

Protection of the Compulsory Portion: the Characteristics of the Returned Portion from Deduction

*Sieh-Chuen Huang**

Abstract

This study attempts to find the procedure to protect the compulsory portion by discussing the legal characteristics of the returned portion from deduction. It focuses on the situation where the legatee is also an heir. If the property right of the legacy has been transferred to the legatee exceptionally and the remaining inheritance has not been parted yet, it would be indefinite whether other heirs may skip the partition and assert that the infringed portions have returned to themselves by deduction and hence claim for the return of the legacy on the basis of ownership.

By analyzing Japanese theories that were frequently cited by Taiwanese legal research, it is possible to find that the answer to the question above would be affirmative in Japan. As a result, the dispute over inheritance separates into two processes. One is the process of deduction of the legacy for compulsory portion. The other is the process of division of the remaining inherited property. Otherwise, the Supreme Court in Taiwan denies the claim of those other heirs and considers that before the partition of the inheritance, even if the heirs exercise the rights to deduct and make the infringed portions lose their effects, the property right would only return to the inheritance but not to the heirs themselves. Therefore, the other heirs have no specific shares, and they may not claim for the return of the legacy.

In summary, it is reasonable to conclude that before the partition of the inheritance, if the property right of the legacy has been transferred to the legatee who is also an heir, other heirs could bring an action for partition of the inheritance directly, express the intent of deduction during the procedure,

* Assistant Professor of Law, Graduate School of Law, Hokkaido University.

and finally receive the property rights tantamount to compulsory portions. The protection of the compulsory portion may be accomplished in procedure of partition of the inheritance, rather than the assertion of “deducting the infringed portions and claiming for return of the property.”

Keywords: compulsory portion, deduction, succession, estate, joint heirs, partition of the inheritance, wills, legacy, procedure