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メタデータ	言語: 出版者: 琉球大学法文学部 公開日: 2007-08-28 キーワード (Ja): キーワード (En): 作成者: Takeda, Masanori, 武田, 昌則 メールアドレス: 所属:
URL	http://hdl.handle.net/20.500.12000/1570

Problems of Enforcing Child Support Orders Between the U.S. and Japan

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I. Introduction

Due to the close relationships between the United States and Japan, regarding trade and commerce, military service¹, immigration, or recreational travel, international child support cases between the U.S. and Japan are becoming more common. Also, the issues regarding those cases are becoming more and more striking.

This article will identify important problems of enforcing child support orders between the U.S. and Japan that confront practitioners who handle international child support cases between the two countries. The problems are divided into 2 categories: enforcement of a Japanese child support order in a U.S. tribunal, and enforcement of a U.S. child support order in a Japanese tribunal.

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¹Japan Federation of Bar Associations, Report on Okinawa Military Base Human Rights Problems 18 (Jun. 16, 2000): It isn't seldom ... that a USF (U.S. Force) member leaves his family without saying anything ...As for Amerasian children (born to a male USF member or civilian employee and a local woman), it is theoretically possible to win a payment of bringing-up expenses by lawsuit, but as a matter of fact, it is extremely difficult to procure money. In many cases they are left with money unpaid.

II. Enforcement of a Japanese Child Support Order in a U.S. Tribunal.

A. Legal Basis for Recognition

1. *Lack of Reciprocal Agreement*

If a child support order is issued by a foreign reciprocating countries under the Uniform Interstate Family Support Act (hereinafter referred to as "UIFSA"), the responding state in the U.S. is required to treat a request for enforcement of that order the same as it would treat a similar request from a sister state and follow UIFSA procedures for registration and enforcement². But Japan has not yet established reciprocal agreements with any U.S. state.

2. *Does Japan have "substantially similar" procedure to UIFSA?*

The Office of Child Support Enforcement³ has advised that state have authority to provide IV-D⁴ services to anybody, anywhere⁵. Therefore,

²Pub. L. No. 104-193 § 371; 42 U.S.C. § 659A.

³The U.S. Department of Health, Administration for Children and Families, Office of Child Support Enforcement ("OCSE"). OCSE administers the IV-D program.

⁴IV-D refers to Title IV-D of the Social Security Act, which required that each state create a program to locate non-custodial parents, establish paternity, establish and enforce child support obligations, and collect and distribute support payments. All recipients of public assistance (usually a temporally assistance for a needy families) are referred to their State's IV-D child support program. State must also accept applications from families who do not receive public assistance, if requested, to assist in collection of child support. Title IV-D also establish OCSE. OCSE, Acronyms and Glossary, at <http://www.acf.dhhs.gov/programs/cse/ict/glossory/htm>.

⁵According to Policy Interpretation Question (PIQ) of OCSE, states are required to provide child support enforcement services to individuals who reside in a foreign country and who apply directly to the State for paternity or support enforcement services. Section 454(4)(A)(ii) of the Social Security Act (the Act) imposes a literal requirement that State agencies must provide Title IV-D services to anyone who has filed a proper application for services with the agency. Section 454(6)(A) of the Act states that "services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan." This

some states Child Support Enforcement (CSE) Agencies⁶ provide services even without a reciprocity agreement⁷.

provision makes it clear, in the interstate context, that services must be provided to anyone who applies. OCSE has consistently interpreted the language now found under section 454(4)(A)(ii) as imposing no residency or citizenship requirement as a precondition for Title IV-D services under the Act... Section 454(4)(A)(ii) of the Act thus continues to require that services be provided to anyone who applies, regardless of nationality, just as section 454(6)(A) makes this principle explicit in the interstate context. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) amended the Act by adding section 459A, which provides authorization to the Federal government to declare foreign countries to be "reciprocating countries," and to enter into international agreements with such countries. The section, however, also allows States to continue existing reciprocity agreements they may have with foreign countries and to enter into new reciprocal agreements with foreign governments which have not been declared reciprocating countries under Federal law. Under the authority noted above, States may also continue to provide services to U.S. citizens living abroad and to non-resident aliens who apply (or have applied) directly to the State for child support enforcement services... Neither the Act nor IV-D regulations specifically provided for the provision of services for incoming international cases based solely on reciprocity arrangements negotiated independently by State agencies. OCSE policy, however, has long recognized that there are no constraints within the Act prohibiting individuals in foreign countries from filing a signed application for services in accordance with sections 302.33(a)(i) and 303.2(a)(2) and (3) of the regulations. Consequently, States were free to negotiate international arrangements whereby the foreign country would facilitate securing the applications for services from individuals and forwarding them to the State for provision of services. Many cases are currently being worked under these prior arrangements, or by direct application of individuals in foreign countries to the State where the obligor resides, and IV-D agencies should continue to work these cases until such time as the originating country is declared a foreign reciprocating country. OCSE PIQ 99-01, at <http://www.acf.dhhs.gov/programs/cse/pol/piq-9901.htm>.

