

# Principles of Japanese Law of Succession

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## I. INTRODUCTION

Just like Japanese family law, the basic structures of the Japanese law of succession were rewritten with the revision of Japan's Civil Code (CivC)<sup>1</sup> in May 1947. With the reform of the Fifth Book of the Japanese Civil Code, the traditional family inheritance was abolished and a parentelic system of succession was introduced. This current law of succession is, however, largely based on the provisions on succession in case of death of members of the house other than the head of house as laid down in the Civil Code of the

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<sup>1</sup> *Minpō*, Law No. 89/1896 and No. 9/1898, as amended by Law No. 74/2011; Engl. transl. available at <http://www.japaneselawtranslation.go.jp>.

Meiji era from 1898, which was highly influenced by French as well as German law. Nevertheless, the Japanese law on intestate succession is not as detailed or as regulated as its German equivalent. That is because the Japanese legislator decided to give preference to individual agreements between decedent and heir rather than to intestate succession. This is one of the reasons why Japanese family courts have to deal with about 177,000 cases concerning succession each year.<sup>2</sup> Fewer than 0.01% of these cases were non-admissible.

### 1. History

Since the *Edo* era (1603-1868), the Japanese rules on succession were characterized by the house system (*ie-seido*) and the principle of universal succession of the eldest son. The head of the house (*koshu*) held extraordinary authority and power over the house's members and assets. The eldest son, who was the future head of the house and would once have had the responsibility for his parents, inherited the house and all the assets (*katoku sôzoku*), while younger sons and daughters as well as the spouse had no rights whatsoever to the house estate. This so-called 'heir of the house' followed in the head's footsteps and was the most important factor for the security of the family members. He was not only responsible for the wellbeing of all members, but also for the management of the assets of the house (*kasán*). Among other factors, death or resignation (*inkyô*) of the head or a deprivation of citizenship could initiate succession. Whenever possible, a male head was expected to lead the house. Therefore, a son of the head who was born out of wedlock would have become the head rather than a legitimate daughter. If the house did not have any sons at all, the adult adoption of a son-in-law was an important instrument to ensure the male leadership of the house. Only in the case of the death of an inferior house member were the assets divided among the descendants (*isan sôzoku*), who then had priority over the surviving spouse and the head of the house.

The end of World War II marked the end of this system. 'Individual dignity and the essential equality of the sexes' that were provided by the newly created Article 24 of the post-war Constitution marked the end of this deep-rooted tradition. Proponents (especially women) and opponents (almost exclusively powerful men who were the heads of their houses) came to an understanding that the house system could not survive in a modern and democratic Japan.<sup>3</sup> Nowadays the estate is distributed among the spouse and all sons and daughters. Despite all that, the revision of the law did not affect Japanese society for several years. In fact, the house system continued to exist as a

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2 Japan Statistical Yearbook (2011), Chap. 25-16 Justice and Police, 2009 [available online at <http://www.stat.go.jp/data/nenkan/pdf/yhyou25.pdf>].

3 P. SCHMIDT, Die Entwicklung des japanischen Erbrechts nach dem Zweiten Weltkrieg (Cologne 1993) 26; N. NISHIMURA, *Sengo nihon kazoku-hô no minshu-ka – jakkan no kaisô* [The Democratization of Japan's Post-War Family Law – Some Reflections], in: *Hô-shakai-gaku* 29 (1977) 133 *et seq.*

moral obligation, and the new law of succession was often used to maintain a de-facto succession of the eldest son, or at least the succession within the house.<sup>4</sup>

## 2. *Commencement of Succession*

The death of the decedent is the only possible ground for opening succession (Art. 882 CivC). The time of death is the end of cardiac activity. Brain death – considered the irreversible end of all brain activity – commences the inheritance when it meets several legal prerequisites in Japan's Organ Transplantation Law,<sup>5</sup> which is the fruit of an ongoing debate on brain death and organ transplantation. Furthermore, the family court can pronounce someone's death at the request of any interested person by an adjudication of disappearance after seven years of unknown state (Art. 30 CivC).<sup>6</sup> The place of death is the deceased person's registered address (Artt. 883, 22 CivC) or – if unknown – his last known residence (Art. 23 CivC).

## 3. *Right to Claim for Recovery of Succession*

Article 884 CivC, which corresponds to Sec. 2018 BGB,<sup>7</sup> provides a right to demand recovery of the estate (*sôzoku kaifuku seikyû-ken*) against a person with no rights to the estate (*hyôken sôzoku-nin*) if the true heir's right of succession is violated. This is the case if the unlawful heir derives his rights from a wrongful registration in the family register (*koseki*) or is in possession of the whole or at least parts of the inheritance, regardless of whether he acted bona or male fide, negligently or intentionally. Nevertheless, the true heir (*shinsei sôzoku-nin*) has to assert his claim within five years of his awareness of being the true heir and being excluded from inheritance;<sup>8</sup> under German law, the true heir's right is statute-barred after thirty years (Sec. 197, 199 BGB). In principle, such a claim for recovery of succession can also be brought against a coheir who is in possession of a larger share of the estate than he is entitled to.<sup>9</sup> The right to claim recovery of the estate is not inheritable. Instead, the heir of the true heir may bring a claim in his own name against the infringer.<sup>10</sup>

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4 For example, by means of renunciation and waiver of legally secured portion.

5 *Zôki no ishoku ni kansuru hôritsu*, Law No. 104/1997, as amended by Law No. 83/2009; Engl. explanation given by the Ministry of Health, Labor and Welfare available at <http://www.mhlw.go.jp/english/wp/wp-hw/vol1/p2c3s4.html>. See also the contribution by S. SHIMADA, *Paradigmenwechsel im japanischen Organtransplantationsgesetz und die verbleibenden Probleme*, in this issue.

6 2,675 applications of declaration of disappearance were made in 2008 (28 dismissed), Japan Statistical Yearbook (2011), *supra* note 2.

7 Bürgerliches Gesetzbuch (BGB) = Civil Code of the Federal Republic of Germany.

8 Imperial Court, 19 September 1905, Minroku 11, 1210.

9 Supreme Court, 20 December 1978, Minshû 32, 1674.

10 Imperial Court, 9 April 1918, Minroku 24, 653.

## II. HEIRS

Under the current law of intestate succession, all heirs (*sōzoku-nin*) are defined by statute in detail. An individual succession that deviates from the statute is only possible by will (testate), which is rather uncommon in practice, however. The legislator's intention to strengthen the decedent's right to make individual arrangements did not become reality in modern Japanese society.

