nation, the most important is that it may be contrary to the common sense of our society to award damages through legal action arising from an act of a favor between neighbors, i.e. having a neighbor's child under one's care. Within the legal profession, this case gave an impetus to research on the "law-consciousness" of the Japanese, and the role of the court in settling disputes in society as well as similar cases in other countries.

By Prof. KATSUICHI UCHIDA
NAOYA SUZUKI
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3. Family Law

***De facto* divorce and a "spouse" in the Agricultural, Forestry and Fishing Employees' Mutual Benefits Association Law.**

Decision by the First Petty Bench of the Supreme Court, on April 14, 1983. Case No. (*gyo tsu*) 109 of 1979. 37 *Minshū* 270.

[Facts]

A woman, X, (plaintiff, appellant, *jokoku* appellant) married a man, A, in 1930. They had four children. Their marital relationship deteriorated after 1952, mainly because of A's infidelity. A decided to leave their matrimonial home in November 1956, and X had no objection to the separation. They discussed and came to an agreement on the amount of maintenance X might receive for their children. A actually left home that month, and submitted to X a paper which expressed his desire to divorce, along with a written consent for X to receive A's pension directly until November 1964. A also promised to pay maintenance for the children up to the age of eighteen. In due course A entered into a *de facto* marriage with another

woman, B, and they lived together in the same household with B's two children until A's death in August 1968. During their cohabitation A never returned to stay at the former matrimonial home. A carried out his promises throughout the period of separation. After his death the pension was cancelled, but about three-fifths of the total due pension fund benefits remained payable to as her maintenance. X and her children were removed in August 1960 from the list of "dependents" under A's employee health insurance, and also from the government list of dependent families for tax purposes. Instead, the names of B and her children were entered on those two lists.

B worked hard and made a contribution to A's maintenance of his children. B was introduced by A to his mother and relatives as A's wife in about February 1964. In July 1965 A submitted to government authorities a forged notification of divorce without X's knowledge, as well as a certificate of marriage with B, and notification of A's adoption of B's children. Upon his death, A's funeral was arranged and carried out by B and her family.

After the separation, we should note that X, still residing with the children of her marriage to A, did not try to reconcile and revive the marriage.

In June 1970, X claimed a survivor's allowance from Y, the Agricultural, Forestry and Fishing Employees' Mutual Benefits Association (defendant, appellee, *jokoku* appellee), but her claim was rejected. She applied to the Committee of the Association for review of the Association's decision, but her application was dismissed. Then she requested annulment of the decision of the Committee and payment of a survivor's allowance in the Tokyo District Court of the first instance.

The Tokyo District Court dismissed X's petition. So did the Tokyo High Court of the second instance. X thus appealed to the Supreme Court.

[Opinions of the Court]

Jokoku appeal dismissed.

The conception of a "spouse" in Article 24(1) of the Agricultural, Forestry and Fishing Employees' Mutual Benefits Association Law should not always be construed as identical with that of a "spouse" in the Civil Code. Judging from the general concept and purposes of the Mutual Benefits Association Law, one of the social security laws, the definition of "survivors" should be considered in light of the actual circumstances of deceased members of the Association. As for the "spouse", it is reasonable to construe this as a person who lived together in mutual support with the deceased as a husband and wife in the socially-acknowledged sense. The spouses listed on family registers are not necessarily the spouses who are entitled to the survivors' allowance, if their marriages existed only on paper for some time, and are unlikely to be dissolved in the near future, i.e., in the circumstances of *de facto* divorce.

In this case, (1) A and X had been separated by agreement, consenting to dissolve their marital partnership actually but not legally. (2) A's financial support to X is deemed to have the character of alimony in a *de facto* divorce. (3) After the separation A and X had no intention to continue their marriage, or to resume their cohabitation as man and wife. Bearing in mind these facts, the marriage of A and B can be said to have broken down, and to have reached the status of *de facto* divorce after December 1956. By August 1968 their marriage was "dead", and showed no sign of revival. Accordingly it is reasonable to say that X does not fall within the category of a spouse in Article 24(1) of the Mutual Benefits Association Law, and therefore the decision of the court below was just and correct.

[Comment]

1. Article 24(1) of the Mutual Benefits Association Law, which was in force at the time of A's death, provides as follows:— "The surviving relatives who are entitled to survivors' allowance are a spouse of a member or a former member of the Association (including a person who is not a spouse listed on the family register but who has been living in an association similar to marriage),

a child, parents, a grandchild and grandparents of the said person, who were supported by the income of the said member immediately before his death."

Some other social legislation contains similar provisions, and includes a *de facto* spouse in the category of a spouse entitled to survivor's allowance. The issue in this case is whether a partner to so-called *jūkonteki-naien* (*de facto* marriage, where one party (or both) is (or are) already married to another person) is included as a "spouse" for the purposes of the legislation.

2. A man and a woman who, though not lawfully married, are living together with the intention of living as if in marriage and are socially accepted as man and wife, are generally protected as the partners to a *quasi*-marriage under both case law and academic writings (Decision by *Daishin-in*, on October 6, 1932. 11 *Minshū* 2026). The case law, however, has treated the *jūkonteki-naien* as void against public policy (Decision by *Daishin-in*, on May 28, 1934. 26 *Minroku* 773).

After some years the *Daishin-in* ruled that particular legal consequences might attach to a *jūkonteki-naien*, once that relationship was formed after a lawful marriage had broken up irretrievably (Decision by *Daishin-in*, on April 8, 1937. 16 *Minshū* 418). There has been a growing tendency for the lower courts, since the war, to recognize the existence and validity of *naien* for various purposes.

3. Some specific laws, such as the Factory Law in 1923, have long treated *naien* as *quasi*-marriage. Article 80 of the Civil Servants' Pension (Amendment) Law of 1933 was the first provision which expressly provides that a "surviving spouse (is) recognized to have entered into association similar to marriage" if such "spouse" is a partner to *naien*. It was not until the filing of the present petition that the case of the entitlement of a party to *jūkonteki-naien* to survivor's allowance was raised before the Supreme Court. According to interpretation by government offices, or to the decisions of the Review Committee of Social Insurance, even a party to that sort of *naien* has been treated as a meritorious claimant of the allowance when the lawful mar-

riage has broken down irretrievably. The current decision is significant in that it does acknowledge the legitimacy of this interpretation, and makes it clear that the court holds the marriage to have broken down irretrievably if the petitioner persuades the court that (1) there was an agreement to dissolve the marital relationship and (2) there has been no such relationship recently.

By Prof. Taeko Miki
Takashi Suzuki

4. Law of Civil Procedure and Bankruptcy

Among several court reports published this year, a Supreme Court report in the field of civil procedure has clarified for the first time the meaning of statutory conditions for the recognition of foreign judgments in Japan. In addition, two lower court reports in the field of bankruptcy law have reached differing conclusions regarding the proper legal interpretation of construction contracts when the contractor enters bankruptcy. Both topics are discussed below.

1. The meaning of the "reciprocity" requirement as part of statutory conditions for recognition of foreign sovereign judgments in Japan, and possible violations of Japanese public policy in the promulgation of foreign judgments as a ground for denying them recognition in Japan.

Decision by the Third Petty Bench of the Supreme Court on June 7, 1983. Case No. (*o*) 826 of 1982. A case involving a demand for the execution judgment. 37 *Minshū* 611.

[Reference: Civil Procedure Act §200(iii), (iv); Civil Execution Act §24.]