

J. Y. Interpretation No.410 (July 19, 1996) *

ISSUE: Does Article 1 of the Enforcement Act of the Part of Family of the Civil Code which prohibits the application of the Civil Code ex post facto constitute an infringement on the right of equality guaranteed by Article 7 of the Constitution to the married women?

RELEVANT LAWS:

Article 7 of the Constitution (憲法第七條) ; Articles 1016, 1017, 1018, 1019 and 1030 of the Civil Code (民法第一千零十六條、第一千零十七條、第一千零十八條、第一千零十九條、第一千零三十條) ; Article 1 of the Enforcement Act of the Part of Family of the Civil Code (民法親屬編施行法第一條) ; Article 16, Subparagraph 11, of the Estate and Gift Taxes Act (遺產及贈與稅法第十六條第十一款) .

KEYWORDS:

gender equity (男女平等) , separate property (特有財產) , contributed property (原有財產) , marital union property (聯合財產) .**

HOLDING: Article 1 of the Enforcement Act of the Part of Family of the Civil Code (hereinafter the “Enforcement

解釋文：民法親屬編施行法第一條規定「關於親屬之事件，在民法親屬編施行前發生者，除本施行法有特別

* Translated by Lawrence L. C. Lee.

** Contents within frame, not part of the original text, are added for reference purpose only.

Act”)¹ states that, except as otherwise provided by the present Enforcement Act, the provision of the Civil Code (hereinafter the Code) applying to succession does not apply to succession completed before the Enforcement Act came into force; unless otherwise provided for by the present Enforcement Act, the revised provisions do not apply to any succession opened before the revision. Article 1 of the Enforcement Act is not in violation of the Constitution because the purpose of Article 7 of the Constitution is to recognize the situation prior to the enactment or amendment of the Enforcement Act and to maintain legitimacy stability. Furthermore, the Enforcement Act also enacted differential regulations to be consistent with coexisting legal order, which should be changed or eliminated. In the matter of regulations governing the community property, Article 1017, Paragraph 1, of the Code, promulgated on December 26, 1930,² states that the part of the commu-

規定外，不適用民法親屬編之規定。其在修正前發生者，除本施行法有特別規定外，亦不適用修正後之規定」，旨在尊重民法親屬編施行前或修正前原已存在之法律秩序，以維護法安定之要求，同時對於原已發生之法律秩序認不應仍繼續維持或須變更者，則於該施行法設特別規定，以資調和，與憲法並無牴觸。惟查關於夫妻聯合財產制之規定，民國七十四年六月三日修正前民法第一千零十七條第一項規定：「聯合財產中，妻於結婚時所有之財產，及婚姻關係存續中因繼承或其他無償取得之財產，為妻之原有財產，保有其所有權」，同條第二項規定：「聯合財產中，夫之原有財產及不屬於妻之原有財產部分，為夫所有」，第三項規定：「由妻之原有財產所生之孳息，其所有權歸屬於夫」，及最高法院五十五年度台抗字第一六一號判例謂「妻於婚姻關係存續中始行取得之財產，如不能證明其為特有或原有財產，依民法第一千零十六條及第一千零十七條第二項之規定，即屬聯合財產，其所有權應屬於

¹ LAW GOVERNING THE APPLICATION OF THE OF CIVIL CODE PART IV FAMILY, which includes 15 articles, was enacted in 1930, and was amended in 1985, 1996, and 2000.

² The Civil Code Part IV Family, which comprises articles numbered between 967 and 1136, was enacted in 1930, and had five amendments in 1985, 1996, 1998, 1999, and 2000.

nity property which belonged to the wife at the time of marriage as well as what she acquired during the continuance of the marriage constitute her contributed property and it remains in her ownership. Article 1017, Paragraph 2, states that the part of the community property initially belonging to the husband and that cannot be proved to be property owned by the wife should be presumed as the property of the husband. Article 1017, Paragraph 3, states that the ownership of the interest coming from the wife's property belongs to the husband. Therefore, the Supreme Court's Precedent T.K.T. No. 161 (Sup. Ct., 1966) held that the property obtained by the wife during the continuance of the marriage which cannot be proved separate property or contributed property belongs to the husband under Articles 1016 and 1017, Paragraph 2, of the Code. Under the authority of Article 7 of the Constitution emphasizing gender equity, the Code was amended on June 3, 1985. The previous precedent, which follows the amended Code, is no longer to be implemented. Nevertheless, because the Enforcement Act did not set forth different regulations