### 1. *Legal Capacity to Inherit*

The legal capacity to be an heir is equivalent to the legal capacity of a human being to hold rights, which begins on the completion of birth and applies to every natural person regardless of gender, nationality or age (Art. 3 (1) CivC). A legal person does not have the legal capacity to inherit. However, it can be a legatee by universal title and therefore could have the same rights and duties as an heir (Art. 990 CivC).

Deviating from Article 3 CivC, an unborn child is legally presumed to have been born (Art. 886 CivC, *nasciturus*). This legal fiction is only applicable in respect of succession and does not include a child born dead (Art. 886 (2) CivC). Paragraph 2 clarifies what is not explicitly expressed in the parallel regulation of the German Civil Code (Sec. 1923 (2) BGB), namely that the child being born alive is a suspensive condition of retroactive effect.<sup>11</sup>

### 2. *Heirs at Law*

The spouse of the deceased is always an heir (Art. 890 CivC). This regulation is one of the most important revisions to strengthen woman's rights after the end of World War II and corresponds with the distribution of property in case of divorce (*cf.* Art. 768 CivC). The surviving wife or husband ranks equally with other potential heirs at intestacy. However, this is not applicable to a spouse of a de-facto marriage (*naien*).<sup>12</sup> Common-law wives and husbands are therefore not entitled to any inheritance at all.<sup>13</sup> This might cause serious problems. In a case where a decedent lived with a common-law spouse, the heirs who inherit the decedent's status as lessee can evict the spouse from the de-facto marital home. However, the Supreme Court has at least acknowledged that a common-law spouse is entitled to exercise the right of the heirs to claim against the eviction by the landlord.<sup>14</sup>

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11 Imperial Court, 6 October 1932, Minshū 11, 2023.

12 Despite almost equal treatment of legal and de-facto marriage; *cf.* C. DANWERTH, Basic Principles of Family Law, in: ZJapanR/J.Japan.L 31 (2011) 241 *et seq.*

13 *Cf.* Supreme Court, 10 March 2000, Minshū 54, 1040 [available online at <http://www.courts.go.jp/english/judgments/text/2000.03.10-1999.-Kyo-.No..18.html>].

14 Supreme Court, 28 April 1967, Minshū 21, 780.

The children of the deceased are heirs of first rank (Art. 887 CivC). Lineal ascendants – meaning parents, grandparents and so forth – are heirs of second rank (Art. 889 (1) CivC), whereby those who have a closer relationship to the deceased are preferred. The siblings of the decedent come third (Art. 889 (2) CivC). Unlike the German Law of Succession (cf. Sec. 1928, 1929), heirs at law of fourth and fifth rank – who inherited under the Meiji Civil Code – no longer exist. If the deceased had children, heirs of second or third rank cannot inherit. Furthermore, where there are heirs of second rank, the third-ranked heirs are excluded from inheritance. In other words, a relative is not entitled to inherit as long as a relative of a preceding rank survives; this is similar to Section 1930 BGB. If a prospective heir dies before the deceased, this person's lineal descendants (grandchildren, niece or nephew) become heirs (succession per stirpes, Art. 887 CivC).

### 3. *Disqualification*

Article 891 CivC imposes sanctions on certain wrongdoings of the heir by disqualifying the acting person from succession. If the heir's act meets the requirements of this provision, he automatically loses his right of succession without any decision by the court or any declaration of intent; it is effective without any form requirements. The reasons for disqualification of heirs can be divided into two groups: actions relating to the death of the decedent (para. 1-2) and inappropriate interference with a will (para. 3-5). For the most part, the system corresponds with the provision in German law (cf. Sec. 2339 BGB). However, the German procedural rules are far more detailed than their Japanese counterparts.

The purpose of Article 891 para. 5 CivC is to impose a civil sanction on an heir who caused a significantly unreasonable interference with succession by disqualifying him/her as an heir.<sup>15</sup> Cases where an heir committed an act of destroying or concealing a decedent's will but did not perpetrate such an act 'for the purpose of enjoying unjust benefits in inheritance' do not fall within the scope of Article 891 CivC.<sup>16</sup>

### 4. *Disinheritance*

In cases of cruelty or gross misconduct, which must at least affect the decedent indirectly, the latter may apply to the family court for disinheritance of the presumptive heir (Art. 892 CivC). The reasons for legal divorce (Art. 770 CivC) and judicial dissolution of adoption (Art. 814 CivC) are examples for gross misconduct. Such a provision cannot be found in the law of succession in Germany. The application for disinheritance has to

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15 Supreme Court, 3 April 1981, Minshû 35, 431.

16 Supreme Court, 28 January 1997, Minshû 51, 184 [available online at <http://www.courts.go.jp/english/judgments/text/1997.01.28-1994.-O-.No..804.html>].

be filed with the family register (Art. 97, 63 (1) Family Register Law<sup>17</sup>). The registration has a declaratory effect. The decedent can, however, revoke the application for disinheritance at any time (Art. 894 CivC). Even after the commencement of succession, the executor has the right to apply to the family court if the deceased declared the intention by will to disinherit the presumptive heir (Art. 893 CivC).

In the case of disqualification or disinheritance, the lineal ascendants, spouse and children also forfeit their legally secured portion (Art. 1028 CivC).<sup>18</sup> Only the persons who are entitled to a legally secured portion can be disinherited. In contrast to disqualification, disinheritance does not affect any legacies to the heir concerned (Art. 965 CivC). A third party who purchased a plot of land out of the inheritance from a disinherited cannot exercise the right provided in Article 177 CivC (Perfection of Changes in Real Rights) because he is not part of the said legally protected parties.<sup>19</sup> The family courts in Japan granted only 50 of a total number of 269 applications for disinheritance made in 2008.<sup>20</sup>

### III. EFFECTS OF SUCCESSION

The provisions concerning the effect of succession (Art. 896-914 CivC) have an immense relevance in practice, and a large number of cases are being brought before the courts. Therefore, case law is an almost impenetrable jungle.

#### 1. *Universal Succession*

Similar to Section 1922 para. 1 BGB, upon the commencement of succession, an heir takes over all the rights and duties pertaining to the property of the decedent, regardless of whether the heir is aware of the decedent's death (Art. 896, 915, 921 CivC). Even though not written and codified, this includes the right of exclusive possession of the estate.

