

Devaux on French Choice of Law Rules on Marriage

Angelique Devaux has posted *The New French Marriage in an International and Comparative Law Perspectives* on SSRN.

“Drinking, eating, sleeping together is marriage it seems to me” already wrote Antoine Loysel, Jurisconsult, into Institutes Coutumières at the beginning of the 16th century.

After several failed attempts and the creation of a civil partnership designed as a semi-loophole to a heated debate and timely subject, it took France more than twelve years after the Netherlands to finally join the family of countries authorizing marriage of homosexual couples.

Equality is the key word of the French reform: Equality in duties and rights that allows an identical access for legal protection to marriage like for opposite-sex couples, inspired from The Declaration of Human and Civic Rights of 26 August 1789 .

To perfect the equality to an international level, the Act of 17 May 2013 included language which states that marriages performed in a foreign jurisdiction satisfy the legal requirements of marriages in France. The new bill also confirms France’s traditional choice of law rule according to which the law of the nationality of each spouse applies to the substantive validity of marriage. In order to be effective, the statute adopts a new conflict of law rule providing that same-sex marriage would still be allowed when the national law, or the law of the residence, or the law of the domicile of one of the spouses allows it. Intended to translate an extensive and cosmopolitan access to same-sex marriage, the new rules of conflict of laws suffer in reality from imperfection and do not provide an equal access to marriage for all, in particular due to historical international conventions that superseded the law.

The difficulties for both gay and lesbian spouses occupy an even more prominent place in today’s globalized world where more and more couples live outside their country of origin. As soon as cross-border elements come, the new definition of French marriage faces a multitude of challenges related to

immigration, benefits, adoption, international wealth management, matrimonial property regime, divorce, and succession.

What are the surrounding practical consequences when same-sex married couples decide to move abroad, and how to solve or to anticipate all the dormant problems?

In this paper, I am examining some of the potential issues related to same-sex marriage and conflict of laws in a comparative law perspective, and I suggest a new approach to deal with these coming questions in accordance with the international and European tools that may serve individuals from countries that already have opened marriage to same-sex couples, and those who want to join the international family.