⁶ CSE Agency is an agency that exist in every state that locates locates non-custodial parents (NCPs) or putative fathers, establishes, enforces, and modifies child support, and collects and distributes child support money. It is operated by state or local government according to the Child Support Enforcement Program guidelines as set forth in Title IV-D of the Social Security Act. Also known as a "IV-D Agency." OCSE, *supra* note 4.

⁷ Gary Caswell, *Making Long-Distance Parents Pay Up - International child-support enforcement*, 23-2 Family Advocate 52 (Fall 2000). Overall, I have made great reference from this article. According to him, the policy of the Office of Attorney General, the IV-D Agency of Texas, is to work international cases based upon the public policy that all children should receive support from their parents and whether federal funding is available for working the cases.

In those cases, it is critical to decide whether the issuing country is a qualifying "state" under UIFSA Section 109⁸. This Section of UIFSA defines "state" to include any foreign jurisdiction that has established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA⁹. This Section withdraws the requirement of reciprocity demanded the Uniform Reciprocal Enforcement of Support Act (URSEA)¹⁰. There are some cases addressing the issue of what constitutes "substantially similar" procedures¹¹. But even in these interstate cases, it still seems unclear what constitutes "substantially similar" procedures. In those cases, both the requesting state and the responding state have an act that specifically regulates enforcement of interstate child support orders. Japan has not enacted a law that specifically regulates enforcement of international child support orders like UIFSA, URESEA, or RURESEA (the Revised Uniform Reciprocal Enforcement of Support Act)¹².

Nonetheless, Japan should be considered to have established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA. Because, for child support cases,

⁸Unif. Interstate Family Support Act § 101 (19)(ii) 9IB U.L.A. 257 (1999).

⁹*Id.*

¹⁰Commissioners Official Prefatory Note to UIFSA IIA3, 9IB U.L.A. 240 (1999).

¹¹For Example, in *Link v. Alvarado*, 929 S.W.2d 674 (Tex. App. 1996), the court held that Hawaii, a URESA state, was a state with law substantially similar to Texas's UIFSA. Thus, the Texas courts were required to recognize the continuing, exclusive jurisdiction of Hawaii over its orders. See also *Neville v. Perry*, 648 N.Y.S.2d 508 (N.Y. Fam. Ct. 1996) (New York's Uniform Support of Dependents Law is substantially similar to UIFSA); *Thompson v. Thompson*, 893 S.W.2d 301 (Tex. App. 1995) (Indiana law under URESA is substantially similar to Texas's UIFSA; Texas could not modify Indiana order since Indiana had continuing, exclusive jurisdiction).

¹²As mentioned below in IIIA, in Japan, enforcement of international child support orders is subject to general provisions concerning enforcement of foreign judgment. Minjisoshoho [Civil Procedure Code] Art. 118.

both the legal standard of decisions and the procedures under Japanese law are quite similar to the law in the United States. In Japan, a child support order is issued in two ways: the domestic relations conciliation proceeding at the Family Court¹³; or, the domestic relations determination proceeding at the Family Court¹⁴.

At the Conciliation proceeding, a child support dispute is sought to be settled through the intervention of a court facilitating a compromise between the parties. The conciliation proceedings are conducted by a conciliation committee which is normally composed of one judge and two Conciliation Commissioners of Family Affairs, one of whom is usually a woman. As mentioned above, the parties are ordinarily summoned to the Family Court for a hearing. An attempt is then made through expert advice to guide the parties to reach a compromise which is just and fitted to the welfare of both parties and the children who are affected. When parties in the conciliation proceedings reach an agreement approved by the conciliation committee, the agreement is entered in the court's case record and it has the same force as an order following litigation.