Apart from assets – *i.e.* real estate, movables, money or receivables – the universal succession of Article 896 CivC also encompasses liabilities such as debts. It also includes the succession of a right of possession.<sup>21</sup> Furthermore, the heir steps into contracts of the decedent or in the position of being the receiver of a declaration of intent. Although it might seem rather irrational from a German perspective to award a dead person any damages for his own death – under German law, only a claim that arose during the decedent's lifetime can be subject to succession – according to Japanese case law, the heirs can claim for damages for the decedent's death against the tortfeasor, regardless of

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17 *Koseki-hô*, Law No. 24/1947, as amended by Law No. 61/2011.

18 Imperial Court, 26 March 1942, *Minshû* 21, 284.

19 Imperial Court, 22 April 1927, *Minshû* 21, 260.

20 Japan Statistical Yearbook (2011), *supra* note 2.

21 Supreme Court, 30 October 1969, *Minshû* 23, 1881.

whether the deceased himself signified any intention to claim for damages.<sup>22</sup> The heirs inherit the claim of damages of the deceased that arose in the moment of death. Moreover, the Supreme Court approves the inheritability of compensations for pain and suffering (*isha-ryô seikyû-ken*) in general.<sup>23</sup>

Many details are contentious legal issues, especially the succession of specific legal positions. Unlike the suretyship for lease agreements, which is basically inheritable,<sup>24</sup> a personal suretyship (*mimoto hoshô*) of the deceased is not part of the inheritance.<sup>25</sup> The dependents' pension rights are personal rights of the dependents and therefore cannot be part of general inheritance.<sup>26</sup> The right of separation of property arising after the divorce is inheritable.<sup>27</sup> Another peculiarity and remnant of the house system can be found in Article 897 CivC, which excludes rights relating to ancestor worship from general inheritance.

## 2. Joint Succession

In cases where two or more heirs exist, the estate is jointly owned by all heirs (*isan kyôyû*) in proportion to their share in succession (Art. 898, 899 CivC). Until partition, the inheritance is under joint ownership of all the heirs (Art. 898 CivC). In this context, joint ownership does not differ from the model of joint ownership provided in Articles 249 *et seq.* CivC.<sup>28</sup> These provisions are applied *mutatis mutandis* to joint administration and use of estate (Artt. 249, 251-253, 918 CivC). Already before the partition of estate, it is permissible for each of the joint heirs to transfer his or her own share in succession if he or she informs all other heirs. The German law even requires a notarial-ly recorded contract (Sec. 2371 BGB). Property rights in parts of the estate acquired by a third party from one of the joint heirs are also effective against the other heirs (Art. 909 CivC).<sup>29</sup>

The claim for rents accruing from real estate in joint inheritance during the period from the opening of succession until its partition is obtained separately from the estate by joint heirs as a divisible claim in proportion to their statutory shares in inheritance.<sup>30</sup>

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22 Imperial Court, 27 December 1941, Minshû 20, 1479; Supreme Court, 1 November 1967, Minshû 21, 2249.

23 Supreme Court, 1 November 1967, Minshû 21, 2249.

24 Imperial Court, 29 November 1935, Minshû, 14, 1934; 30 January 1934, Minshû 13, 103.

25 Imperial Court, 10 September 1943, Minshû 22, 948.

26 Cf. *Onkyû-hô* (Pension Act), Law No. 48/1923, as amended by Law No. 44/2009; *Kôsei nenkin hoken-hô* (Pension Insurance Act) Law No. 115/1954, as amended by Law No. 121/2011.

27 Nagoya High Court, 3 July 1952, Kô-minshû 5, 265.

28 Theory of co-ownership (*kyôyû-setsu*), Supreme Court, 31 May 1955, Minshû 9, 793; 7 November 1975, Minshû 29, 1525; 13 March 1986, Minshû 40, 389.

29 Supreme Court, 22 February 1963, Minshû 17, 235.

30 Supreme Court, 8 September 2005, Minshû 59, 1931 [available online at <http://www.courts.go.jp/english/judgments/text/2005.09.08-2004.-Ju-.No..1222.html>].

### 3. *Statutory Shares*

The deceased can decide by will how much his heirs are entitled to inherit (Art. 902 CivC). He can also determine – differing from the law in Germany – a third person to determine the shares. Only in cases where such a decision has not been made are statutory shares applicable. This statutory share is abstract; the concrete share (*kekkyoku no sôzoku-bun*) is determined by taking gifts and legacies into account (Art. 903, 904 CivC). Section 2050 BGB provides a duty to adjust the statutory share, taking into account any advancements made, unless the deceased directed otherwise. Other gifts only have to be considered under German law if the deceased directed the adjustment when he made the gift. Under Japanese law, legacies, gifts for the purpose of marriage or adoption as well as means of livelihood are deemed to be part of the estate. Regardless of the existence or value of the gift at the time of the commencement of the succession, the value at the time of donation is decisive (Art. 904 CivC).<sup>31</sup> Both regulations are narrowed and specified by case law.

In cases of intestate succession where both the deceased's children and spouse are heirs, the surviving spouse obtains one-half of the estate (Art. 900 (1) CivC) and the other half is divided equally between the legitimate children and also between illegitimate children whose share, however, is only half that of legitimate children. If one of the inheriting children has died before the deceased or has been disqualified as an heir or disinherited, the share that would have been given to that heir will be distributed among the lineal descendants of the predeceased in equal shares (Art. 887, 901 CivC). In general, the respective shares of all direct heirs of the same rank are equal (Art. 900 (4) CivC). If the deceased is childless, the estate is divided among the lineal ascendants and the spouse, who takes two-thirds (Art. 900 (2) CivC). If the lineal ascendants have already died, heirs of third rank (siblings) and the spouse inherit. Brothers and sisters take a share of one-fourth and the spouse takes three-quarters of the assets (Art. 900 (3) CivC). The statutory shares were revised in 1980. The reform increased the share of the spouse to the detriment of blood relatives.<sup>32</sup>

#### a) *Illegitimate Child*

The share of an illegitimate child is one-half that of a legitimate child (Art. 900 (4) CivC). During the negotiations of the new Constitution, subsequent to the end of World War II, the portion of illegitimate children appeared on the agenda. However, a large majority

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31 Cf. Supreme Court, 18 March 1976, Minshû 30, 211.

