existence of the safety care liability.

The present case also found liability based on the breach of the safety care liability. At the same time, the precedential value of this judgment lies in the fact that the Supreme Court recognized the liability of an employer to pay damages to employees in the case of injury and death caused intentionally by third parties.

By Prof. Teruaki Tayama
Prof. Katsuichi Uchida
Naoya Suzuki

3. Family Law

1. A case in which the date for commencement of the limitation period for renunciation of a succession was at issue.

Decision by the Second Petty Bench of the Supreme Court on April 27, 1984. *Jokoku* appeal dismissed. Case No.(*o*) 82 of 1982. A case demanding money lent, etc. 38 *Minshū* 698. 1116 *Hanrei Jihō* 29. 528 *Hanrei Taimuzu* 81.

[Facts]

As A stood guarantor for quasi-loan for consumption worth ten million yen between B and X (plaintiff, *koso* respondent, *jokoku* appellant), it was claimed that A had incurred a debt by guaranty. On Feb. 22, 1980, the court at first instance passed a judgment upholding the plaintiff's claim. But because, on Mar. 5, 1980, A died, X moved for a revival of the action. The court at first instance granted the motion, and served a copy of the judgment on Y_1, Y_2 and Y_3 who were A's heirs (defendants, *koso* appellants, *jokoku* appellees). But having run away from home in 1966, A had had no connection with Y_1 and the others.

In addition, though Y_1 and the others knew of A's death, they did not know of the existence of A's debt and the fact that the action in relation to the debt was pending. Therefore, Y_1 and the others appealed from the judgment of the court at first instance, and simultaneously claimed a renunciation of their succession in the Osaka Family Court. The Family Court accepted their claim.

The court on appeal accepted the contentions of Y_1 and the others, and set aside the decision of the court at first instance (Decision of the Osaka High Court on Oct. 22, 1981. 1042 *Hanrei Jihō* 104). Thus, X filed a *jokoku* appeal on the grounds that the point of commencement of the limitation period within which successors could decide whether or not to accept their succession was the date when they knew the facts about the death of their ancestor and understood their situation as heirs.

[Opinions of the Court]

As a rule, the limitation period within which successors can decide whether or not to accept succession under Article 915 (1) of the Civil Code should be reckoned from the date when they know of the death of their ancestor and that they have become heirs. But if they fail to state a qualified acceptance or a renunciation of the succession within three months after they knew these facts because they believed that there was no deceased estates in existence, and, judging from the life history of the deceased and the state of intercourse between him and his successors, it is difficult to expect the successors to examine whether assets and debts exist in the inherited estate and, therefore, they have good reason to believe that there is no inheritance at all, then the limitation period should not be reckoned from the date when they first know about the death of the testator and their inheritance. In such a case, it is appropriate to construe the limitation period as beginning when the successors know or could reasonably be expected to know the existence of all or part of the assets and debts of the deceased estate.

[Comment]

This Supreme Court decision made it possible for the successors to renounce their interests in the estates of their ancestor more than a year after the succession. A successor must make an acceptance (absolute or qualified) of the estates or a renunciation of his interests in the estates within three months after he became aware of the beginning of succession (the Civil Code, Article 915 (1)). This three month period is called "*jukuryo kikan*" (i.e., the limitation period within which an intestate successor must decide whether or not to accept seccession). This limitation period has been construed to be reckoned from the date when the successor knew (1) the fact that his ancestor had died and (2) the fact that he had acquired the status of heir.

But if the successor believed that there was no debt though he knew the facts (1) and (2), he would not usually renounce his interests in the estate. In such a case, he is considered to have made an absolute acceptance of the succession (the Civil Code, Article 921 (ii)), and succeeds to every right and duty of the ancestor. But many scholars have criticized this result because it may be harsh to make him succeed to the debts of his ancestor even when he comes to know of the debts of his ancestor after the limitation period expired. Thus, a lower court held that the limitation period should be reckoned from the date when, in addition to the aforesaid requirements ((1) and (2)), (3) he actually came to know the content of the ancestor's rights and duties (Decision by the Osaka High Court on Mar. 22, 1979, 380 *Hanrei Taimuzu* 72).

The present Supreme Court decision was the first to deal with the commencement of the limitation period, and is an important decision as it accepted that, as a rule, only the first and second conditions had to be satisfied for the limitation period to commence, but in exceptional cases the third requirement should also be satisfied.

2. A case in which it was debated whether a decree which did not give a noncustodial parent an opportunity of contact with his child was constitutional.

Decree by the Second Petty Bench of the Supreme Court on July 6, 1984. *Kokoku* appeal dismissed. Case No. (*ku*) 103 of 1983. A case of a special appeal from the decree to deny the challenge to the decree dismissing the petition for visitation. 1131 *Hanrei Jihō* 79.

[Facts]

X (father of daughter A) divorced Y (mother of A) by agreement. Y became the legal custodian of A. Thereafter, X (plaintiff, *sokuji-kokoku* appellant, *tokubetsu-kokoku* appellant) petitioned the family court for a decree that Y (defendant, *sokuji-kokoku* respondent, *tokubetsu-kokoku* respondent) should give X an opportunity of contact with A at least twice a year. The family court held that undoubtedly even a noncustodial parent had rights to contact with the child as a parent, but courts should only allow the parent to exercise those rights when it was in the child's welfare. The family court then held that in this case it was against the welfare of the child to give X an opportunity to meet A, and therefore it dismissed the petition of X. X filed an immediate appeal (*sokuji-kokoku*), but the court dismissed the appeal. X then filed a special appeal (*tokubetsu-kokoku*) to the Supreme Court on the grounds that the decree of the court of appeal violated Article 13 of the Constitution which provided for individual rights to the pursuit of happiness.

[Opinions of the Court]

Whether contact with the child should be granted to the parent who has become a noncustodial parent by agreement is a matter of interpretation and application of Article 766 (1) and (2) of the Civil Code which provides for disposition of care and custody of the child, and therefore is not related to the problem of whether the decree violated Article 13 of the Constitution.

[Comment]

The Civil Code in Japan has no express provisions with respect to parent's right of access to the child. Thus, there are theoretical arguments about whether such a right should be recognized, and about what form it would take. At present, many theories recognize parent's right of access to the child. But there are different opinions about the characterization of this right. Some regard it, inter alia, as a natural right deriving from the parent-child relationship, some regard it as a part of custody or rights relating to custody and others regard it as a right of the child. At any rate, each theory has its basis in Article 766 of the Civil Code which provides for determination of the right of custody to the child after divorce. On the other hand, there are strong arguments which deny the right of access. Those arguments are similar to the opinions maintained by Goldstein and others of the United States in "Beyond the Best Interest of the Child", the basis of such arguments being that there are no social settings in Japan in which divorced parents may actually exercise these rights.

Courts have also accepted the existence of the rights to access since the decree of the Tokyo Family Court on Dec. 24, 1964, 17 *Kasai Geppō* No. 4. p. 55. But they have also accepted that these rights should not be granted if it would be not in the child's welfare. Thus, the Supreme Court held that whether access rights should be granted in individual cases was only a matter of interpretation and application of Article 766 of the Civil Code by the court, and therefore did not give rise to problems of constitutionality as claimed in the special appeal.

By Prof. TAEKO MIKI
TAKASHI SUZUKI