At the domestic relations determination proceeding, after the application for the determination proceedings is filed¹⁵, the Family Court summons the parties and conducts a hearing. When necessary, the judge may order an investigation by the Family Court Probation Officer, to seek the diagnostic services of the Family Court Clinic or to require the production of evidence. The Family Court judge makes decisions regarding support obligation by

¹³Kaji Shinpanho [The Law for Determination of Family Affairs] Art. 17

¹⁴Minpo [Civil Code] Art. 879.

¹⁵This domestic relation determination proceeding consists of hearing, both on merits and other support issues. Other domestic matters (divorce, custody) between the parties also can be handled simultaneously in this proceeding.

¹⁶This application is usually filed after the parties cannot reach an agreement at the conciliation proceeding.

considering all relevant factors, such as creditor's demand and obligor's resources¹⁷. Japanese Family Courts calculate child support amount according to the schedule developed by cooperative study among judges in Tokyo and Osaka¹⁸. When a decision is rendered by the judge, it may be appealed to the High Court (In Japan, "High Court" means regional court of appeal for appeals from District, Family, and Summary Courts). Once the determination becomes binding, personal relationships are fixed in accord therewith¹⁹. If the decision orders payment of money or transfer of property, it may be enforced immediately²⁰. Usually, support obligation continues until a child becomes an adult (in Japan, 20 years old)²¹.

According to those contents of Japanese child support law, Japan has established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA. Therefore, Japan should be interpreted to be a qualifying "state" under UIFSA.

3. *Recognition Based on Comity*

Absent a reciprocal arrangement or proof of substantial similarity of foreign laws and procedures, the foreign order should be recognized on the basis of international comity. Therefore, if Japan is not considered to have established "substantially similar" procedures to UIFSA, recognition for Japanese order should be based on the common law doctrine of international comity.

¹⁷Minpo [Civil Code] Art. 879.

¹⁸Child Support Schedule at Tokyo Family Court, available at http://courtdomino2.courts.go.jp/K_oshirase.nsf/33cb0ff663fb98b3849256b14001d25b1/f60917eb28cdad4449256d720004e347?OpenDocument.

¹⁹As mentioned below, if substantial change occurs to the relevant factors, the Family Court can modify the support order. Minpo [Civil Law] Art. 880.

²⁰The Supreme Court of Japan, A Guide to Court Procedure: Procedures for Family Affairs Cases: at http://www.courts.go.jp/English/procedure/kaji1_e.html

²¹In some cases, child support obligation should continue until a child graduates from university. 13-9 Kasai Geppo 53 (1961).

Generally, recognition on the basis of comity is founded on a finding that the process of issuing the order was fair and afforded all parties due process²². In the child custody field, common law comity was used by individual states to be recognized in both sister-state and international child custody judgments long before the Uniform Child Custody Jurisdiction Act (UCCJA) provided comity by statute²³. Similarly, in the child support field, statutes in many states now give comity to both interstate and international child support cases through UIFSA, as I have already mentioned.

As mentioned above, under Japanese law, both the conciliation proceeding and the domestic relations determination proceeding are fair and afford all parties due process. Accordingly, a Japanese child support order should be recognized in the United States, not only based on the interpretation of UIFSA, but also based on common law doctrine of international comity.

B. Related Issues

1. *Choice of Law*

Under UIFSA, generally, the responding tribunal (i.e., a court in the United States) shall apply its procedural and substantial law and may exercise all powers and provide all remedies available²⁴. But this rule must be accomplished in a manner consistent with the overriding principle of UIFSA that enforcement of the issuing tribunal's order, and that

²²Hilton v. Guyot, 159 U.S. 113 (1895). International child support enforcement between the U.S. and a country which has neither reciprocal agreement with the U.S., nor laws substantially similar to UIFSA, this case is still thought to be controlling.

²³For example, custody decree of English Court was entitled to comity in Virginia in action brought by father seeking visitation rights with children in America. Oehl v. Oehl, 221 Va. 618 (1980).

²⁴Unif. Interstate Family Support Act § 303 (1), 9IB U.L.A. 303 (1999).

the responding state does not make the order its own as a condition of enforcing it²⁵. The law of the issuing state (i.e., Japanese law) governs the nature, extent, amount, and duration of current payment and other obligations of support and the payment of arrearages under the order²⁶.

