

### 3. Family Law

#### Amendments to Inheritance Law (1980) and Implementation (1981)

##### 1. *The Background of the Amendments*

The Inheritance Law in the Meiji Civil Code of 1900 smacked highly of a feudalistic, patriarchal system centering on the systems of primogeniture and patrimonial inheritance. Under the patrimonial inheritance system, the family estate was solely in the hands of the head of the family or patriarch and the livelihood of the family members was guaranteed by the patrimony of the patriarch.

With the promulgation of the New Constitution, however, the law of inheritance in the Civil Code was also revised on a large scale in 1947. In order to realize the ideals of the Constitution calling for the respect of individuals and equality between the sexes, the revised law abolished the patrimonial inheritance system and established a system of co-succession and the inheritance right of the spouse, while at the same time confining the scope of blood-related successors to the level of lineal descendants, lineal ascendants, and brothers and sisters, thus taking on the shape of a modern law of succession.

As the time was limited for legislation, however, the amendments were not necessarily satisfactory as far as the details were concerned.

In 1962, the law of inheritance was partially amended, and as a result the system of succession by representation was improved and a new system was created allowing persons who had special connections with the deceased to receive a share in the absence of a successor.

For some time afterwards there were no moves for an amendment, but from about 1971 the Civil Law Department's Family Law Subcommittee of the Legal Council began an overall review of the law of succession. In July, 1975, the subcommittee announced an interim report concerning the successors and shares

in succession, the matrimonial property system and the amount of contribution that allows an increased portion for the successor who has contributed toward maintenance and increase of the estate.

As a result of the continued study in detail by the subcommittee, the Councilor's Office of the Justice Ministry's Civil Affairs Bureau announced a "Draft Outline of the Amendments of the Civil Code concerning Succession" in July, 1979. Upon taking into account the opinions of various circles and the trend of public opinion, the Legal Council in February, 1980, filed a recommendation with the Justice Minister for partial amendment to the Civil Code concerning succession.

On the basis of the recommendation, the Justice Ministry mapped out a "Bill calling for Partial Amendment to the Civil Code and an Act for Adjudgement of Domestic Relations" which the Cabinet submitted to the Diet for approval. The bill was approved in May, 1980 (Ch. 51 of 1980) and put into force on Jan. 1, 1981.

## ***2. Contents of the Amendment***

### **I Increased Share of a Spouse in Succession:**

The spouse of a decedent becomes a successor in every case and is entitled to a co-succession with the top-ranking successor of the blood relationship (Civil Code §890). Until then, in the case of an intestate succession where children and the spouse were co-successors, the share in the succession of the children was two-thirds, and that of the spouse one-third; where the spouse and lineal ascendants were successors, the share in the succession of the spouse and that of the lineal ascendants were one-half; where the spouse and brothers and sisters were co-successors, the share in the succession of the spouse was two-thirds and those of the brothers and sisters one-third.

In Japan, the scale of families is becoming smaller with the emergence of so-called "nuclear families" in recent years, and births have been steadily declining. In this sense, opinions gained strength that when the spouse and the children are co-successors,

the shares in succession of the spouse are too small. In addition to the actual changes in the family relationship, calls have been quite strong across the nation demanding that the legal status of the wife be elevated by justly evaluating the cooperation and contribution of the wife during matrimony.

Against such a backdrop, the share of surviving spouses has been raised as follows in order to protect them:

1) Where the children and the spouse are successors, the share in succession of the children and that of the spouse shall respectively be one-half;

2) Where the spouse and lineal ascendants are successors, the share in succession of the spouse shall be two-thirds and those of the lineal ascendants shall be one-third;

3) Where the spouse and brothers and sisters are successors, the share in succession of the spouse shall be three-fourths and those of the brothers and sisters shall be one-fourth (Civil Code §900).

Incidentally, the protection of the surviving spouse is achieved by the amendment to the Marital Property Law. The Civil Code Article 762 provides for the so-called separate property system. Under this system, property belonging to either the husband or the wife from a time prior to the marriage, and property acquired during the marriage in his or her own name, constitutes his or her separate property.

There was an opinion at one time calling for the protection of the spouse by adopting the community property system, but if such a system were adopted, it would become necessary to introduce highly complicated measures to deal with the question of the burden of debts, administration and disposition of community property. In this regard, it was designed to protect the status of the spouse, especially that of the surviving spouse, by raising the share in succession of the spouse while maintaining the separate property system which is, as far as legal matters are concerned, simple.

II The creation of the system concerning the amount of con-

tribution:

When a person engaged in agriculture or an independent enterprise dies intestate, can the successor who has contributed a great deal toward the making and maintenance of the property of the deceased claim more than the statutory share in the succession against those who have not contributed at all?

When there is a considerable difference in the manner of contributing toward the maintenance or the increase of a decedent's estate, the formal, uniform distribution of the decedent's estate as provided for by law concerning the shares in succession gives rise to unequitable results among the successors. So, a new system concerning the contribution was established to provide a substantial equity between the co-successors by helping the successor, who has made a special contribution toward the maintenance or the increase of the decedent's estate, acquire more than the statutory share in the succession.

