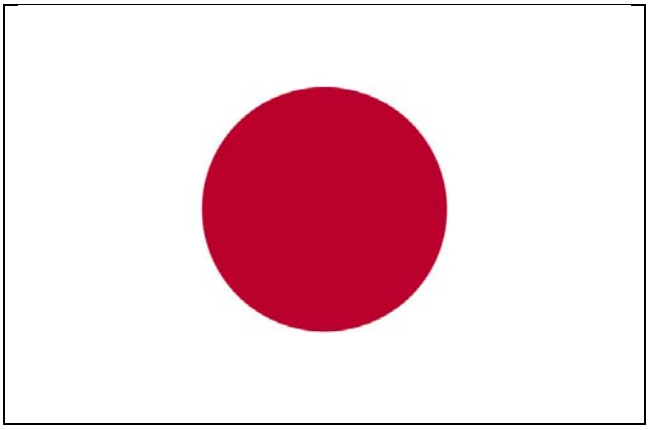
INTERNATIONAL INHERITANCE FORUM

REPORT ON JAPAN



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1 GENERAL RULES

Inheritance law is governed by the Civil Code. The Civil Code governs property rights, family matters, and inheritance. The Civil code was enacted in 1896. Some of the articles in the inheritance part of the Civil Code was amended and enacted on July 1, 2019. The inheritance part of the Civil Code governs the general rules of inheritance, wills, and the legally reserved portions of heirs.

1.1 Origin and nature of property

From the time of commencement of inheritance, an heir shall succeed blanket rights and duties attached to the property of the decedent; provided that this shall not apply to rights or duties of the decedent that are purely personal (Civil Code 896).

The law does not distinguish between movables and immovables.

1.2 Simultaneous death

Article 32-2 of the Civil Code stipulates as the following.
"If more than one person dies and it is unclear whether one of them was still alive after the death of another, it is presumed that they all died at the same time". Please refer to the Civil Code, https://www.japaneselawtranslation.go.jp/ja/laws/view/2058#je_pt1

The latest amendment has not been reflected.

If it is presumed that the decedent and the spouse died at the same time, the spouse will not become heirs.
If it is presumed that the decedent and the child died at the same time, the child of the child will become an heir (an heir per stirpes).

1.3 Capacity to inherit

Minors, unborn children and absentees can inherit.

There are no restrictions based on nationality nor domicile.

1.4 Ownership and vesting of property

If there is no will, the heirs inherit the deceased's property rights in accordance with the proportion of their shares.

However, in order to divide the deceased's property, heirs need to make an agreement by discussion. If they cannot reach an agreement, then, one or more of the heirs need to file a petition for the conciliation proceedings as to the division of the inherited property to the family court. If they cannot reach an agreement in the conciliation proceedings, then, the court determine the division of the inherited property in the adjudication proceedings.

1.5 Unworthiness

There are no certain persons presumed or deemed unworthy to inherit by operation of law?

As mentioned on 1.1 above, "From the time of commencement of inheritance, an heir shall succeed blanket

rights and duties attached to the property of the decedent; provided that this shall not apply to rights or duties of the decedent that are purely personal" (Civil Code 896).

1.6 Acceptance

Article 915(1) of the Civil code stipulates as the following.
"An heir shall give unconditional or qualified acceptance, or renunciation, regarding inheritance within three months of the time he/she has knowledge that there has been a commencement of inheritance for him/her; provided that this period may be extended by the family court on the application of an interested party or a public prosecutor."

However, as heir does not need to conduct anything in order to accept inheritance. In general, if an heir does not renounce inheritance within three months of the time when he/she has knowledge that there has been a commencement of inheritance for him/her, an heir inherits the decedent's property unconditionally as a result of the fact that an heir cannot renounce inheritance.

Article 921 stipulates as the following.
"An heir shall be deemed to have made unconditional acceptance in the following cases:

(i)
if an heir has made a disposition of the inherited property in whole or in part;
provided that this shall not apply to an act of preservation or a lease that does not exceed the period determined in Article 602;

(ii)
if an heir has not made qualified acceptance or renunciation of inheritance within the period of paragraph 1 of Article 915;

(iii)
if an heir, even after having made qualified acceptance or renunciation of inheritance, conceals inherited property in whole or part, uses that property for him/herself, or failed intentionally to enter it in the inventory of inherited property; provided that this shall not apply after the acceptance of a person who has become an heir due to the renunciation of inheritance of the original heir.