2. Statute of Limitation

In an action for arrearages, the statute of limitation of the issuing state or responding state, whichever is longer, applies²⁷. In Japan, the period of prescription in respects of rights established by a child support order is ten years from the day when the order becomes final²⁸, and the 10-year statute of limitation runs from the date when a specific payment is due, not the date when the order is entered²⁹. Such claims lapse if they are not exercised for ten years³⁰. This 10-year limitation might be longer than limitations in the United States. Therefore, counsel for a petitioner from Japan needs to be prepared to prove these features of the Japanese statute of limitation.

C. Modification of a Japanese Order

Although I believe Japan has enacted a law substantially similar to UIFSA, if the responding tribunal finally decides that Japan has not enacted such law yet, the forum state is not required to refrain from modifying a Japanese order³¹. Even so, without showing the reason why an

²⁵Comment for Unif. Interstate Family Support Act § 303, 9IB U.L.A. 303 (1999).

²⁶Unif. Interstate Family Support Act § 604 (a), 9IB U.L.A. 357 (1999).

²⁷*Id.*, § 604 (b).

²⁸Minpo [Civil Code] Art. 174-2, Paragraph 1

²⁹*Id.*, Art. 174-2, Paragraph 2

³⁰*Id.*, Art. 167, Paragraph 1

³¹Modification is also possible under UIFSA § 611(a)(2).

issuing tribunal (i.e., a Japanese court) is unable to modify its own order, the respondent can object to the responding tribunal's assertion of modification jurisdiction³².

In Japan, Family Court may modify its child support order if any change has taken place in the circumstances, such as the financial capacity of the person under duty to support³³, if such a change is prominent³⁴. But in Japan, an automatic income withholding order has not been available yet. Japanese courts do not allow a child support order to be enforced by such automatic income withholding³⁵. In the U.S., such a type of order is available, in order to realize effective child support enforcement³⁶. Since availability of an automatic income withholding order is a matter of execution, if U.S. courts modify a Japanese child support order to be attached with an automatic income withholding order, such modification does not break comity between the U.S. and Japan. Therefore, such modification should not be banned.

D. Foreign currency conversion

As a general rule in the United States, foreign support amounts,

³²Gary Caswell, *supra* note 7, at 54.

³³Minpo [Civil Code] Art. 880

³⁴Takio Takagi et al., Jijo no Henko [Change in the circumstances], Huyo [Support], Jokai Minpo III Shinzoku Sozoku Ho (1988)

³⁵*Mother v. Father*, 1017 Hanrei Taimuzu 273, 275 (Tokyo High Ct., Feb. 26, 1998), hereinafter referred to as "*Mother in Minnesota*".

³⁶Income withholding is a procedure by which automatic deductions are made from wages or income, as defined in the Personal Responsibility and Work Opportunity Act, to pay a debt such as child support. Income withholding often is incorporated into the child support order and may be voluntary or involuntary. The provision dictates that an employer must withhold support from a non-custodial parent's wage and transfer that withholding to the appropriate agency (the Centralized Collection Unit or State Disbursement Unit). Sometimes referred to as wage withholding. OCSE, *supra* note 4.

arrearrages and judgments can be converted using the exchange rates in existence on the date of preparation of the notice of registration and on the date of a hearing³⁷. However, if the foreign currency has seriously devalued against the dollar since the date of the order or since the initial breach of the support obligation, one case law allows conversion at the rate of exchange each "breach" date³⁸. Therefore, the obligor is made whole in terms of U.S. dollars by receiving the breach date U.S. equivalence for each Japanese support amount that was due and not paid.

E. Availability of UIFSA Procedure for Petitioners in Japan

As mentioned above, OCSE has taken the position that States are required to provide child support enforcement services to individuals who reside in a foreign country and who apply directly to the State for paternity or support enforcement services³⁹, and some state CSE agencies provide services even without a reciprocity agreement.

Actually, quite a few petitioners living in Japan have been provided services from CSE agencies in many states of the United States, if absent spouses live in the United States⁴⁰. In those cases, Japanese petitioners need not obtain Japanese court orders⁴¹. They need not appear in

³⁷Shaw, Savill, Abion & Co., Ltd. v. The Fredricksburg 189 F.2d 952, 955 (2d Cir.1951)

³⁸El Universal v. Phoenician Imports, 802 S.W.2d 799 (Tex. Civ. App. 1990).

