

Reconstruction of the Meaning of Legally Reserved Portion: A Historical Analysis

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Abstract

There are pros and cons toward legally reserved portion in legal studies. This article contends that before we decide to enhance or limit legally reserved portion, it is necessary to understand precisely its meaning and function in our society.

Some research points out that one meaning of legally reserved portion is the preservation of “*jia*” because of the influence of Meiji Civil Code. However, through the study of succession in Meiji Civil Code, we could find that legally reserved portion in *katoku* succession (one-child succession) is a device to keep “*jia*” (“*ie*” in Japanese) in a complete form, while as in estate succession (joint and equal succession) legally reserved portion is a support for close relatives. That is, the meaning of legally reserved portion in one-child succession is different from that in joint and equal succession. In fact, the one-child succession does not exist either in traditional Chinese law or current Taiwanese law, in which joint and equal succession happens after death. Therefore, preservation of “*jia*”, that is, to keep the family’s property in a whole unit, may not be the meaning of legally reserved portion in Taiwan.

By analyzing judicial interpretations, the discussion on the revision of Civil Code, and cases regarding testamentary gifts and legally reserved portion, it is found that most testamentary beneficiaries are male joint heirs. Legally reserved portion modifies this kind of unfair gifts and protects heirs from reckless and biased decision of the decedents. This function to protect equality among joint heirs in result guarantees equality among male and female heirs. Therefore, this

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