governed by the national law of a testator at the time of the rescission.
Regulation No. 650/2012*	Article 21. (General rule) 1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death. 2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.

2006 Japanese PIL Act	–
Regulation No. 650/2012*	Article 22. (Choice of law) 1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death. A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death. 2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition. 3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law. 4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death. Article 23. (The scope of the applicable law) 1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole. 2. That law shall govern in particular: (a) the causes, time and place of the opening of the succession; (b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner; (c) the capacity to inherit; (d) disinheritance and disqualification by conduct; (e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy; (f) the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29(2) and (3); (g) liability for the debts under the succession; (h) the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs; (i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and (j) the sharing-out of the estate.

Regulation No. 650/2012*	Article 24. (Dispositions of property upon death other than agreements as to succession) 1. A disposition of property upon death other than an agreement as to succession shall be governed, as regards its admissibility and substantive validity, by the law which, under this Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made. 2. Notwithstanding paragraph 1, a person may choose as the law to govern his disposition of property upon death, as regards its admissibility and substantive validity, the law which that person could have chosen in accordance with Article 22 on the conditions set out therein. 3. Paragraph 1 shall apply, as appropriate, to the modification or revocation of a disposition of property upon death other than an agreement as to succession. In the event of a choice of law in accordance with paragraph 2, the modification or revocation shall be governed by the chosen law. Article 25. (Agreements as to succession) 1. An agreement as to succession regarding the succession of one person shall be governed, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded. 2. An agreement as to succession regarding the succession of several persons shall be admissible only if it is admissible under all the laws which, under this Regulation, would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded. An agreement as to succession which is admissible pursuant to the first subparagraph shall be governed, as regards its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law, from among those referred to in the first subparagraph, with which it has the closest connection. 3. Notwithstanding paragraphs 1 and 2, the parties may choose as the law to govern their agreement as to succession, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 22 on the conditions set out therein. Article 26. (Substantive validity of dispositions of property upon death) 1. For the purposes of Articles 24 and 25 the following elements shall pertain to substantive validity: (a) the capacity of the person making the disposition of property upon death to make such a disposition; (b) the particular causes which bar the person making the disposition from disposing in favour of certain persons or which bar a person from receiving succession property from the person making the disposition; (c) the admissibility of representation for the purposes of making a disposition of property upon death;

Regulation No. 650/2012*	(d) the interpretation of the disposition; (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition. 2. Where a person has the capacity to make a disposition of property upon death under the law applicable pursuant to Article 24 or Article 25, a subsequent change of the law applicable shall not affect his capacity to modify or revoke such a disposition. Article 27. (Formal validity of dispositions of property upon death made in writing) 1. A disposition of property upon death made in writing shall be valid as regards form if its form complies with the law: (a) of the State in which the disposition was made or the agreement as to succession concluded; (b) of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to succession possessed, either at the time when the disposition was made or the agreement concluded, or at the time of death; (c) of a State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his domicile, either at the time when the disposition was made or the agreement concluded, or at the time of death; (d) of the State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his habitual residence, either at the time when the disposition was made or the agreement concluded, or at the time of death; or (e) in so far as immovable property is concerned, of the State in which that property is located. The determination of the question whether or not the testator or any person whose succession is concerned by the agreement as to succession had his domicile in a particular State shall be governed by the law of that State. 2. Paragraph 1 shall also apply to dispositions of property upon death modifying or revoking an earlier disposition. The modification or revocation shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under paragraph 1, the disposition of property upon death which has been modified or revoked was valid. 3. For the purposes of this Article, any provision of law which limits the permitted forms of dispositions of property upon death by reference to the age, nationality or other personal conditions of the testator or of the persons whose succession is concerned by an agreement as to succession shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications to be possessed by any witnesses required for the validity of a disposition of property upon death. Article 28. (Validity as to form of a declaration concerning acceptance or waiver) A declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration, shall be valid as to form where it meets the requirements of: (a) the law applicable to the succession pursuant to Article 21 or Article 22; or (b) the law of the State in which the person making the declaration has his habitual residence.