³⁹OCSE, Policy Interpretation Question (PIQ) 99-01, at <http://www.acf.dhhs.gov/programs/cse/pol/piq-9901.htm>

⁴⁰Calvin Sims, *Okinawan Women Fighting for Support From U.S. Servicemen*, N.Y. Times, July 23, 2000, at <http://www.nytimes.com>

⁴¹Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity

the responding tribunals. Testimony may be taken by telephone or video conferencing and tribunals may communicate directly to clarify recitals in orders or provisions of foreign law⁴². Evidence may be transmitted using standardized federal forms and faxed copies of documents such as pay records are admissible in evidence⁴³. Proceedings may be initiated by or referred to administrative agencies, such as CSE agencies⁴⁴.

Availability of CSE services is a great improvement for petitioners left behind in Japan, because it is practically very difficult and expensive for them to seek child support against obligors in the U.S. without making use of CSE services.

However, states CSE agencies provide services according to the advice of OCSE, not under reciprocal agreement between two countries. Accordingly, if children in the United States would like to enforce child support against their parents, they have to file an international child support action against the respondents in Japan. As described later, it is more difficult and expensive.

Therefore, it is fundamentally important for both the U.S. and Japan to enter a reciprocal agreement regarding child support enforcement, just like between the U.S. and some other countries such as Ireland, Slovak Republic, Czech Republic, or Poland⁴⁵.

of administrative enforcement of the order, the support enforcement agency shall register the order pursuant to the provisions for establishment of court order. Unif. Interstate Family Support Act § 507(b), 9IB U.L.A. 349 (1999).

⁴²Unif. Interstate Family Support Act § 316, 9IB U.L.A. 327 (1999).

⁴³*Id.*

⁴⁴Commissioners Official Prefatory Note to UIFSA IIB5(a), 9IB U.L.A. 241 (1999).

⁴⁵Gary Caswell, *supra* note 7, at 52

III. Enforcement of a U.S. Child Support Order in a Japanese Tribunal

A. Requirements for Recognition

Under Japanese law, requirements for recognizing a foreign child support order are prescribed in Japanese Civil Procedure Code⁴⁶, as quoted below.

"A final and conclusive judgment by a foreign court shall be valid only upon the fulfillment of the following conditions":

- (1) The jurisdiction of the foreign court is admitted by laws and ordinances, or treaties;
- (2) The defeated defendant who has received service of summons or orders (excluding service by publication or other similar service) necessary to commence procedures, or who has responded to the action without receiving such service;
- (3) The contents of a judgment and the procedure is not incompatible with public order or good morals of Japan;
- (4) There exists reciprocal guaranty.

1. *Final and Conclusive Judgment by a Foreign Court (Text)*

First, a foreign child support order should be "final and conclusive" judgment. "Final and Conclusive" means that such a child support order cannot be overturned by ordinary appeal procedures⁴⁷. Also, such a "final and conclusive judgment" should be issued in foreign courts where the

⁴⁶Minjisoshoho [Civil Procedure Code] Art. 118

⁴⁷Takeji Kojima, Recognition and Enforcement of Foreign Judgment [Gaikoku Hanketsu no Shonin Shikko], International Civil Procedure Law [Kokusai Minjisoshoho] (1994). Both in the U.S. and Japan, child support orders are subject to modification due to subsequent change of circumstances. But such changes subsequent to orders do not prevent such orders being "final and conclusive."

process of issuing the order was fair and was afforded all parties due process. Generally, U.S. courts' child support orders meet this requirement.

But in the U.S., quite a few states have adopted administrative and quasi-judicial processes and these processes have been frequently used. Both processes have provision for judicial review⁴⁹. No studies have been made to solve an issue whether child a support order through administrative or quasi-judicial procedures can be final and conclusive "judgment." In my opinion, Japanese courts might not recognize such an orders as "judgment by a foreign court," unless such an order had gone through judicial review and was upheld by a court⁵⁰.

