

PREVENTIVE LAW

SERIES

Legal Assistance Program

TOPIC:

JAPANESE DIVORCE

March 2014

If you have questions concerning the topic
of this pamphlet, please contact the
Legal Assistance Office

For additional information & useful links, please visit:

<https://aflegalassistance.law.af.mil>

Legal Assistance Office
Phone: 226-4022

Office of the
Staff Judge Advocate
Misawa AB, Japan

The following information is designed to answer some common questions you may have about separation agreements and divorce. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE. After reading this pamphlet, you should discuss your questions with a Legal Assistance attorney.

FREQUENTLY ASKED QUESTIONS

1. Can I get a divorce in Japan?

Yes, but **only if one spouse is a Japanese citizen. If you are both US citizens, you cannot get divorced in Japan. If you are both US citizens, you must get divorced in a state where one of you has legal residency. Please make an appointment with a Legal Assistance attorney for more information.**

2. But we got married in Japan, can't we get divorced here?

No. Not unless one of you is a Japanese citizen.

3. My spouse is a Japanese citizen. How do we get divorced in Japan?

Japanese law governs divorce proceedings. Divorce may be either consensual or judicial. American citizens cannot get a judicial divorce. Consensual divorce is obtained by submitting a separation agreement to the Family Register Record. No formalities are required unless a dispute arises as to the custody of children or division of property, in which case a referral is made to the family court. American citizens CAN get a consensual divorce but all issues (i.e., property division, child custody, child support, etc) must be resolved before filing for divorce. Alimony is not recognized, although lump sum settlements which have a similar objective may be granted by the court.

American citizens must show evidence that they are able to be divorced in their state and that the procedures used in Japan are compatible with those of their home state. American citizens can only get a divorce in Japan if both parties consent (also known as uncontested). If division of military retirement pay is an issue, a Japanese divorce is not an option. American courts have exclusive jurisdiction over this issue. Therefore, although a Japanese court could issue a divorce decree ordering division of military retirement pay, the order regarding division of military retirement pay is invalid. You would have to relitigate this issue in an American court if you want to see any of the retirement pay. To avoid this problem, you need to get a divorce in the United States. If custody and support of minor children is an issue, a Japanese divorce is *strongly discouraged* for a variety of reasons. For instance, American state courts can always revisit the issues of child support and child custody. If you are getting divorced, you certainly do not want to have to go through the same procedure again back in the U.S.!

If there are no children from the marriage or if those with children still wish to go forward with a Japanese divorce, you must be able to meet certain strict requirements. First, you and your spouse must be able to agree on all matters such as property division, child custody and child/support (if there are minor children involved). Second, you must be willing to sign a separation agreement that addresses all these matters. You will be responsible for drafting your own separation agreement that reflects you and your spouse's wishes. The agreement must then be translated into Japanese.

You will have to hire a translator to translate the documents. We can give you the names of several individuals in the local area who provide translations. These individuals are not connected with the legal office and we do not endorse their services in any way.

After the documents are translated, you and your spouse, or the translator on your behalf, may file them with the **Towada City Family Court**. Both of you will be required to appear in court on the date of the hearing. After your court appearance, the court will send you a certificate in Japanese stating that you are divorced. You should translate the certificate into English for use by the Military Personnel Flight and Accounting and Finance, but the Japanese certificate is the only official copy you will receive.

BEWARE: Misawa also has a “quickie” procedure for getting a divorce that can be done at Misawa City Hall. It is called a “ward office” or “mutual consent” (*kyogi rikon*) divorce. Japanese law allows for this procedure when at least one party is a Japanese national and both parties consent to the divorce. This procedure is very popular to some because it is significantly cheaper and faster, but poses many risks to American citizens especially those with minor children. The United States Embassy in Tokyo specifically warns American citizens that the legality of this extra-judicial procedure in the United States is uncertain. Therefore, some state courts may determine that the divorce is invalid. Consequently, you will be still considered married! Further, the provisions for child support and child custody are more suspect; thus, easier to challenge at a later formal proceeding in a proper court of competent jurisdiction.