In the family court, in respect to the partition of an estate, there have been many adjudgements of domestic relations recognizing the amount of contribution during the past 10 years, but then there occurred many disputes and much confusion about the scope of successors receiving the amount of contribution, related juristic construction and requirements.

In the amendment, the handling of the amount of contribution has been made expressly clear as follows:

1. If any one of the co-successors has contributed specially to the maintenance or the increase of the property of the person to be succeeded to by such means as offering services or pecuniary performance concerning the undertaking of the person to be succeeded to, services of recuperation and nursing for the person to be succeeded to, and otherwise, the property owned by the person to be succeeded to at the time of the opening of the succession deducted the amount by such one of the co-successors, which was determined by the agreement among the co-successors, shall be deemed to be the property succeeded to, and the share of such one in succession shall constitute the share in succession computed by the provisions of Article 900 through 902 plus the

amount of contribution.

2. Unless the agreement under the preceding paragraph is reached or possible, the family court shall, on the application of the person who has made the contribution as provided for in the above paragraph, determine the amount of contribution, taking into account the time, mode and extent of the contribution, the amount of the property succeeded to, and all other circumstances.

This provision is designed to modify the shares in succession rationally by determining the amount of contribution by the adjudgement of the family court or by the agreement among the co-successors. The persons entitled to the amount of contribution are limited to children, the spouse, and lineal ascendants. Brothers and sisters, and non-successors such as a de facto spouse cannot claim the amount of contribution regardless of their contribution to the formation of the property of the person to be succeeded to, and the amount of contribution shall be recognized only when there has been "a special contribution." "Special contribution" means that its scope shall be more than the deeds as is expected as a matter of fact by the duty between husband and wife to cooperate and aid each other (Civil Code §752) or the duty between relatives to support each other (Civil Code §877).

### III The Limitation of Succession by Representation of Brothers and Sisters:

Since there were no specific restrictions on the scope of a successor by representation prior to the amendment, when brothers and sisters became co-successors there emerged a so-called "laughing successor (lachender Erbe)" who had nothing to do with the person to be succeeded to, as there happened to be many lineal descendants of brothers and sisters. Furthermore, such cases were often attended with evils marrying the smooth partition of an estate requiring a lot of time in searching for or contacting possible successors.

In this connection, the amendments provided that the scope

of the successors by representation shall be limited to the children of brothers and sisters, that is, nephews and nieces of the person to be succeeded to (Civil Code §889 (2)).

#### IV A revision of the Basis for Partition of an Estate:

Revising Civil Code Article 906 concerning the basis for partition of an estate, a new provision was added to the effect that considerations be made in partitioning the estate with regard to "age," "mental and physical state," and "living conditions" of respective successors.

Article 906 says: "For effecting the partition of an estate, the kind and nature of the things or rights constituting the estate, the age, occupation, state of mind and body, and living conditions of each successor and all other circumstances shall be taken into consideration."

The law made it clear that in case there is a physically and mentally handicapped person or a person greatly in need of support among the successors, special consideration must be paid to the preservation of their livelihood.

#### V The Revision of Legally Secured Portions:

As the share in succession of the spouse was increased by the current amendment, the legally secured portions for the spouse are also increased to be equal with the children to maintain a balance.

Hitherto, the legally secured portions used to be either one-half or one-third of the property of the person to be succeeded to. But in the case of one-third, (1) where the successor is only the spouse, (2) where the successors are the spouse and lineal ascendants, and (3) where the successors are the spouse and brothers and sisters, the portions are raised to one-half. As a result, the portions are to remain one-third only when the successors are lineal ascendants (Civil Code §1028).

Thus the idea of protecting the spouse has been pushed through in the matter of succession. However, the proposed amendment calling for equitable shares in the succession between illegitimate

and legitimate children was not dealt with at this time.

By MASAYUKI TANAMURA

## **4. Criminal Law and Procedure**

### **1. Central to the trends in criminal legislation was the new development seen in the work of revising the Criminal Code**

The preparatory work for the revision of the Criminal Code was virtually completed in May, 1974 when the Legislative Council submitted to the Justice Minister a “Draft of the Revision of the Criminal Code” winding up its 11 years of deliberations.

Criticism ran high against the draft, however, even while the Council was deliberating on it. Some criminalists, the Japan Bar Associations, the Psychoneurosis Society of Japan and others leveled scathing attacks on the draft, and their criticism remained unabated even after the draft was submitted.

Against such a background, there was no move to submit to the Diet a legislative bill calling for a revision of the Criminal Code until 1980 and it appeared that action for a revision was deadlocked.

In the meantime, the Justice Ministry announced in July, 1979 the “Results of the Study of the Overall Revision of the Criminal Code and Their Interpretation,” partly adopting the dissenting opinion. This too was subjected to criticism from many quarters.

The indiscriminate killing of a number of bus passengers by an arsonist and several other serious crimes committed by mentally deranged persons and drug addicts occurred one after the other following the summer of 1980, keenly impressing upon society the need for measures of security discussions on the revision of the Criminal Code centering on measures of security were actively revived. Then and there, the Justice Ministry stepped up its activities to promote the submission of the bill to the Diet.