2. "International Jurisdiction" of a Foreign Court (Sub Paragraph 1)

Second, the foreign court must have "international jurisdiction" over the case under Japanese law. Japan has no statutory provision which prescribes rules defining such "international jurisdiction." According to the Supreme Court of Japan, "international jurisdiction" shall be reasonably decided under the principle that establish imparity among the parties and fair and prompt administration of justice⁵¹. Tokyo High Court held that

⁴⁹Tadakazu Suzuki, *Gaikoku no Hisho-Saiban no Shonin, Torikeshi, and Henko* [Recognition, Withdrawal of Recognition, Non-Recognition, Modification of Foreign Non-Contentious Order], 26 *Hoso Jiho* 1489

⁴⁹Ira Mark Ellman et al, *Family Law: Cases, Text, Problems* 561 (3d ed. 1998)

⁵⁰For example, an administrative order under UIFSA § 507 is not a "judgment by a foreign court" only by itself. But if an obligor contests the validity of an administrative order and its validity is upheld by a court, it can be "judgment by a foreign court."

⁵¹*Husband v. Wife*, 50 *Minshu* 1451 (Sup. Ct., June 24, 1996). In this divorce case, the Supreme Court decided as follows. "It is necessary to consider inconvenience of a respondent who is compelled to respond to the suit. However, on the other hand, it is also necessary to consider whether it is possible for a petitioner to file a divorce petition in court where the respondent resides and the extent of the possibility of the filing divorce there, in order not to harm the rights of the petitioner who seeks divorce."

⁵²According to the New Jinji Soshō-Hō [Personal Status Litigation Law ("PSLL")],

a Minnesota Family Court had "international jurisdiction" over a case where a Japanese mother who was resident of Minnesota sought recognition of a Minnesota State's child support order against a Japanese father who resided in California⁵³. The Supreme Court of Japan affirmed this judgment⁵⁴. In this case, the appellee (the father) has been to Minnesota several times for business trip and had several sexual intercourses with the appellant (the mother) in Minnesota. The mother bore a child in Minnesota and she continued to live there with the child. The mother filed petition in Family Division of Fourth Judicial District Court in Hennepin County, Minnesota, seeking to establish a paternity and to collect child support. The service of summons was sent to the father, but he was not present at the hearing. Based on evidence such as the mother's testimony at the hearing, the court entered a judgment in favor of the mother⁵⁵. After the father returned to Japan without implementing the child support, the mother filed petition in Japanese court, seeking recognition of the Minnesota child support order. Under these facts, Tokyo High Court admitted that Minnesota had "international jurisdiction" over the case, by reasoning as follows⁵⁶.

"In a case regarding parent-child relationships like this, the parties' residence should be the basis for determining whether the court has "i

which has been enforced since April 1, 2004, a petition regarding personal status, including, but not limited to a divorce petition, can be filed in court where petitioner resides (PSLL, Section 4, Paragraph 1). However, this provision prescribes jurisdiction or venue regarding domestic cases. With respect to international cases, "international jurisdiction" theory given by the Supreme Court will not be changed (Jurist, Vol. 1259, Page 35).

⁵³Mother v. Father, 1017 Hanrei Taimuzu 273, 275 (Tokyo High Ct., Feb. 26, 1998), hereinafter referred to as "*Mother in Minnesota*".

⁵⁴Case No: (o) 1231 of 1998, Sup. Ct., Mar. 14, 2000.

⁵⁵State of Minnesota, Fourth Judicial District Court, County of Hennepin, Family Division, File No. PA27324 (Sep. 9, 1993).

⁵⁶Mother in Minnesota, 1017 Hanrei Taimuzu at 275

nternational jurisdiction". If each party has a different residence, in principle, the court where a respondent resides has "international jurisdiction." ... But under the facts of this case, ... it cannot be held that the respondent could not expect such an action regarding parent-child relationships like this to be filed against him. ... Also, ... in this case, most of evidence can be obtained conveniently in Minnesota. On the other hand, ... we can afford to say that the petitioner owed too much burden if she had to file an action in the respondent's residence. Under these circumstances, not only courts where the respondent resided, but also courts where the petitioner's residence is located, have "international jurisdiction" over this case."

In this case, even under Minnesota law, Minnesota court had personal jurisdiction over the respondent under UIFSA, which provides, "the individual engaged in sexual intercourse in this state and the children may have been conceived by that act of intercourse."⁶⁷

Both UIFSA's long - arm scheme and Japanese "international jurisdiction" standard are much more improved than the rigid standard declared in *Kulko v. Superior Court*⁶⁸.

But they do not yet go as far as the Brussels Convention, other existing European models, or the proposed Inter-American Convention on Support Obligations⁶⁹. Actually, Tokyo High Court denied the existence of "international jurisdiction" where a Japanese mother who resided in

⁶⁷Unif. Interstate Family Support Act § 201 (6), 9IB U.L.A. 275 (1999).