32 Where the spouse and child are joint heirs, the share of the spouse was altered to one-half of the estate (previously one-third); where the spouse and a lineal ascendant of the deceased are joint heirs, this is two-thirds (previously one-half); and where the spouse and the siblings are joint heirs, this is three-quarters (previously two-thirds); amendment to the CivC by Law No. 51/1980.

opposed the equalization of legitimate and illegitimate children in this matter.<sup>33</sup> Half a century later, the Supreme Court of Japan ruled that the provision of Article 900 sub-para. 4 CivC violates neither Article 14 nor Article 24 para. 2 of the Constitution.<sup>34</sup> The enactment's aim is understood by the Court as 'to respect the status of the legitimate child who was born between spouses who are married by law'. The legal marriage receives special protection by law, and this includes the children born within that marriage. Therefore, insofar as the statutory share of inheritance is concerned, 'the legitimate child has to be given preference'.

The court also pointed out that the decedent has the opportunity to set up a testament that treats his legitimate and illegitimate children equally and held that

[i]n cases such as where there is no designation by testament, differentiation of statutory shares of inheritance between legitimate and illegitimate children [...] has a reasonable ground in the reason of enactment and the differentiation is not excessively unreasonable in relation to the reason of enactment, and can be acknowledged as being within the scope of reasonable discretion granted to the legislature.

This decision was subject to controversy, not only in the Japanese public. Five concurrent and five dissenting opinions prove that even the 15 justices of the Grand Bench themselves have been sharply divided over this issue. Until today, multiple international organizations have criticized Japan for maintaining this dubious provision.<sup>35</sup> The Supreme Court, however, basically confirmed its ruling in several following decisions,<sup>36</sup> if not as strong and decisive as before.<sup>37</sup> In the long run, the provision seems to be untenable.

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33 The discussion was based on a motion of the former president of Kanazawa University and well-known jurist *Zennosuke Nakagawa*; cf. S. WAGATSUMA, *Sengo ni okeru Minpô kaisei no keika* [The Progress of the Revision of the Civil Code in the Post-War Era] (Tokyo 1956) 48-9.

34 Supreme Court, 5 July 1995, *Minshû* 49, 1789 [available online at <http://www.courts.go.jp/english/judgments/text/1995.07.05-1991-Ku-No.143-155301.html>]; see also P. SCHMIDT, *Urteil des OGH zur Frage der Verfassungsmäßigkeit der gegenwärtigen Ausgestaltung des gesetzlichen Erbteiles eines nichtehelichen Kindes in Art. 900 Zivilgesetz*, in: *ZJapanR/J.Japan.L.* 1 (1996) 100.

35 E.g. UN HUMAN RIGHTS COMMITTEE, *Concluding Observations: Japan*, CCPR/C/79/Add.102 (1998), ct. 12 (Violation of Art. 26 of the International Covenant of Civil and Political Rights); UN COMMITTEE ON THE RIGHTS OF THE CHILD, *Concluding Observations: Japan*, CRC/C/15/Add.90 (1998), ct. 14; COMMITTEE OF THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW), *Concluding Observations* (2009), ct. 17.

36 Supreme Court, 27 January 2000, *Katei Saiban Geppô* 52 (2000) 78; 28 March 2003 *Katei Saiban Geppô* 55 (2003), 51; 31 March 2003, *Katei Saiban Geppô* 55 (2003) 53; 14 October 2004, in: *Hanrei Taimuzu* 1173 (2005) 181.

37 Cf. Supreme Court, 31 March 2003, *Katei Saiban Geppô* 55 (2003) 53.

b) *Contributory Portion*

The profound reform of 1980 inserted Article 904-2 in the Civil Code which deals with special contributions to the deceased's property by one of several heirs. By this system, heirs who made special contributions to the decedent's property are entitled to an increase of their statutory or testamentary share. The legislative goal is to ensure substantial fairness in inheritance. Paragraph 1 provides that if, among the heirs, there is a person who made a special contribution to the maintenance of or increase in the assets of the deceased by providing labor or service for the deceased's business or by caring for and nursing him, he or she should receive an increased share in succession. An example is longstanding complimentary work on the parental farm. However, normal housework or a spouse's care and nursing to such an extent as is required by the duty to provide mutual support are not sufficient. The size of the increase of the share is determined by an agreement of all the heirs.

The share of the person who made a special contribution is the statutory or testamentary share plus the portion of contribution. Paragraph 2 of the same provision provides that if the heirs fail to reach an agreement, the family court may, upon the request of the person who made the contribution, determine the portion of contribution by taking into consideration the time, means and extent of contribution as well as the amount of the estate and all other circumstances.<sup>38</sup> However, common-law spouses or, for example, spouses of the deceased's children are not heirs and therefore cannot claim a contributory portion under Article 904-2.

4. *Separation of Property*

Heirs can effect the partition of estate (*isan no bunkatsu*) and end the provisional joint ownership at any time just by their agreement while taking into account the kind and nature of the property as well as the age of each heir, their occupation, mental and physical condition, their standard of living and all other circumstances (Art. 906, 907 (1) CivC). Those other circumstances include the living together of decedent and heir or correlating statements of the decedent concerning the succession of the family business. Therefore, joint heirs can, by considering the circumstances involving each heir, allow a particular heir to receive more than the statutory share.

The value of inheritance is the value at the time of separation.<sup>39</sup> The deceased has the opportunity to prohibit the partition for a certain period of time or to determine it by will (Art. 908 CivC). However, in cases where the joint heirs cannot reach an agreement on the division of estate, the family court adjudicates the matter, and the estate has to be divided in accordance with the statutory shares (Art. 907 (2) CivC). In this way, provisions on statutory shares of inheritance are determined to operate in a supplementary

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38 C.f. e.g. Maebashi Family Court, 14 July 1985, Katei Saiban Geppô, 38 (1984) 12.

39 Tokyo High Court, 22 December 1969, Katei Saiban Geppô 22 (1970) 55.

way in cases such as where there is no designation by testament.<sup>40</sup> An agreement as to the distribution of estate between the heirs can be the object of rescission because of false information intentionally given by one of the joint heirs.<sup>41</sup> Upon partition (Art. 907 (1) CivC), the property forming the estate which was held in joint ownership since the time of the decedent's death becomes subject to individual ownership, and thus the attribution of the property items is determined. In the past, about 12,000 applications for partition of the decedent's estate were made to the family court, 12% of which were dismissed.<sup>42</sup>

The distribution of estate is effective retroactively from the time of the commencement of succession (Art. 909 CivC). The estate can be distributed according to individual items (*genbutsu bunkatsu*) or value (*kanka bunkatsu*). Alternatively, one heir can take all property and pay an adequate compensation to each of the other heirs (*daishô bunkatsu*). The different methods can also be combined. Each of the joint heirs is liable for warranty as that of a seller (cf. Art. 555 CivC) towards other heirs in proportion to his share of inheritance (Art. 911 CivC). Under the provisions on sale, the other party is entitled to cancellation (*kaijo*), reduction (*daikin no gengaku*) or payment of damages (*songai baishô*).