1.7 Liability for debts

As stated on 1.1, "From the time of commencement of inheritance, an heir shall succeed blanket rights and duties attached to the property of the decedent" (Civil Code 896). Thus, acceptance entails liability for the deceased's all the debts. Heirs can consider whether or not accept inheritance. They have the rights to renounce inheritance. Heirs do not necessarily receive the deceased' inventory. However, if an heir obtains the information that the deceased has more debts than his or her entire property after three months of the commencement of inheritance, an heir can file a petition to extend the time for the renunciation of inheritance to the family court.

There is a way for heirs to accept without incurring personal liability exceeding their benefits under the law or under the will.

Article 922 (Qualified Acceptance) of the Civil Code stipulates as the following.
"An heir may accept inheritance reserving to perform the obligation or testamentary gift of the decedent only within the extent of the property obtained by inheritance."

However, it is rare to resort to this method.

That is because if there are two or more heirs, qualified acceptance may only be made if all members of the joint heirs make qualified acceptance jointly (Art.923), and the procedure is very complicated.

1.8 Renunciation and disclaimer

Art.915(1) of the Civil Code stipulates as the following.
"An heir shall give unconditional or qualified acceptance, or renunciation, regarding inheritance within three months of the time he/she has knowledge that there has been a commencement of inheritance for him/her; provided that this period may be extended by the family court on the application of an interested party or a public prosecutor."

There is no situation in which the law deems that an heir has renounced.

Acceptance or renunciation of inheritance may not be revoked even within the period referred to in paragraph 1 of Article 915(Art.919(1) of the Civil Code).

A person who intends to renounce inheritance shall make a statement to that effect to the family court (Art.938).

A person who has renounced inheritance shall be deemed as not originally having been an heir to the inheritance (Art.939). Thus, for example, the child of a person who has renounced inheritance cannot inherit the deceased's property.

1.9 Marital rights

If the property including the real estate, deposits in the banks, and stocks, etc. the ownership of which belongs to the deceased, is regarded as inherited property.

If there is no will, a spouse has a proportion of shares.
Please refer to the following 2.2. and 2.3.

If the deceased leaves a will which states that the spouse will inherit deceased's entire property, unless a child, or lineal ascendants make a claim of a reserved portion, the spouse can inherit entire property.

Under the amended civil code, the right of residence for the surviving spouse was newly prescribed if certain conditions are satisfied (Civil Code Art. 1028).

In the case where a surviving spouse obtains this right in the division of inherited property, he or she will be able to reside in the residence while he or she is alive or for a certain period of time which is agreed among the heirs. In order to obtain this right, certain conditions need to be satisfied.

The merit for the surviving spouse to obtain this right in the division of property is that in general, the value of the right of residence is regarded as lower than the value of the ownership of the real estate.

2 INTESTACY

2.1 Declarations of inheritance

The Civil Code stipulates the types of heirs. A family register of the decedent is the only proof to identify the heirs.

2.2 Relationship

The spouse of a decedent will always be an heir (Civil Code Art. 890).
With regard to the priority of heirs by blood

1. Child
2. Lineal Ascendants
3. Siblings

(Civil Code Art. 887(1), 889(1)).

If there is a child, there are children, children become heirs.
If there is no child, lineal ascendants become heirs.
If there are no child, nor lineal ascendants, siblings become heirs.

As explained above, relationship is not based solely on blood.
Adopted children inherit their adopting parents' estates.
The surviving spouse is an intestate heir.
A spouse is legally married to a decedent.

2.3 Order of preference

The spouse of a decedent will always be an heir (Civil Code Art. 890).
With regard to the priority of heirs by blood

1. Child
2. Lineal Ascendants
3. Siblings

(Civil Code Art. 887(1), 889(1))

Inheritance is based on degrees of relationship regarding the heirs by blood.

