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ON *DAISHŪ-SŌZOKU* (REPRESENTATION) IN THE JAPANESE CIVIL LAW

—Especially, *Daishū-Sōzoku* to Brothers and Sisters
of a person to be succeeded to—

by *Minoru Tanaka*

Paragraph 1, Article 888 of the Japanese Civil Code provides; “If, in cases where a person who would become successor in accordance with the provisions of the preceding Article dies or loses his right of succession previous to the opening of the succession and there exist lineal descendants of such persons, the lineal descendants become successors in the same rank as that person, in accordance with the provisions of the preceding Article.” The above-mentioned system of succession by the lineal descendants of the next generation in place of the immediate lineal descendants is called “*Daishū-sōzoku*”. It is sometimes said that this system of *Daishū-sōzoku* corresponds to a system in English Law where descendants take the estate *per stirpes*. But the succession by representation is not identical to *Daishū-sōzoku*. The latter may be said to be a much broader concept than the former. If we look for any principle in foreign law which is similar to the principle underlying the Japanese system, we may say that *Daishū-sōzoku* is based on a principle something like either “*Erbfolge nach Stämmen*” in German Civil Code (B. G. B. Art. 1924) or “*représentation successorale*” in French Civil Code (Code Civil Art. 739).

Provisions of the Japanese Civil Code apply the system of *Daishū-sōzoku* to cases where the successors are the lineal descendants of a person to be succeeded. Moreover they prescribe for the application of the same system to cases where the successors are the brothers and sisters of a person to be succeeded (Paragraph 2, Article 889).

Ordinarily provisions of the Civil Code limit the categories of persons who are entitled to succession to the spouse, lineal descendants, lineal ascendants, and brothers and sisters of a person to be succeeded. However, if we apply the principle of *Daishū-sōzoku* to the above-cited provisions defining the categories of the successors, we find that even

nephews and nieces who are not ordinarily entitled to succession may become legal successors to a person to be succeeded. Namely, the application of *Daishū-sōzoku* to the ordinary system of succession has produced a strangely contradictory result.

For example, we know a case which involved the following situation of facts. A, a person to be succeeded, did not have any spouse, lineal descendants or lineal ascendants but had only B, a brother, and C, a sister. Both B and C have predeceased A. When A died there remained a, b, and c who were the children of B. So, upon the death of A, it has become necessary to decide whether or not a, b, and c can be the successors to A's estate. When a, b, and c brought a suit for succession to the Family Court in Kumamoto, the court has given a negative answer to the question. (This is an interpretation in conformity with the majority opinion of the Japanese jurists.) However, the Fukuoka High Court sitting as a court of appellate jurisdiction over the Kumamoto Family Court has reversed the judgment below and made a statement in favour of a, b, and c's succession to the estate. (This represents the minority opinion.)

I would like to support the judgment of the Fukuoka High Court rather than that of the Kumamoto Family Court for the reasons as explained hereunder.

The provisions of the Japanese Civil Code limiting the successor of the estate up to the brothers and sisters have been modified substantially by the recognition of the system of *Daishū-sōzoku*. The categories of the successors are thought to have been expanded a great deal. In view of the above-mentioned modification of the provisions and the expansion resulting therefrom, I believe that the nephews and nieces are duly entitled to become successors to the estate. My interpretation is of a particular significance and has a substantial meaning on the following grounds.

(1) It may help in maintaining a balance between the succession and the support among relatives. Provisions of the Japanese Civil Code recognize the duty of mutual support among relatives up to the third degree of relationship. Accordingly the categories of successors may be expanded at least up to the relatives of the third degree. For example it may be considered wholly irrational if we come to the conclusion that a nephew who has given a maintenance and

support to his aged uncle as a only surviving relative should be denied a right to succeed to his uncle's estate.

(2) It may eliminate many cases where there are no legal successors to the estate. Provisions of the Japanese Civil Code has limited the categories of the successors up to the brothers and sisters of a person to be succeeded. But isn't it a too narrow definition when we think about today's feeling which we share among the members of the family. I believe that the inclusion of nephews and nieces are advisable from the viewpoint of the legislative policy. By so expanding the categories, we can reduce the number of cases where the estate goes to the national treasury because of the absence of the legal successors.

THE SIGNIFICANCE OF THE SEAT OF THE MAIN OFFICE OF A CORPORATION

by Teruko Yonetsu

The main office of a corporation is the headquarter of its business activities, and the place where the business-controlling central organization is located is called the seat of the main office. It is required by law that the precise administrative location with the details of the house number of the main office is to be recorded in a corporation contract or in the proceedings at the inaugural meeting of its corporation.

Prior to the inauguration of a corporation its business activities are unknown. Therefore, the seat of the main office or the headquarter of its business activities exists only as a planned concept. After the registration and establishment of a corporation have been completed, it sometimes happens that the business activities are opened at a different place from the registered one or, that the original center having functioned at the planned site is moved after the lapse of time to some other place. In the above cases, I wonder, what the legal effect of the corporation's function will be, provided, the moving of the main office was not submitted to the general meeting of share-