2. How do we file for divorce in Family Court?

The couple goes to the Family Court to register. Following this, one or more conciliation meetings will be held before a mediator and a judge. The aim of these consultations is to effect reconciliation or, failing that, to arrange mutually agreeable terms for the dissolution of the marriage.

3. What papers do we need to get a divorce in Japan?

If you decide to apply for a divorce in the Towada City Family Court, you will need to submit some or all of the following documents, translated into Japanese:

- Husband and wife’s birth certificates
- Separation agreement (major issues such as child custody, if applicable, and division of parties’ assets must be addressed)
- (For U.S. citizens) An abstract of the divorce laws of that person’s state of legal residence
- (For Japanese citizens) A copy of their family registry and a certificate of residence (*juminhyo*)
- Military ID cards of the parties
- Marriage certificate
- Birth certificate for any dependent child(ren)
- ID cards of any dependent child(ren)
- A copy of certificate of alien registration for non-Japanese parties
- Revenue stamps: -900
- Postage stamps: -80 x 10
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DO NOT give original documents to the court. You should keep the originals for your files. If you need certified copies of documents, you must go to the custodian of that document such as the State

or county office in which the marriage license was received or the State office of vital statistics for birth certificates. Our office can provide you a phone and address listing of most state agencies. After you obtain certified copies of the documents that you need you should submit these copies to the court.

4. What are the residency requirements for filing?

At least one of the parties must be a legal resident of Japan. The court will not accept cases from couples who have traveled to Japan for the sole purpose of obtaining a divorce.

5. How long does it usually take to get a divorce in Japan?

It will normally take at least 2 months to get a divorce in Japan. It usually takes approximately 3 weeks to get the separation agreement done, 2 weeks to get the translations done and 4 weeks to get a court date.

6. Can a divorce be granted in absentia?

While both parties do not need to be present to file and begin the procedures leading to a divorce, because of the nature of the conciliation process, the court will require the appearance by both parties for at least one joint hearing.

7. How much will it cost to get a divorce in Japan?

It depends on how much the translator charges for their services. Costs may vary according to the complexity of each case. There will be additional charges for additional copies of translated documents. The average cost, however, of a consensual/uncontested divorce in the Misawa area is approximately \$500-600.

8. Do the personnel of the Family Court speak English?

Many of the mediators and judges have English language ability. However, the court advises non-Japanese speakers to bring with them a person who can read and write Japanese to assist them in completing the registration forms. Parties may wish to bring their own translator to the hearings.

9. Is a divorce granted by the Family Court valid in the U.S.?

A divorce legally granted in one country is generally recognized in the United States as long as the parties were present for the proceeding, at least one party was resident in the country of forum, and recognizing the divorce will not violate a strong public policy of the United States.

10. How is the custody of children determined?

The general practice is to award custody to the mother unless there is an overriding reason to award custody to the father. Nationality of the child is not considered crucial in the determination of which parent will assume custody.

11. What about enforcing child custody agreements?

A foreign child custody agreement cannot be automatically enforced in Japan, although the court can order enforcement. In the case of parental kidnapping from the U.S. to Japan, the custodial parent can apply through the court in Japan to require the return of the child to the United States.

12. Are there any problems associated with getting a divorce in a Japanese court?

Potential pitfalls do exist! When you return to the United States, the Japanese divorce decree could be more easily challenged by your former spouse than one issued by a court in the United States, particularly if the former spouse argues the divorce was obtained by fraud, duress or coercion. State courts usually recognize the validity of a foreign divorce but they are not required to do so and some do not. In addition, state courts retain continuing jurisdiction over issues such as child support and child custody. Further, it is extremely difficult to modify or enforce provisions of a Japanese divorce decree outside of Japan. Therefore, **if the parties will have to work with each other after the divorce on continuing issues such as child support, alimony, child custody, or division of military retirement pay, you should definitely NOT get a Japanese divorce.** In addition, for those who wish to obtain “joint physical custody,” the Japanese courts generally do not grant such a provision. Rather, one parent is usually found to be the primary physical custodian, while the other becomes the non-custodial (part-time) parent.