⁶⁸*Kulko v. Superior Court*, 436 U.S. 94. In this case, notwithstanding father's presence in California when he shipped off to and returned from the Korean War, and the contacts he had with the state by virtue of sending his children and their support payment there, the U.S. Supreme Court held that there were not sufficient, voluntary, and purposeful acts by the father toward California to permit its exercise of personal jurisdiction over him without violating the right to due process.

⁶⁹Carol S. Bruch, *Statutory Reform of Constitutional Doctrine: Fitting International Shoe to Family Law*, 28 U. Cal. Davis L. Rev. 1047, 1055

Ohio sought recognition of a Ohio State's child support order against a Japanese father who had residence in Japan, on the ground that the mother transferred her residence to Ohio for her own convenience⁶⁰.

However, given the dire need for more child support for more children, we should admit that failure to support a minor child in a state or a country is, sufficient contact with that state to justify in personal jurisdiction, and sufficient basis with that state to justify "international jurisdiction" under Japanese law. Therefore, both the United States and Japan should follow the remarkable proposal of late Professor F. K. Juenger and Professor C. S. Bruch that any child living in a state (California) and in need of support should be able to seek child support in a state (California) courtroom, without regard to the defendant's other contacts with the state⁶¹. This notable proposal is not only consistent with "minimum contacts" theory in the United States⁶², but also consistent with the principle that establish impartiality among the parties and fair and prompt administration of justice, which is the standard of "international jurisdiction" under Japanese law.

3. *Service of Summons Should Not be Made by Publication (Sub Paragraph 2)*

Third, the service of the summons should be made appropriately so that it can protect due process of defendants. In other words, the service should be made according to the standard of "international civil procedure." Therefore, under the circumstances where the complaint was served by mail to a Japanese respondent in Japan without being attached Japanese

⁶⁰*Mother v. Father*, 50 Kominshu 319 (Tokyo High Ct., Sep. 18, 1997), hereinafter referred to as "*Mother in Ohio*"

⁶¹Hearing on Conflict of Laws Issues, United States Commission on Interstate Child Support, Dec. 29, 1990 (written testimony of Carol S. Bruch, Nov. 29, 1990 and of F. K. Juenger, Dec. 4, 1990)

⁶²*McGee v International Life Ins. Co.*, 355 U.S. 220 (1957).

translation, an Ohio state's child support order should not fulfill this requirement⁶³.

4. *Not Incompatible with Public Policy of Japan (Sub Paragraph 3)*

Fourth, the contents of a judgment and the procedure shall not be incompatible with public policy under Japanese law.

(1) Contents of a Judgment

If the contents of a foreign judgment are incompatible with fundamental principle of substantive law of Japan, the foreign judgment could not be recognized in Japan. The Supreme Court of Japan denied recognizing a part of a California state court's judgment because the part authorized punitive damage, which was incompatible with public policy under Japanese law⁶⁴.

Accordingly, an income-withholding order for child support in a U.S. court could not be recognized as it stands, because such an income-withholding order imposes a third party employer to pay the support amount to an official support and collection service, without being intervened by a separate garnishee order. Such a process is incompatible with public policy under Japanese law. However, in *Minnesota Mother*, Tokyo High Court recognized such an income-withholding order, insofar as the order imposes the respondent to pay the support amount to the petitioner, on the ground that such an income-withholding order had an executing power to imposing the support payment against the respondent because Minnesota law prescribed that such an income-withholding order authorized the petitioner to enforce the judgment against the respondent if the

⁶³See *Mother in Ohio*, 50 Kominshu at 319

⁶⁴*California Corporation v. Oregon Partnership*, 51 Minshu 2573 (Sup. Ct., Jul. 11, 1997).

employer has not paid the withheld income for more than 30 days⁶⁵.

(2) Procedure of a Judgment

Also, the procedure of a foreign judgment, other than the service of process which is regulated under Subparagraph 2, shall not be incompatible with fundamental principle of procedural law of Japan. For example, if a foreign judgment were obtained without fair trial, if it were not made by impartial judges, or if it were obtained by fraud, it would not be recognized in Japan under this provision.

In *Mother in Minnesota*, the appellee alleged that the procedure of the Minnesota State's child support order was incompatible with public policy under Japanese law, on the ground that the order was entered upon the appellee's absence without designating the next court date. But Tokyo High Court denied this allegation and held that the procedure of the child support order was not incompatible with public policy under Japanese law⁶⁶.