##### 5. Nonexistence of Heirs

If it is unknown – after the commencement of succession – whether an heir exists, an extensive search of increasing intensity begins (Art. 951-959 CivC). An administrator of the succeeded property is appointed (Art. 952 CivC) to execute and check the procedure, which includes several public notices calling upon heirs as well as all creditors of the estate and legatees. However, if no heir is eventually found, the National Treasury irretrievably inherits the whole property (Art. 959 CivC).

Because of the exclusion of de-facto spouses and de-facto adopted children from succession, the said provisions on non-existence of heirs were considered insufficient.<sup>43</sup> The first major revision of the post-war Civil Code in 1962 afforded some protection for de-facto spouses. Since then, persons who had been living together with the deceased in one household and helping with care and nursing of the deceased or otherwise had a special relationship with the decedent (*tokubetsu enko*), are entitled – based on the discretion of the family court – to inherit (Art. 958-3 CivC).

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40 Supreme Court, 5 July 1995, Minshû 49, 1789 [available online at <http://www.courts.go.jp/english/judgments/text/1995.07.05-1991-Ku-No.143-155301.html>].

41 Supreme Court, 11 June 1999, Minshû 53, 898 [available online at <http://www.courts.go.jp/english/judgments/text/1999.06.11-1998.-O-.No..1077.html>].

42 2005: 11,999 applications; 2008: 12,879 applications; see Japan Statistical Yearbook (2011), *supra* note 2.

43 P. SCHMIDT, *supra* note 3, 110.

#### IV. ACCEPTANCE AND RENUNCIATION

As mentioned above, the inheritance passes to the entitled heir irrespective of the right to disclaim it, just as under German law. The heirs have the freedom to decide by acceptance (Art. 920 CivC) or renunciation (Art. 938 CivC) whether this legal effect of succession should be irrevocable. The declaration of intent – either acceptance or renunciation – has to be given within three months after becoming aware of the death of the deceased and of the fact that the succession has been opened in that heir's favor (Art. 915 CivC). Before making this crucial decision, the heir has the right to investigate the estate (Art. 915 (2) CivC). According to case law, under certain circumstances the period of three months (*jukuryo kikan*) only begins when the heir becomes aware of the condition of inheritance – especially the possible existence of debts.<sup>44</sup> If the heir dies before having the opportunity to express his intention, the three-month period starts with the knowledge of the heir's heir (*saiten sôzoku*, Art. 916 CivC). If the heir neither accepts nor renounces, the heir is under a duty to administer the estate (Art. 918 CivC). Acceptance and renunciation cannot be rescinded (*torikeshi*) except under the provisions in Book I (General Provisions) and Book 5 (Relatives) of the Civil Code, for example due to lack of legal capacity or mistake (Art. 919 CivC). However, after such a rescission, the inheritance must – according to Japanese case law – either be accepted or renounced without undue delay.

##### 1. *Unconditional Acceptance*

If an heir exercises the right to accept the inheritance unconditionally (*tanjun shônin*), the heir maintains the effect of universal succession which occurred by the commencement of succession and succeeds without any limitations to the rights and duties of the deceased person (Art. 920 CivC). Apart from giving an explicit declaration, the heir is also held to have unconditionally accepted the inheritance if the heir disposes of the estate, if the period of three months has lapsed, or if the heir conceals or consumes parts of the estate or fails in bad faith to list property in the inventory after having made a declaration of qualified acceptance or renunciation (*hôtei tanjun shônin*) (Art. 921 CivC).

##### 2. *Qualified Acceptance*

The liability of the heir for the obligations of the estate is restricted to the amount of the estate if the heir expresses a qualified acceptance of the inheritance (Art. 922 CivC). In this case, debts are only paid and legacies executed only within the extent of the estate. In German law (Sec. 1975 BGB), a restriction of liability similar to the qualified acceptance is only possible if administration of the estate is ordered or estate insolvency proceedings are instituted. Even in Japan, however, qualified acceptance is rarely used,

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44 Supreme Court, 27 April 1984, Minshû 38, 698.

which could also be explained by the ancient moral obligation to always repay the debts of the 'house' or parents even if one's own property is concerned. Another explanation might be high requirements of form as well as the requirement of mutual consent of all heirs.<sup>45</sup>

The inheritance includes legal positions that have an asset value – for example, fruits that are acquired by succession,<sup>46</sup> dividend rights<sup>47</sup> or claims for damages.<sup>48</sup> In the case of more than one heir, the qualified acceptance can only be effected jointly by all heirs (Art. 923 CivC). After preparing an inventory, the family court has to approve the application of qualified acceptance (Art. 924 CivC). If the court's permission is granted, the heir has the duty to continue to administer the estate with the same care that would be used in respect of the heir's own property (Art. 926 CivC) until all liabilities are fulfilled or – in the case of joint heirs – the appointment of an administrator of estate by the family court (Art. 936 CivC) who has the position of a legal representative.<sup>49</sup> While in principle qualified acceptance is only possible by all heirs jointly, unqualified acceptance may be legally assumed with respect to some of the joint heirs (Art. 921 subpara. 1 and 3 CivC). These heirs are then liable in proportion to their share of inheritance (Art. 937 CivC). The universal legatee also has the opportunity of qualified acceptance.

### 3. Renunciation

The absolute majority – almost 90% – of all succession cases concerns the renunciation of succession (*hōki*), which therefore has a great importance in practice.<sup>50</sup> However, the Japanese Civil Code contains only three articles that specify the procedure of renunciation (Art. 938-940 CivC). The heir who desires to effect a renunciation has to make an oral or written application to the family court within three months after gaining knowledge that there has been a commencement of inheritance (Art. 915 (1), 938 CivC). Under German law, the renunciation can only be made within six weeks (Sec. 1944 (1) BGB). The reason for almost 150,000 applications per year could either be that many estates are encumbered with debts which exceed the assets or that there is a wish not to break up the family business by the eldest son becoming the only heir. The retroactive effect of the renunciation (Art. 939 CivC) effects that the person who applied for renunciation is deemed not to have been an heir from the commencement of succession. To put it in another way, from the legal point of view there has never been a succession by the one renouncing.