Only a court of competent jurisdiction of an American state, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, N. Mariana Islands, and the Trust Territory of the Pacific can order a division of retired pay; therefore, a division of a military member’s pension attempted in a Japanese divorce decree will not be enforceable.

Finally, if you choose to get a divorce in Japan, it is highly recommended that you request more than one official copy of the divorce decree at the time you get the original processed in order to prevent the hassles of trying to obtain official copies later when you’re back in the U.S. Also, obtain the address of the Japanese court in case you do need additional copies of the divorce decree in the future.

The following information is given for general informational purposes concerning foreign divorces.

Foreign Divorce

A foreign divorce is defined by Black’s Law Dictionary as a divorce obtained out of state or country where the marriage was performed.

Reciprocity

Reciprocity can be defined as the relationship existing between two States when each gives certain privileges to the other on conditions that the other State will do the same in similar situations. This is an important issue in determining whether a foreign divorce decree is to be recognized in the United States based on a matter of courtesy or respect. If a foreign country will not recognize a judgment of an American state court, the American court, while free to recognize the foreign judgment, need not do so.

Jurisdiction Concerning Foreign Countries

Normally the judgments of courts of foreign countries are recognized in the United States based on a matter of courtesy or respect due the courts and judgments of one nation to another. This general rule is frequently applied in divorce cases; a decree of divorce granted in one country by a court having jurisdiction to do so may be given full force and effect in another country.

Therefore, a court must have jurisdiction over the parties involved before it can grant a divorce decree. In other words, the parties must meet the minimal requirements needed to bring them under the laws and protection of the court. If a divorce action lacked jurisdiction, it may be attacked and set aside in an American court. Usually, State courts will not recognize a divorce obtained in a foreign country if neither spouse resided in that country. For purposes of divorce jurisdiction and residence, American service members and dependents stationed overseas in Japan are generally deemed to meet the requirements to satisfy jurisdiction before a Japanese court if, prior to filing for divorce, they have resided within the country for over 6 months. Finally, if a foreign divorce decree is obtained by fraud or mistake, American state courts may refuse to recognize it.

Basis for Divorce

You should consult with a Legal Assistance Attorney regarding the specific laws of your state. Many states have a “no fault” divorce. Generally, one party simply alleges irreconcilable differences. Be aware there may be certain time requirements in your state for filing or being separated in order to comply with the “no-fault” divorce procedure. Yet, some states still have grounds for divorce where one party must allege fault.

Alimony and Child Support in General

When one spouse has obtained a divorce in a foreign jurisdiction with an award of custody, he or she may maintain an independent state action against the other spouse for the future support of the child. The American state court must recognize such decrees concerning alimony and child support and accord them as broad a scope as would be given them in the state in which the decision was pronounced, providing (1) that the court had personal jurisdiction over the responsible or the obligator spouse, (2) where the procedural requirements of due process were observed, and (3) the decree that was entered was a final decree. There are some instances when the state court is not bound by a foreign judgment, such as a foreign judgment for child support when the state court had previously acquired jurisdiction over the parties and their minors. There have been cases in which courts have refused to enforce payments which may become due in the future under a foreign divorce decree based on the lack of finality of the decree. A state court is not required to enforce payment of arrears of alimony or child support where the law of the divorce court has the power to modify or cancel the arrears. Nevertheless, the courts of another jurisdiction are at liberty to enforce payment of such arrears.

The information contained in this pamphlet is of a general nature and is provided for your assistance and convenience. It is not intended as legal advice and is not a substitute for legal counsel. If you have any questions as to how the law in this area affects you or your legal rights, contact your civilian attorney or the Misawa Air Base Legal Office for an appointment with a licensed attorney (226-4022).