5. Reciprocal Guarantee (Reciprocity)

Fifth, there exists reciprocal guarantee between Japan and a foreign country. According to the Supreme Court of Japan, if a foreign country recognizes a Japanese judgment under substantially similar conditions under Article 118 of Japanese Civil Procedure Code, there exists "reciprocal guarantee"⁶⁷. Generally, there's such "reciprocal guarantee between the U.S. and Japan"⁶⁸. As to child support orders, there is sufficient legal basis for the U.S. tribunals to recognize Japanese child support orders,

⁶⁵See *Mother in Minnesota*, supra note 33, at 277. As mentioned above, The Supreme Court of Japan affirmed this judgment (Case No: (o) 1231 of 1998, Sup. Ct. Mar. 14, 2000).

⁶⁶*Mother in Minnesota*, supra note 33, at 275.

⁶⁷Case No. (o) 826 of 1982, 37 Mishu 611, (Sup. Ct., Jun. 7, 1983).

⁶⁸*Id.* In this case, the foreign judgment was issued by a Federal District Court in

as mentioned above in IIA. Therefore, such reciprocity exists regarding child support cases.

B. Court Process to Recognize a U.S. child support order

In order to enforce a foreign child support order, a petitioner should file an action for seeking a judgment on a foreign child support order.

1. *Jurisdiction*

A petitioner seeking judgment on a foreign judgment should file an action in a district court where a respondent resides. If the respondent has no residence in Japan, the petitioner can file an action in a district court where the respondent's garnishable assets were located⁶⁹.

2. *Court Procedure*

Responding Japanese courts examine whether a foreign child support order is final and conclusive, and whether a foreign child support order fulfills the requirements for recognition, prescribed in Article 118 of Minjisoshoho [Civil Procedure Code]⁷⁰. However, the Japanese courts do not examine the merits of a foreign child support order⁷¹. Therefore, Japanese courts do not examine whether a U.S. child support order obeys the rules for choice of law in the U.S., or whether the order has proper conclusion or proper reasoning.

In a judgment on a foreign child support order, the responding Japanese court shall declare that the court permits execution of the foreign order⁷².

District of Columbia.

⁶⁹Minjishikkoho [Law of Civil Execution], Art. 24, Paragraph 1

⁷⁰*Id.*, Paragraph 3

⁷¹*Id.*, Paragraph 2

⁷²*Id.*, Paragraph 4

C. Foreign Currency Conversion

In order to execute a foreign support amount in a recognized foreign child support order, the creditors can charge the debtors with the support amount either in Japanese Yen or in foreign currency. Under Japanese Civil Code, the debtors can liquidate in Japanese Yen even when they are charged to pay in foreign currency⁷³. If the debtors select to liquidate in Japanese Yen, they should use the exchange rates at the time of the liquidation⁷⁴.

However, there is neither statutory provision nor case law regarding the cases where the foreign currency has seriously devalued against Japanese Yen since the date of the order. Thinking about possibility of serious fluctuations in exchange between U.S. Dollar and Japanese Yen, the creditor should be permitted to use the exchange rate at the time of the order in those cases.

IV. Conclusion

Including practices to make use of state CSE services for petitioners in Japan, great improvements have been attained to resolve problems regarding child support enforcement between the U.S. and Japan. However, many problems remain to be resolved.

First of all, in order to establish and to enforce an international child support order between the U.S. and Japan more effectively, it is critically important for the both countries to conclude the agreement regarding

⁷³Minpo [Civil Code] Art. 403.

⁷⁴Appellant v. The Bank of the Ryukyus, Case No. (o) 305 of 1973, 29 Minshu 1029, (Sup. Ct., Jul. 15, 1975).

child support enforcement, like between the U.S. and some other countries such as Ireland, Slovak Republic, Czech Republic, or Poland. In order to make such reciprocal agreement, Japanese government should establish the central authority to handle international child support cases, like OCSE in the U.S.

In addition, the two countries should adopt the above-mentioned proposal of late Professor F. K. Juenger and Professor C. S. Bruch, so that any children should be able to seek child support in their home state or home country.

In order to realize those ideal goals, practitioners handling international child support cases between the two countries should accumulate practical problems and appeal necessities to solve such problems by establishing appropriate international rules.