夫」，基於憲法第七條男女平等原則之考量，民法第一千零十七條已於七十四年六月三日予以修正，上開最高法院判例亦因適用修正後之民法，而不再援用。由於民法親屬編施行法對於民法第一千零十七條夫妻聯合財產所有權歸屬之修正，未設特別規定，致使在修正前已發生現尚存在之聯合財產，仍適用修正前之規定，由夫繼續享有權利，未能貫徹憲法保障男女平等之意旨。對於民法親屬編修正前已發生現尚存在之聯合財產中，不屬於夫之原有財產及妻之原有財產部分，應如何處理，俾符男女平等原則，有關機關應儘速於民法親屬編施行法之相關規定檢討修正。至遺產及贈與稅法第十六條第十一款被繼承人配偶及子女之原有財產或特有財產，經辦理登記或確有證明者，不計入遺產總額之規定，所稱「被繼承人之配偶」並不分夫或妻，均有其適用，與憲法第七條所保障男女平等之原則，亦無牴觸。

of the modification of the community property in Article 1017 of the Code, the community property, prior to the amendment of the Code in 1984 which still applied to the original regulations, belonged to the husband. A regulation that does not comply with the Constitution's ensuring of gender equality is obviously unconstitutional. In order to agree with the principle of gender equity, the portion of the Enforcement Act regarding community property that does not belong to either the husband or wife should be reviewed by the relevant authorities. Article 16, Subparagraph 11, of the Estate and Gift Taxes Act mentions that the total amount of the inherited property excludes the surviving spouse's and heir's separate property or contributed property, which is officially registered or has a deed. The term, "survivor spouse," which appears in the Estate and Gift Taxes Act, is not limited to a husband or wife. This provision does not breach Article 7 of the Constitution emphasizing the principle of gender equity.

REASONING: Article 1 of the Enforcement Act stipulates that, except as

解釋理由書：民法親屬編施行法第一條規定「關於親屬之事件，在民

otherwise provided by the present Enforcement Act, the provision of the Civil Code applying to succession does not apply to succession completed before the Enforcement Act came into force; unless otherwise provided for by the present Enforcement Act, the revised provisions do not apply to any succession opened before the revision. Article 1 of the Enforcement Act is not in violation of the Constitution because the purpose of Article 1 of the Enforcement Act is to recognize the situation prior to the enactment or amendment of the Enforcement Act and to maintain legitimacy stability. Furthermore, the Enforcement Act also enacted different regulations to be consistent with the coexisting legal order, which should be changed or eliminated. In the matter of the regulations governing the community property, Article 1017, Paragraph 1, of the Code, promulgated on December 26, 1930, states that the part of the community property which belonged to the wife at the time of the marriage as well as what she acquired during the continuance of the marriage constitutes her contributed property and remains in her ownership. Article

法親屬編施行前發生者，除本施行法有特別規定外，不適用民法親屬編之規定。其在修正前發生者，除本施行法有特別規定外，亦不適用修正後之規定」，旨在尊重民法親屬編施行前或修正前原已存在之法律秩序，以維護法安定之要求，同時對於原已發生之法律秩序認不應仍繼續維持或須變更者，則於該施行法設特別規定，以資調和，與憲法並無牴觸。惟查關於夫妻聯合財產制之規定，民國七十四年六月三日修正前民法第一千零十七條第一項規定：「聯合財產，妻於結婚時所有之財產，及婚姻關係存續中因繼承或其他無償取得之財產，為妻之原有財產，保有其所有權」，同條第二項規定：「聯合財產中，夫之原有財產及不屬於妻之原有財產部分，為夫所有」，同條第三項：「由妻之原有財產所生之孳息，其所有權歸屬於夫」，及最高法院五十五年度台抗字第一六一號判例謂「妻於婚姻關係存續中始行取得之財產，如不能證明其為特有或原有財產，依民法第一千零十六條及第一千零十七條第二項之規定，即屬聯合財產，其所有權應屬於夫」，基於憲法第七條男女平等原則之考量，故七十四年六月三日民法對此已加修正，即修正後民法第一千零十七條