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<sup>45</sup> S. NINOMIYA, *Kazoku-hō* [Family Law] (3<sup>rd</sup> ed. Tokyo 2009) 300.

<sup>46</sup> Imperial Court, 25 March 1925, Minroku 20, 230.

<sup>47</sup> Imperial Court, 8 March 1916, Minroku 21, 289.

<sup>48</sup> Tokyo District Court, 22 July 1972, in: *Hanrei Jihō* 686 (1972) 65.

<sup>49</sup> Supreme Court, 9 November 1972, Minshū 26, 156.

<sup>50</sup> 148,526 cases (649 dismissed) in 2008; see Japan Statistical Yearbook (2011), *supra* note 2.

## V. WILL

As mentioned above, in practice it is not very common to make a will (*igon*). The family courts have to deal with only a small number of cases, though this has increased by more than 12% within the last three years to about 16,000 per year.<sup>51</sup> Surprisingly enough, the provisions on will are by far the most extensive in the fifth book of the Civil Code.

The testator has to be at least fifteen years of age to be capable of making a will (Art. 961 CivC). Persons who lack legal capacity cannot make a will (Art. 962 CivC). However, in the case of a testator who is temporarily declared incompetent, this person can make a will in the presence of two medical practitioners (Art. 973 CivC).

The Japanese Civil Code provides testamentary freedom. Nevertheless, the deceased cannot appoint an heir or impose testamentary burdens by testamentary disposition. However, the decedent can effect the acknowledgment of a child (Art. 781 (2) CivC), disinheritance of a presumptive heir and its revocation (Art. 893, 894 CivC) as well as the designation of an executor (Art. 1006 CivC) by will. Furthermore, he can designate the shares of succession (Art. 902 CivC), forbid the partition of the estate for up to five years (Art. 908 CivC), give a legacy by will (Art. 964 CivC) or add conditions to the will (cf. Art. 985 (2) CivC).

### 1. *Forms and Formalities*

The will is a unilateral legal transaction that has to be made in conformity with the forms prescribed by statute (Art. 960 CivC). The reason for the rather strict provisions is the protection of the decedent's true will. There are three different kinds of ordinary wills: holographic will, will by notary and secret will.

The testator has to make a will – taking into account the testator's physical conditions<sup>52</sup> – by a declaration written in his own hand (*jihitsu shôsho igon*), a signature of first and last name as well as his seal on it (Art. 968 CivC). The regulations on the holographic will are similar to the German law, which only waives the requirement of sealing (Sec. 2247 BGB).

A will made by declaration to a notary is made by the testator orally declaring his last will to the notary, who must call in two witnesses (Art. 969 CivC). After writing down the will and having it read out to the attendants, the testator, each of the witnesses and the notary sign and seal the will. Finally, the notary makes an additional entry to the effect that the testament has been created in accordance with the formalities. Minors, presumptive heirs or legatees, the spouse and relatives within the fourth degree of relationship to the notary as well as his clerks cannot become witnesses (Art. 974 CivC). The

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51 14,390 cases (2005); 16,103 cases (2008); see Japan Statistical Yearbook (2011), *supra* note 2.

52 Cf. Supreme Court, 8 October 1987, Minshû 41, 1471 concerning the physical conditions of a testator that made it impossible for him to make a will in person.

will is taken into safekeeping by the notary (Art. 25 Notary Act);<sup>53</sup> the testator receives a certified copy (Art. 47 Notary Act).

In addition to that, the testator can hand the notary and two present witnesses a sealed envelope containing a document with the statement that this document contains the last will (Art. 970 CivC). The notary, witnesses and testator affix their signatures and seals on the secret document. Finally, several special formalities and less common types of will are regulated in the Civil Code, including the will of a person in imminent danger of death (Art. 976 CivC), isolation by reason of contagious disease (Art. 977 CivC) or a person on board a ship or in peril of the sea (Art. 978, 979 CivC) as well as the will of a Japanese residing abroad (Art. 984). In these cases, the formalities for making a will are less strict than described above.

## 2. *Effect of Will*

If the will is not subject to suspensive condition, it comes into effect upon the death of the testator (Art. 985 CivC). The succession by will is opened upon the probate of the family court (Art. 1004 CivC). A will that is contrary to public policy or good morals is null and void (Art. 90 CivC). The same applies to a will that is induced by fraud or duress (Art. 96 CivC). If the will is closed up with a seal, it can only be opened in court and in the presence of the heirs (Art. 1004 (3) CivC).

The most important effect of the will is the legacy, which gives the deceased the opportunity to give a material benefit to a person without appointing this person as an heir. The Japanese Civil Code contains regulations on special and general legacies (Art. 964 CivC). A legatee by universal succession has the same rights and obligations as an heir (Art. 990 CivC) and basically succeeds to all rights and obligations that are included in the testator's property. Therefore, in cases where a testator has no heir but appointed a legatee by universal succession, Article 951 CivC (non-existence of heirs) is not applicable.<sup>54</sup> The object of the special legacy does not have to be specified in the will. It can also be an unspecified object, which is part of the whole inheritance. Even a future right can be the object of a special legacy.

The legacy does not take effect in the case of the legatee's death before or at the time of the death of the testator (Art. 994 CivC). A case is conceivable where a presumptive heir designated by will as the legatee of a larger portion than his statutory share dies before the death of the testator. Unless there are special reasons to consider, such a will would never become effective (Art. 994 CivC). These reasons depend on the circumstances as well as the relationship between the clause designating the heir as legatee and other clauses in the written will and the testator's situation at the time of preparing the

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53 *Kôshô-nin hô*, Law No. 53/1908, as amended by Law No. 74/2011.

54 Supreme Court, 12 September 1997, Minshû 51, 3887 [available online at <http://www.courts.go.jp/english/judgments/text/1997.9.12-1994-O-No.2052-172813.html>].

written will.<sup>55</sup> Besides natural persons, the nasciturus (Art. 965, 886 CivC) as well as legal persons can be legatees (*ju-i-sha*).