A child and a spouse are heirs:
A child 1/2; A spouse 1/2
A spouse and lineal ascendant are heirs:
A spouse 2/3 A lineal ascendant 1/3
A spouse and siblings are heirs: A spouse 3/4 Siblings 1/4

The inheritance of each shall be divided equally.
(Civil Code Art.900)

3. WILLS

3.1 Formalities

There are three types of ordinary wills. A will must be made by:

1) holograph document;

2) notarized document; or

3) sealed and notarized document (Civil Code Art. 967).

There are four special methods of drafting a will for emergencies and the like. (Civil Code Art. 976-979).

These are the formal requirements for drafting an ordinary will.

(1)

A will by holograph document (Civil Code Art. 968).
A testator drafts the entire text, the date, and his/her name in his/her own hand and affixes their personal seal (called Hanko in Japanese).

(2)

A will by notarized document (Civil Code Art. 969)
A testator gives oral instructions of the tenor of the will to a notary public and the notary public takes dictation from the testator and reads this aloud, or allows inspection by the testator and two witnesses.

Then, the testator and witnesses each provide their signatures, and affix their personal seals thereto after having verified the document's accuracy.

Lastly, a notary public gives supplementary registration to the effect that the certificate has been made in compliance with the formalities listed in each of the preceding items, provides their signature, and affixes their personal seal.

(3)

A will by sealed and notarized document (Civil Code Art. 970).

A testator signs, and affixes their personal seal to the certificate and seals it using the same stamp as that used for the certificate and affixes their personal seal.

Then the testator submits the sealed certificate before one notary public and two witnesses, with a statement to the effect that it is their personal will, giving the author's name and address.

Lastly, after having entered the date of submission of the certificate and the statement of the testator upon the sealed document, a notary public, together with the testator and witnesses, signs it and affixes their personal seal.

3.2 Revocation and revival

A testator may revoke a will in whole or in part at any time in compliance with the formalities for a will (Civil Code Art. 1022).

A revoked will cannot be recovered even if the act of revocation is revoked, rescinded, or invalidated except in case where the act was the result of fraud, mistake or duress (Civil Code Art.1025).

3.3 Recognition, publication and probate

There are no extrajudicial procedures to determine the validity of a will.

If a concerned heir believes that the will is invalid, they can file a petition with court against other heirs, recipients, and/or the executor of the will to confirm the invalidity of the will.

3.4 Curing formal deficiencies and rectification

If the will does not comply with formal requirements, it is invalid and it cannot be cured.

A court does not have a power to rectify a will, but it can show an interpretation of the will.

As to the possibility for courts to exercise in order to secure the testator's true intention, the Supreme Court of Japan (March 18, The Showa Year 58(1983)) stated the following.

"In interpreting a will, the testator's true intention should be sought, not only by judging the text of the will formally, and in interpreting a particular provision of the will when the will consists of many provisions, it is not sufficient simply to extract that provision from the will separately from the others and interpret the text formally. It is reasonable to conclude that the testator's true intention should be sought and the intent of the provision should be determined by taking into consideration its relationship to all the provisions of the will, the circumstances at the time the will was prepared, and the circumstances in which the testator was placed."

3.5 Pacts and agreements as to future successions

It is allowed to make an agreement regarding gifts that become effective on the death of the donor (Civil Code Art. 554).

3.6 Forced, reserved and elective shares and other legal rights

The deceased can draft a will to dispose of all of their personal assets, but it may be modified by the heirs' claims based on their legally reserved portion (hereinafter referred to as "LRP").

According to Article 1042 of Civil Code, heirs other than siblings will receive, as LRP, an amount equivalent to the ratio prescribed in each of the following items in accordance with the divisions listed therein:

(i) in the case where only lineal ascendants are heirs, one third of the decedent's property;

(ii) in cases other than that referred to in the preceding item (i), one half of the decedent's property.

