

我國同性婚姻之法律衝突問題

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摘 要

司法院釋字第 748 號解釋施行法僅就內國的同性婚姻關係做出實體法上的相關規定，但對於涉外的同性婚姻關係應如何適用法律，並無明文。我國現行法制對於與大陸地區人民之婚姻、與港澳地區人民之婚姻及與外國人民之婚姻在法律適用規定上均不完全相同，使得涉外同性婚姻的法律適用問題越形複雜。

我國法制應如何定性「同性婚姻」？關於涉外同性婚姻之準據法，是否亦應適用結婚之準據法規定？上開問題均為我國同性婚姻之法律衝突之核心。本文以比較法學分析方法，就上開問題逐一進行分析，並試著提出一些具體建議予我國司法實務工作者。

關鍵詞：國際私法、涉外婚姻、同性婚姻、註冊伴侶關係、本國法主義

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Same-Sex Marriages in Taiwan Private International Law

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Abstract

Act for Implementation of J.Y. Interpretation No. 748 only made relevant substantive laws on same-sex marriage in Taiwan, but there was no clear text on how the law should be applied to same-sex marriage involving foreign elements. Taiwan legal system is not completely the same in terms of applicable laws to marriages with the mainland area people, marriages with the Hong Kong and Macao area people, and marriages with foreign people, making the same-sex marriages involving foreign elements more complicated in the application of law.

How should Taiwan legal system characterize “same-sex marriage”? Regarding the law governing foreign same-sex marriage, could the law governing marriage also apply? They are the core issues of Taiwan conflict of laws over same-sex marriage involving foreign elements. This article uses comparative legal analysis methods to analyze the mentioned issues and tries to give some specific advices to our judicial practice workers.

Keywords: Private International Law, Foreign Marriage, Same-Sex Marriage, Registered Partnership, Lex Patriae

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