Regulation No. 650/2012*	Article 29. (Special rules on the appointment and powers of an administrator of the estate in certain situations) 1. Where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Article. The administrator(s) appointed pursuant to this paragraph shall be the person(s) entitled to execute the will of the deceased and/or to administer the estate under the law applicable to the succession. Where that law does not provide for the administration of the estate by a person who is not a beneficiary, the courts of the Member State in which the administrator is to be appointed may appoint a third-party administrator under their own law if that law so requires and there is a serious conflict of interests between the beneficiaries or between the beneficiaries and the creditors or other persons having guaranteed the debts of the deceased, a disagreement amongst the beneficiaries on the administration of the estate or a complex estate to administer due to the nature of the assets. The administrator(s) appointed pursuant to this paragraph shall be the only person(s) entitled to exercise the powers referred to in paragraph 2 or 3. 2. The person(s) appointed as administrator(s) pursuant to paragraph 1 shall exercise the powers to administer the estate which he or they may exercise under the law applicable to the succession. The appointing court may, in its decision, lay down specific conditions for the exercise of such powers in accordance with the law applicable to the succession. Where the law applicable to the succession does not provide for sufficient powers to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the appointing court may decide to allow the administrator(s) to exercise, on a residual basis, the powers provided for to that end by its own law and may, in its decision, lay down specific conditions for the exercise of such powers in accordance with that law. When exercising such residual powers, however, the administrator(s) shall respect the law applicable to the succession as regards the transfer of ownership of succession property, liability for the debts under the succession, the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession, and, where applicable, the powers of the executor of the will of the deceased. 3. Notwithstanding paragraph 2, the court appointing one or more administrators pursuant to paragraph 1 may, by way of exception, where the law applicable to the succession is the law of a third State, decide to vest in those administrators all the powers of administration provided for by the law of the Member State in which they are appointed. When exercising such powers, however, the administrators shall respect, in particular, the determination of the beneficiaries and their succession rights, including their rights to a reserved share or claim against the estate or the heirs under the law applicable to the succession.

Regulation No. 650/2012*	Article 30. (Special rules imposing restrictions concerning or affecting the succession in respect of certain assets) Where the law of the State in which certain immovable property, certain enterprises or other special categories of assets are located contains special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession in respect of those assets, those special rules shall apply to the succession in so far as, under the law of that State, they are applicable irrespective of the law applicable to the succession. Article 31. (Adaptation of rights in rem) Where a person invokes a right in rem to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it. Article 32. (Commorientes) Where two or more persons whose successions are governed by different laws die in circumstances in which it is uncertain in what order their deaths occurred, and where those laws provide differently for that situation or make no provision for it at all, none of the deceased persons shall have any rights to the succession of the other or others. Article 33. (Estate without a claimant) To the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the estate as a whole. Article 34 […] Article 35 […] Article 36 […] Article 37 […] Article 38 […]

* Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012.

2. Right in rem

If we have a look at the rules on "right in rem," even more comparative developments of private international law can be observed in Japan and Poland (see: table 5). Chapter 9 of the 2011 Polish PIL Act ("Ownership and other property rights. Possession") provides a diversified choice-of-law rules from Article 41 to 45. On the other hand, Section 3 of the 2006 Japanese PIL Act ("Real Rights (Rights in rem), etc.") only provides Article 13, in which the traditional rule to apply the "law of the place where the subjected property of the right is situated" is adopted. These jurisdictions share the basic principle of attaching importance to the law where the property is situated, but it seems that they show slightly different solutions in a few cases as explained below.

Article 42 of the 2011 Polish PIL Act provides that property rights to the aircraft or to the ship, and to the rail vehicle shall be governed by the law of registration. In Japan, there was no written provisions on these issues, but it seems Japan would adopt similar solution. Speaking of the property rights to the ship, although there were a few judgements which applied the law of flag state to such issues,[21] it has been pointed out that the law of registration shall apply.[22] In case of the property rights to the aircraft, Japanese private international law also takes the position that the law of registration should be applied, rather than the law of its actual location.[23]

In Japan, there is also discussion on how the court should determine the law applicable to the property rights to the automobile. Traditionally, it has been insisted that the law of registration shall govern the property rights to the automobile as well.[24] However, there was a Supreme Court's judgement that suggests, as an incidental remark, different theory.[25] According to this judgement, as to the car which cannot be driven on public roadways, the law of its location shall apply; however, as to the car which can be driven on public roadways, the law of the place in which that car is mainly used shall apply.[26] Among scholarly opinions, there is also another

[21] See, for example, Yamaguchi District Court Judgement, June 26, 1967, 18(5–6) *Lower Court Civil Cases* [*Kakyu-saibansho Minji Saibanrei-shu*], p. 711; Akita District Court Judgement, January 23, 1971, 22(1–2) *Lower Court Civil Cases* [*Kakyu-saibansho Minji Saibanrei-shu*], p. 52.

[22] See, for example, A. Takakuwa, "Article 10 of *Horei* and the Property Rights in Marine Affairs [*Horei 10 Jo To Kaiji-bukken*]" [in:] *Disputed Points of Private International Law* [*Kokusaishiho No Soten*], eds. T. Sawaki, J. Akiba, new edition, Yuhikaku 1996, p. 110.