The specific amount of legally reserved portions is calculated as follows:

The amount of legally reserved portion = the amount of estate for the purpose of calculation of LRP

x LRP ratio (1/2 or 1/3)

x statutory shares

The amount of the estate for the purpose of calculation of LRP is calculated as follows:

The amount of the estate for the purpose of calculation of LRP

= positive property at the time of death

(including bequeathment on death to third parties)

+ gift before death to a statutory heir (in principle, within 10 years from death)

+ gift before death to third parties (in principle, within 1 year from death)

- debts of the deceased

There are no limits regarding the amount, but LRP has to be claimed within one year from the time of hearing of the commencement of inheritance and the existence of a gift or testamentary gift which may infringe the LRP.

Under the Civil Code modified in 2018, LRP may be claimed in a monetary form.

It is up to each heir whether to claim his/her LRP.

A spouse can claim LRP if the assets he or she receives under a will is less than a quarter of the amount of estate for the purpose of calculation of LRP.

3.7 Disinheritance

The following persons may not become an heir:

(i) a person who has received punishment for intentionally causing, or attempting to cause, the death of a decedent or a person of equal or prior rank in relation to inheritance;

(ii) a person who is aware that the decedent was killed by someone but made no accusation or complaint about this; provided that this does not apply if that person cannot discern right from wrong, or if the killer was that person's spouse or lineal relative;

(iii) a person who prevented a decedent from making, revoking, rescinding, or changing a will relating to inheritance through fraud or duress;

(iv) a person who forced a decedent to make, revoke, rescind, or change a will relating to inheritance through fraud or duress; or

(v) a person who has forged, altered, destroyed, or concealed a decedent's will relating to inheritance.

Disinheritance of Presumed Heir (Civil Code Art. 892)

A decedent may make an application to the family court for the disinheritance of a presumed heir (here and below, referring to a person who would otherwise become an heir upon the commencement of inheritance) who has a legally reserved portion if that person has abused or given grave insult to the decedent, or if there has been any other grave misconduct on the part of the presumed heir.

3.8 Dependants' relief or maintenance

Apart from wills, there is a universal national pension system and a spouse or children were eligible for survivor's pension if they are qualified as dependents of the deceased.

There is no such a system.

Dependents who do not have LRP cannot make any claim regarding dispose of assets by the deceased.

A maintenance claim cannot be made to contest disposition of the assets by the deceased.

3.9 Restraints on freedom of testation

A testator cannot make a will whose content is against the public policy of Japan. For example, a will, instructing to give a considerable amount of assets to a mistress, may be considered invalid if it were created for the purpose of maintaining the relationship.

4. ADMINISTRATION

4.1 Intestate administration

All heirs must agree on division of the inherited assets. No administrator is assigned. When heirs cannot reach an agreement, each heir may make an application to the family court for a division of the inherited property (Civil Code Art.907).

4.2 Testamentary administration

A testator may, by will, designate one or several executors, or entrust that designation to a third party (Civil Code Art. 1006). If the executor takes an office, they do not have to get any confirmation from the court or other authority.

If an executor does not exist, or that role becomes vacant, the family court may appoint an executor at the request of an interested party (Civil Code Art. 1010).

The common wills are 1) will by holographic document and 2) will by notarized document.

A will by holographic document is required to go through a Ken-nin proceeding, in which a family court confirms the status of the will concerning formalities of the will to prevent future forgery. In principle, a certificate of Ken-nin is necessary to execute the will by holographic documents. (Since July 2020, the Legal Affairs Bureaus started a service to store wills made by holographic documents. If it was stored in the legal affairs bureaus, it can be executed without a Ken-nin proceeding).

Notarized will can be executed without "Ken-nin" proceeding.

An appointed executor or one of the heirs can bring an original copy of the notarized will to financial institutions or legal affairs bureaus to change the titles or dispose assets.

4.3 Management and control

An executor has the right and duties of administration of inherited property and all other necessary acts for the execution of a will (Civil Code Art. 1012) and a family court does not supervise executors. However, if an executor has failed to perform their duties, or if there is any other justifiable reason, an interested party may apply to the family court for the dismissal of that executor (Civil Code Art. 1019).

When a testator did not specify remuneration of the executor in his/her will, a family court may determine the remuneration of an executor according to the status of the inherited property and other circumstances (Civil Coder Art. 1018).