In respect of a will, it is essential to respect the intention expressed in that will and rationally construe its purport. Article 908 CivC provides that the decedent may decide on the mode of distribution of property by will. A will to the extent that an heir 'shall inherit' specified property is to be construed that the will-maker's intention is to let the said heir inherit the said property solely rather than jointly with other heirs, unless it is 'obviously intended as a legacy or special circumstances justify construing such a legacy'.<sup>56</sup> Other heirs are bound by the expression of will and are not allowed to negotiate for a different way to divide property.

### 3. *Acceptance and Renunciation*

Legatees can renounce a legacy at any time after the decedent's death (Art. 986 CivC). This renunciation is a declaration of intent (Art. 97 CivC) of the legatee and is to be made to the person who is charged with the legacy.<sup>57</sup> This renunciation as well as an explicit acceptance of the legacy cannot be rescinded by means of the provisions of the fifth book of the Civil Code (Art. 989 CivC). Only the provisions of mental reservations (*shinri ryûho*), sham transactions (*kyogi hyôji*) and mistakes (*sakugo*) are applicable (Art. 989 (2), 919 (2) CivC). Because of the legatee's opportunity to renounce at any time (Art. 986 CivC), the heir who is charged with a legacy can request the legatee to make a declaration to accept or renounce the property if a reasonable period of time has been granted to make this explicit declaration. In the case of silence, the legacy is deemed to have been accepted. If the legatee who is called to declare his intention dies, his heirs are entitled to effect acceptance or renunciation (Art. 988 CivC).

### 4. *Revocation*

Once a will is made, the testator can revoke it at any time (Art. 1022 CivC). This is also applicable to a donation mortis causa (*shi'in zôyo*). Corresponding to German law (Sec. 2253-2258 BGB), the making of a will revokes an earlier will to the extent that the later will is at variance with the former (Art. 1023 CivC), is inconsistent with a disposition inter vivos (Art. 1023 (2) CivC) or the testator intentionally destroyed a testamentary object or the document itself (Art. 1025 CivC). Invalidity because of a mistake about essential characteristics (*seishitsu sakugo*) is also conceivable. The right to revoke the will cannot be waived by the testator (Art. 1026 CivC).

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55 Supreme Court, 22 February 2011, Minshû 65, 699 [available online at <http://www.courts.go.jp/english/judgments/text/2011.02.22-2009.-Ju-.No..1260.html>].

56 Supreme Court, 11 July 1988, Minshû 45, 477; lastly Supreme Court, 24 March 2009, Minshû 63, 427 [available online at <http://www.courts.go.jp/english/judgments/text/2009.03.24-2007.-Ju-.No..1548.html>].

57 Imperial Court, 2 February 1918, Minroku 24, 237.

## VI. COMPULSORY SHARE

The testamentary freedom permits the testator to give his property to anyone. However, the compulsory share (*iryû-bun*) is a legally secured portion of the estate to which particular heirs are entitled. It is intended to safeguard the family from arbitrariness on the part of the deceased person.

### 1. Attribution and Proportions

Persons entitled to a compulsory share of the estate are the descendants of the testator, the spouse and lineal ascendants (Artt. 1028, 889, 890 CivC; for German law, cf. Sec. 2303, 2309 BGB). The nasciturus is entitled to a compulsory portion if he is born alive (Art. 886 CivC). Siblings are not entitled to take advantage of the compulsory share. Persons who lose their right of succession because of disqualification, disinheritance or renunciation are not entitled to a compulsory share.<sup>58</sup>

Basically, the amount of the compulsory share is one-half of the decedent's property; lineal ascendants can claim only one-third (Art. 1028 CivC). Under German law, all persons entitled to a compulsory portion receive one-half of the value of the share of the inheritance on intestacy (Sec. 2303 BGB). However, depending on the matrimonial property scheme, the compulsory share of the spouse is far more complicated to calculate in Germany.

If the decedent has given property to one of the prospective heirs during his lifetime (transaction *inter vivos*) or by testamentary disposition, this will be considered in the distribution of property if the donation was made within one year before the commencement of succession (Art. 1030 CivC). Gifts given more than one year ago can only be considered when the parties acted with knowledge that the gift would interfere with the compulsory share of the donee.<sup>59</sup> In fact, it is sufficient that the interference was foreseen; intent is not required.<sup>60</sup> Gifts include non-gratuitous transactions if the remuneration is inadequate (Art. 1039 CivC). Because of the equality of joint heirs, special gifts listed in Article 903 CivC are taken into account even if they were given more than one year before the death of the decedent. Section 2325 (3) BGB, though, takes into account gifts up to ten years since the donated object was given and determines the value on the basis of the date of entry into contract on which the gift was given (Sec. 2315 (2) BGB). Quite contrary to this, Japanese case law determines the value on the basis of the commencement of succession and is only in accordance with German law in the case of gifts of money.<sup>61</sup>

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58 Imperial Court, 26 March 1942, Minshû 21, 284.

59 Courts have to consider all relevant circumstances and therefore have a wide scope of discretion; cf. Supreme Court, 24 March 1998, Minshû 52, 433 [available online at <http://www.courts.go.jp/english/judgments/text/1998.03.24-1997.-O-.No.2117.html>].

60 Imperial Court, 15 September 1934, in: Hôritsu Shinbun 3801 (1935) 9.

61 Supreme Court, 18 March 1976, Minshû 30, 111.

## 2. *Abatement*

In the case of infringement of the legally secured portion, the person entitled to a compulsory share has a title to reduce the heir's shares in succession (Art. 1031 CivC).<sup>62</sup> According to case law, the person who is entitled to a compulsory share has the right to choose which legacies or gifts inter vivos he or she claims for abatement.<sup>63</sup>

The claim for abatement is a right to alter a legal relationship. The person entitled to a compulsory share can lodge the claim in court or just by declaration of intent.<sup>64</sup> Gifts or testamentary gifts of specific objects are void to the extent that the compulsory share is infringed. The rights of legatee and donee pass over to the person entitled to claim for abatement (in rem effect).<sup>65</sup> The legatee and donee, on the other hand, can ward off the exercise of the right to claim for abatement by providing compensation in money to the person entitled to the compulsory share (Art. 1041 CivC).

The right to demand abatement extinguishes if it is not exercised within one year from the time when the person entitled to a compulsory share becomes aware that his right is infringed (Art. 1042 CivC).<sup>66</sup> However, ten years after the opening of succession, this right will expire, even without knowledge.

