

Basic Principles of Japanese Law of Succession

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1 Statutory shares in succession (法定相続分) "Hōtei sōzoku-bun"

(1) Diagram 1 (Please view the Inheritance Share Diagrams Excel file.)

Legal heirs: Spouse and Children

(相続人が配偶者と子の場合)

The spouse gets half and the children share the other half.

(2) Diagram 2

Legal heirs: Spouse, Child and Grandchildren

(相続人の子に死亡している者がいる場合)

If one child, Son A, has died, his children (the grandchildren) divide his share.

(3) Diagram 3

Legal heirs: Spouse and Parents

(子がない場合)

If there are no children, the spouse and parents share the inheritance.

2/3 to the spouse and 1/3 to parent(s).

(4) Diagram 4

Legal heirs: Spouse and Siblings

(子がいなく、両親も死亡している場合)

If the deceased has no children and no parents, the spouse and siblings will share the inheritance, 3/4 to the spouse and 1/4 shared by siblings.

(5) Diagram 5

Legal heirs: Spouse, Siblings and Sibling's children

(子がいなく、兄弟姉妹に死亡している者がいる場合)

If a sibling is deceased, his living children receive and equally divide his share.

2. Subject to inheritance (相続の対象) "*Sōzoku no taishō*"

The inheritance includes all personal assets of the deceased such as real estate, insurance, savings, car, etc., which are subject to inheritance tax, if the total value exceeds the basic deduction (see No. 7 below). It is important to keep in mind that the decedent debts are also passed on to heirs.

3. Special Benefit (特別受益) "*Tokubetsu jueki*" (See Excel Diagram 6)

When the estate is divided, the court may take into consideration whether one of the children received a large sum of money from the deceased while he was alive is also taken into consideration. In that case, the amount of the gift will be deducted from the child's portion. If the gift is greater than the child's inheritance portion, the child would receive nothing, with his share going to other heirs.

4. Extent of Contribution (寄与分) "*Kiyoubun*"

The court might also consider if one of the heirs made a significant contribution to the deceased during his life (such as caring for him), that may be also taken into consideration, when the estate is divided. In that case, they might have a right to a little bit more, although the Japanese court doesn't usually accept this argument.

"*Kiyoubun*" example -- if a child maintains or increases the value of her parent's assets, either by managing those assets or by providing care thus saving on an outside caretaker's wages, that child's inheritance portion will increase. Example: four children inheriting an estate of ¥100 million would ordinarily inherit ¥25 million each. One child, however, has increased the value of the estate by ¥20 million during the parent's lifetime. That ¥20 million is first deducted from the value of the estate leaving ¥80 million to be divided equally among the four children. The one child in question will receive his 1/4 share of ¥80,000,000 plus another ¥20 million due to his efforts in increasing the value of the estate. That child will inherit ¥40 million altogether.

5. A last will and testament (遺言)

(1) Will by Holograph Document (自筆証書遺言) "Jihitsushōshoigon"

This document must be handwritten and cannot be printed by computer or other devices. It must be dated and signed and placed in a sealed envelope. For foreigners who write the will in a foreign language, this can present a problem for the Japanese judge who cannot read it. It also can be susceptible to other problems. If one of the heirs finds the handwritten will and doesn't tell the other heirs, he could just throw it away and it's gone. Also, if one does find the handwritten will, they should not open it. It has to be reported to and read by the judge at the Family Court in front of all heirs.

(2) Will by Notarized Document (公正証書遺言) "Kōseishōshoigon"

The presenter recommended this type of will be created especially for foreigners living in Japan who want to be sure their assets are shared as desired. If anyone wants to make a notary deed will, it would be best to contact a lawyer first as the notary public doesn't give legal advice. When one goes to make the Japanese will, they must bring an interpreter and two witnesses who understand Japanese. The notary office can provide two witnesses to do this. One can show the notary the contents of a will translated into Japanese or describe the contents and the notary will generate a Japanese document. The notary public will then read the will out loud to you, making sure that you understand the contents before signing it. A copy of this will is then stored at the notary's office. The judge will have no problem accepting and reading such a document.

If you have family living abroad, and you filed a notarized will, they will not be required to come to Japan. However, if you only have a handwritten will, it is likely all heirs will be requested to attend a reading of the will at the Family Court. It was suggested that it might be best to make two wills with the exact same content - one in Japan and one in your home country, especially if you own property in Japan.

It was also mentioned that there is a requirement to use the term *sozoku saseru* in a Japanese will, which means to bequeath.

6. Portion to which one is legally entitled (遺留分) "Iryūbun"

Japanese law specifies clearly as to what portion of the inheritance is given to all legal heirs as previously described. Spouse, parents and direct descendants are legally entitled to a portion. The *iryubun* concept means legal heirs cannot be written out of your will. They will get at least a small part of the estate by invoking the *iryubun* system. One can only successfully exclude siblings. If legal heirs were excluded in a will, they have one year from the death of the decedent to file a registered letter declaring one's intention to use the *iryubun* system to contest it.

7. Basic deduction for inheritance tax (相続税の基礎控除) "Sōzoku zei no kiso kōjo"

There is a basic deduction used in Japanese law to determine whether inheritance taxes are required. It is 30 million yen + (6 million X the number of legal heirs). All personal assets of the deceased such as real estate, insurance, savings, car, etc. are subject to inheritance tax, if the total value exceeds the allowable deduction.

Conflict of Law and Remission Clause

There was a discussion of whether the laws of one's home country or Japan will prevail in inheritance cases. Ms. Tohyama said the laws of the deceased's country usually take precedence unless there are some remission clauses or other factors in which Japanese law would take precedence. Foreign residents should investigate the conflict of law and remission clauses that apply to them, before creating the will. In the case of the U.S., it can get a bit complicated since each state has its own laws. First they must determine which state is the deceased's legal state.

Miscellaneous Comments

If a lone foreigner with no heirs to inherit their wealth dies in Japan, without a will, their assets may go to the Japanese government. If someone in Japan wants their assets to go to someone other than designated heirs, they must write a will.

Also, after a person dies, their bank accounts are frozen until the estate is settled, so families should have enough money on hand to pay for the funeral, etc. Usually Agreement on Division of Inheritance (遺産分割協議書) should be made by all heirs to activate the frozen accounts.