

### 3. Law of Civil Procedure and Bankruptcy

The Civil Code and the Domestic Relations Adjustment Act (Amendments Act) was passed at the 91st regular Diet session on May 9, 1980 and promulgated as Law No. 51 on May 17, the same year. Pursuant to the amendments above, the Amendments to the Domestic Relations Adjustment Rules were adopted and promulgated as Supreme Court Rules No. 8 on Oct. 23, the same year. Both the Amendments Act and the Amended Rules were put into force on Jan. 1, 1981.

An outline of the Amendments Act for the Act for Adjustment of Domestic Relations which belong to adjective law is described below:

The following four points form the major portion of the current amendments.

- (1) In the light that the "contribution (to the estate) system" was created anew in the amendment of Book V "on Succession," of the Civil Code, the "Treatment Designed to Fix the Extent of Contribution" was included in the Requirements of Domestic Relations Adjustment (Item B).
- (2) The system of preliminary injunction (Sicherungsmaßnahmen) prior to judgment, which had often caused troubles in practice, was improved with the enforceability by execution (Vollstreckbarkeit) bestowed on it.
- (3) When judgment or preliminary injunction prior to judgment requires public notification for the protection of third parties such as in the case of judgment on removal of a guardian or preliminary disposition (einstweilige Verfügung) calling for suspension of performance of duties of a guardian and appointment of his substitute, a statement to that effect can be entered in the family register on the requisition of the court.
- (4) When it is deemed necessary for a judgment on the partition of an estate, the Family Court can order the successor to turn part or all of the estate into money by auction or by some other op-

tional means.

By far the most important items in the current amendments are the adjustment of the preliminary injunction prior to judgment and the granting of the enforceability by execution on the above injunction.

Prior to the amendments, the regulation concerning the preliminary injunction prior to judgment was not listed in the Act for Adjustment of Domestic Relations, although the Rules for Domestic Relations Adjustment prescribed a number of preliminary injunctions to cope with various types of judgment respectively.

However, there were neither statutory provisions nor rules pertaining to the enforceability by execution that may accompany these preliminary injunctions. Hence, arguments whether or not the enforceability by execution should be admitted in connection with preliminary injunctions were touched off shortly after the Act for Adjustment of Domestic Relations and the Rules were put into force. A positive theory admitting the accompaniment of the enforceability by execution and a negative theory denying it confronted sharply with each other.

The practice has been greatly affected by these. In recent years, however, the negative theory has become dominant and the practice has proceeded accordingly. Since the enforceability by execution was not recognized, preliminary injunctions as steps prior to judgment have become virtually ineffective and practically ceased to serve their purposes. In this regard, strong demands especially from among those actually handling cases at Family Courts have been made urging legislative steps to overcome the situation as such.

The current amendments, made in response to these demands, provided the statutory ground for preliminary injunctions prior to judgment while at the same time specifying the accompaniment of an enforcement power such as the enforceability by execution. As a result of the amendments, the protection of the interests of those concerned with the case while hearings are being conducted and the effectiveness of the judgment will be further ensured.

The Act for Adjustment of Domestic Relations following the current amendments provided for possible preliminary injunctions and basic matters relating to other procedures, while leaving concrete details to the Supreme Court Rules. Hence, the Rules of Domestic Relations Adjustment were also amended.

By Assoc. Prof. TETSUO KATO  
NORIYUKI HONMA

## 4. Criminal Law and Procedure

**Act Providing for Payment of Benefits to Victims of Criminals.**  
(Promulgated on May 1, 1980. Ch. 36.)

Increasingly many countries including Japan have adopted a legal relief system for the injured party in a crime.

Article 1 of the new act prescribes the purpose of the law as follows:

“This act provides for the payment of benefits by the state to the bereaved family of those who have met with untimely death or to those who have suffered heavy injuries due to a criminal act injuring a man’s life or body.”

Since there have been several “phantom killer” cases in recent years, the application of this act is expected to increase. During the six-month period ending June 30 since the act was put into force on Jan. 1, 1981, there were only about 30 cases calling for such application. Many problems have been raised with regard to the amount of benefits, application of the act, etc.

By Assoc. Prof. MINORU NOMURA  
TOSHIMASA NAKAZORA  
NORIO TAKAHASHI