## 3. *Renunciation*

With the post-war revision of the Civil Code came the introduction of Article 1043 CivC, which provides that the renunciation of a compulsory share (*iryû-bun no hôki*) is only effective if the family court has approved the corresponding application. The court examines the application with a sensible understanding of all circumstances and checks whether the application is reasonable and was made completely voluntarily. The family court, therefore, does not have to accept the petition if no profound reasons are contended.<sup>67</sup> In the case of changed circumstances that make it impossible for the person renouncing to stay with the primary decision, the renunciation – in accordance with doctrine and case law – can be rescinded.<sup>68</sup>

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62 Supreme Court, 29 May 1962, Katei Saiban Geppô 14 (1962) 111.

63 Imperial Court, 15 September 1934, Minshû 13, 1792.

64 Supreme Court, 14 July 1966, Minshû 20, 1183.

65 Supreme Court, 30 August 1976, Minshû 30, 768.

66 Cf. Imperial Court, 26 April 1905, Minroku 11, 611; Supreme Court, 12 November 1982, Minshû 36, 2193.

67 Tokyo District Court, 4 October 1960, Katei Saiban Geppô 13 (1961) 149.

68 Tokyo High Court, 5 September 1983, in: Hanrei Taimuzu 1094 (1984) 33.

## SUMMARY

*The principles of the Japanese law of succession were rewritten after the end of World War II. The house system (ie seido) that made the eldest son the universal and sole heir of the house's assets was replaced by a parentelic system of succession that is predicated on the equality of the sexes and individual dignity as stated in Article 24 of the post-war Constitution.*

*The death of the decedent marks the commencement of succession. The heirs have the right to claim for recovery of the estate if a third party violates their rights.*

*In the case of intestacy, the spouse and children are always heirs. Half the estate is distributed to the surviving spouse and the other half is divided equally between the children. However, the share of an illegitimate child is one-half that of a legitimate child. In matters of succession, an unborn child is presumed to have been born on the condition that he or she is born alive. Lineal ascendants are heirs of second rank, and siblings come third. A relative is not entitled to inherit as long as a relative of a preceding rank survives. The Civil Code also states several reasons for disqualification of inheritance and provides the opportunity for the decedent to disinherit heirs at law.*

*Upon commencement of succession, an heir takes over all the rights and duties pertaining to the property of the decedent, which includes assets as well as liabilities. In cases where more than one heir exists, the decedent's property is jointly owned by all heirs until partition. Heirs can effect the partition of estate by their agreement. In cases where the heirs cannot reach an agreement, the family court divides the estate in accordance with the statutory shares.*

*The inheritance passes to the entitled heir irrespective of the right to disclaim it. The heir has the right to unconditional acceptance, qualified acceptance, which limits the liability of the heir to the inheritance, or to renounce the inheritance.*

*Rather uncommon in practice is the opportunity to make a will (igon). The Civil Code provides three different kinds of ordinary wills: holographic will, will by notary and secret will. All forms of wills have to meet the legal formalities to be valid. The testamentary freedom permits the testator to give his property to anyone. However, the compulsory share (iryû-bun) is a legally secured portion of the estate to which the descendants of the testator, the spouse and lineal ascendants are entitled. Basically, the amount of the compulsory share is one-half of the estate; lineal ascendants can only claim for one-third.*

## ZUSAMMENFASSUNG

*Mit dem Ende des Zweiten Weltkriegs wurde auch das japanische Erbrecht umfassend reformiert. Das Haussystem (ie seido), das nach dem Prinzip der Universalsukzession den ältesten Sohn als einzigen Erben bestimmte, wurde durch ein Parentelsystem er-*

setzt, das auf der in Art. 24 der Nachkriegsverfassung garantierten Gleichbehandlung beider Geschlechter sowie der Menschenwürde fußt.

*Der Tod des Erblassers eröffnet die Erbfolge. Die Erben haben einen Erbschaftsanspruch gegen den unrechtmäßigen Besitzer eines Nachlassgegenstandes.*

*Im Falle der gesetzlichen Erbfolge sind der Ehegatte und vorhandene Kinder in jedem Fall Erben. Die Hälfte des Erbtes steht dabei dem überlebenden Ehegatten zu, die andere Hälfte wird gleichmäßig unter allen Kindern aufgeteilt. Der Anteil eines nicht-ehelichen Kindes beträgt allerdings nur die Hälfte des Anteils eines ehelichen Kindes. Ein ungeborenes Kind gilt im Rahmen des Erbrechts als erbfähig, wenn es lebend geboren wird. Vorfahren in gerader Linie sind Erben zweiten, Geschwister Erben dritten Rangs. Dabei schließt das Vorhandensein eines Erben niederen Ranges die Erben höheren Rangs von der Erbschaft aus. Das japanische Zivilgesetz enthält zudem Bestimmungen zur Erbunwürdigkeit und Enterbung gesetzlicher Erben.*

*Mit dem Anfall der Erbschaft tritt der Erbe in sämtliche Rechte und Pflichten des Erblassers ein. Dies umfasst sowohl aktives als auch passives Vermögen. Existieren mehrere Erben, ist das Vermögen bis zur Auseinandersetzung im Miteigentum aller Erben. Die Auseinandersetzung des Erbtes beruht auf der gemeinsamen Vereinbarung aller Miterben. Sollten sie zu keiner Einigung kommen, entscheidet das Familiengericht über die Auseinandersetzung in Anlehnung an die gesetzliche Erbfolge.*

*Die Erbschaft geht automatisch, auch ohne Kenntnis des Erben, auf diesen über. Der Erbe kann die Erbschaft unbedingt oder bedingt annehmen – in letzterem Fall wird die Haftung beschränkt –, er hat aber auch das Recht, die Erbschaft auszuschlagen.*

*In der Praxis eher selten ist die Errichtung eines Testaments (igon). Das Gesetz regelt neben dem eigenhändigen und notariellen Testament auch das Geheimtestament. Die drei Arten unterscheiden sich hinsichtlich der jeweiligen Formerfordernisse. Die Testierfreiheit ermöglicht es dem Erblasser grundsätzlich sein Eigentum an jedermann zu vererben. Diese Freiheit findet ihre Grenze im Pflichtteilsrecht. Nachkommen und Vorfahren gerader Linie sowie der Ehegatte erhalten in jedem Fall einen gesetzlich bestimmten Anteil (iryû-bun) an ihrem gesetzlichen Erbrecht, der ihnen nicht entzogen werden kann. Dieser Anteil beträgt grundsätzlich die Hälfte der Erbschaft, im Fall der Vorfahren gerader Linie nur ein Drittel.*