[23] See, for example, Horei Research Group [*Horei Kenkyu-kai*], *Issues on the Revision of Horei* [*Horei No Minaoshi Ni Kansuru Shomondai*], vol. 2, Shojihomu 2003, p. 163.

[24] See, for example, Y. Orimo, *Private International Law: Itemized Discussion* [*Kokusaishiho: Kakuron*], revised edition, Yuhikaku 1972, p. 92; Y. Tameike, *Lecture on Private International Law* [*Kokusaishiho Kogi*], 3rd edition, Yuhikaku 2005, p. 343.

[25] Supreme Court Judgement, October 29, 2002, 56(8) Supreme Court Civil Cases [*Saiko-saibansho Minji Hanrei-shu*], p. 1964.

[26] *Ibidem.*

theory insisting that in any case the property rights to the automobile shall be governed by the law of its actual location.[27]

Table 5. "Right in rem" under Japanese and Polish PIL Act

2006 Japanese PIL Act	Article 13. (1) A real right to movable or immovable and any other right requiring registration shall be governed by the law of the place where the subject property of the right is situated. (2) Notwithstanding the preceding paragraph, acquisition or loss of a right prescribed in said paragraph shall be governed by the law of the place where the subject property of the right is situated at the time when the facts constituting the cause of the acquisition or loss were completed.
2011 Polish PIL Act	Article 41. 1. Ownership and other property rights shall be governed by the law of the country in which the object thereof is situated. 2. The acquisition and the loss of the ownership, as well as the acquisition, the loss, the change of the content, or of the priority, of other rights in rem shall be subject to the law of the country in which the object of these rights was situated at the time when the fact causing the above-mentioned legal effects occurred.
2006 Japanese PIL Act	–
2011 Polish PIL Act	Article 42. Property rights to the aircraft or to the ship, as well as to the rail vehicle shall be subject to the law of the country in which this aircraft, ship or rail vehicle is registered, and in the absence of the register or registration – to the law of the country where the mother harbour, rail station or any similar place is situated. Article 43. Property rights to the goods in transportation shall be subject to the law of the country from which they were sent. Where it follows from the circumstances that these rights are more strictly connected with the law of another country, this latter law shall apply. Article 44. Right arising from the record in the securities account which is held in a securities settlement system shall be governed by the law of the State in which the account is kept. Article 45. Articles 41 to 44 shall apply mutatis mutandis to the possession.

[27] Y. Nishitani, *Challenges and Perspectives on the Governing Law of Right in Rem* [*Bukken-junkyoho Wo Meguru Kadai To Tenbo*], "Journal on Civil and Commercial Law" [*Minshoho Zasshi*] 2007, vol. 136, no. 2, pp. 223 et seq.

Conclusion

This summary of lecture underlines some characteristics of Japanese private international law in comparison with Polish private international law. Through the comparison, it is especially highlighted that considerable differences can be observed in the field of international succession and right in rem.

It should be noted that this lecture does not provide exhaustive enumeration of comparative points, and further detailed reviews would be desirable in the future. Specifically, another important contrast can be observed in the rules on intellectual property. Chapter 10 of 2011 Polish PIL Act provides provisions on intellectual property. This Chapter of 2011 Polish PIL Act consisting of two provisions is noteworthy considering that Japanese private international law still does not have any written choice-of-law provision on intellectual property.

STRESZCZENIE

PRZEGLĄD PORÓWNAWCZY PRAWA PRYWATNEGO MIĘDZYNARODOWEGO W JAPONII

Artykuł stanowi podsumowanie wykładu wygłoszonego podczas konferencji „O prawie japońskim", zorganizowanej przez prof. Kamila Zeidlera na Wydziale Prawa i Administracji Uniwersytetu Gdańskiego w czerwcu 2019 r. Celem artykułu jest przedstawienie problematyki prawa prywatnego międzynarodowego w Japonii na tle prawno-porównawczym, ze szczególnym uwzględnieniem zagadnień dotyczących wyboru prawa właściwego. W pierwszej części omówiono tło historyczne rozwoju prawa prywatnego międzynarodowego w Japonii i Polsce, w dalszej części zaś przepisy dotyczące wyboru prawa właściwego w obu systemach prawnych. W konkluzji zwrócono uwagę, że polska ustawa – Prawo prywatne międzynarodowe w rozdziale 10 zawiera przepisy szczegółowe dotyczące praw własności intelektualnej, podczas gdy w prawie japońskim nadal brakuje takich regulacji.