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In defense of the Core of Japanese Private Law – Public Policy in Japanese Private International Law

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When evaluating cases involving legal relationships between private individuals with cross-border elements – such as a divorce between citizens of different countries – Japanese courts determine which jurisdiction's law shall be applied to the legal relationship in question using a set of rules called "Private International Law". Like Germany, Japan employs a so-called "Savignian approach" to Private International Law. This approach involves striving to apply the law that Japan considers most closely connected to the specific legal relationship, without necessarily considering the consequences or results of applying that law. However, this is a proverbial "leap into the dark": allowing Japanese courts to apply foreign law may sometimes lead to outcomes that fundamentally contradict Japanese ideas of justice and equity. In this context, the so-called Public Policy clause provides a crucial safeguard. If the application of foreign law results in a violation of "public policy and good morals," this clause enables Japanese judges to exclude the foreign law from application. It functions both as an exception to the rules of Private International Law as well as a corrective measure, safeguarding the legitimacy and acceptance of the Private International Law system.

This presentation will analyze the doctrinal development and practical application of the Public Policy clause, illustrating under which circumstances and conditions Japanese courts invoke it. By examining the existing case law, the presentation aims to identify the values that Japanese courts regard as the fundamental and indefeasible core of their legal system, to identify foreign laws likely to cause results discomfiting to Japanese judges, as well as to assess their degree of tolerance for outcomes that diverge from Japanese law as a result of the application of foreign legal norms.

Jan Felix von Alten, is a PhD student at the Chair for Japanese Law and its Cultural Foundations at the Goethe-University of Frankfurt in Germany. He is interested in the coordination of legal systems and the governance of cross-border legal relationships. His areas of interest include German and Japanese Private International Law and Constitutional Law. He is on a research stay at the DIJ from February to July 2025.

About:

The DIJ Study Group is a forum for scholars from all disciplines conducting research on contemporary or modern Japan. The event is open to all.

This session is organized by Harald Kümmerle.

This is a public event. Please be aware that audio-visual recordings may be made, stored, and published during and after the event.

Hybrid Event:

On-site participation: please register via email to kuemmerle@dijtokyo.org until July 1.

Online participation: please register via our [webpage](#). Log-in data will be provided after registration.

Venue:

Online and DIJ Tokyo: <https://www.dijtokyo.org/access/>