1017, Paragraph 2, states that the part of the community property initially belonging to the husband and that cannot be proved to be the property owned by wife should be presumed as the property of the husband. Article 1017, Paragraph 3, states that the ownership of the interest coming from the wife's property belongs to the husband. Therefore, the Supreme Court's Precedent T.K.T. No. 161 (Sup. Ct., 1966) held that the property obtained by the wife during the continuance of the marriage which can not be proved separate property or contributed property belongs to the husband under Articles 1016 and 1017, Paragraph 2, of the Code. Under the authority of Article 7 of the Constitution emphasizing gender equity, the Code was amended on June 3, 1985. The amendment to Article 1017, Paragraph 1, pronounces that the part of the community property which belongs to the husband or the wife at the time of marriage as well as what he or she acquires during the continuance of the marriage constitute his or her contributed property and remains in his or her ownership. The amendment to Article 1017, Paragraph 2, asserts that the

第一項規定：「聯合財產中，夫或妻於結婚時所有之財產，及婚姻關係存續中取得之財產，為夫或妻之原有財產，各保有其所有權」，同條第二項規定：「聯合財產中，不能證明為夫或妻所有之財產，推定為夫妻共有之原有財產」，並將同條第三項刪除。關於聯合財產之管理，修正後之民法第一千零十八條規定：「聯合財產，由夫管理。但約定由妻管理時，從其約定。其管理費用由有管理權之一方負擔。聯合財產由妻管理時，第一千零十九條至第一千零三十條關於夫權利義務之規定，適用於妻，關於妻權利義務之規定，適用於夫」，以符合憲法規定。上開最高法院判例，亦因適用修正後之民法，而不再援用。由於上述修正之規定，對於發生於修正前者，依民法親屬編施行法第一條後段規定：「除本施行法有特別規定外，亦不適用修正後之規定」，而同法施行法對於民法第一千零十七條夫妻聯合財產所有權歸屬部分之修正，並未設特別規定，致仍適用修正前之規定，修正前已發生且現尚存在聯合財產中，不屬於夫之原有財產及妻之原有財產部分仍由夫繼續享有其所有權及對妻原有財產所生孳息之所有權暨對聯合財產之管理權，未能貫徹男女平等精神等意旨，

part of the community property which cannot be proved to be property owned by either the husband or the wife shall be presumed as property contributed by the husband and the wife jointly. Article 1017, Paragraph 3, enacted in 1930 has been cancelled. Regarding the management of the community property, the amendment to Article 1018 rules that the husband shall manage that marital property except where it has been agreed that the wife shall manage it, and the cost of management shall be borne by the party who is entitled to manage. In order to be consistent with the Constitution, where the community property is managed by the wife, provisions of Articles 1019 through 1030 on the rights and duties of the husband shall be applicable to the wife and the rights and duties of the wife shall be applicable to the husband. The previous precedent which follows the amended Code should no longer be implemented. Nevertheless, because Article 1 of the Enforcement Act stipulates the above, and unless otherwise provided for by the present the Enforcement Act rules, the revised provisions are not applicable to the

有關機關應儘速檢討修正民法親屬編施行法相關規定，以使修正前聯合財產之所有權及管理權與既有法律秩序之維護，獲得平衡。又遺產及贈與稅法第十六條第十一款被繼承人配偶及子女之原有財產或特有財產，經辦理登記或確有證明者，不計入遺產總額之規定，所稱「被繼承人之配偶」並不分夫或妻，均有其適用，與憲法第七條所保障男女平等之原則，亦無牴觸。至適用七十四年六月三日修正前民法第一千零十七條第二項規定，致遺產總額之計算發生差異，係因民法親屬編施行法第一條後段規定之結果，尚難謂該條稅法之規定違背憲法第七條規定。

community property accumulated before the revision. The Enforcement Act did not modify the community property portion of Article 1017 of the Code. As a result, the community property portion was in place prior to the amendment of the Code in 1985 and still applies to the regulations amended in 1930. It is obviously unconstitutional to maintain that the property which does not belong solely to the husband or solely to the wife belongs to the husband as well as interest gathered from the wife's separate property. The management right to the martial union property is unconstitutional because this regulation does not comply with the Constitution's guarantee of gender equity. In order to agree with the principle of gender equity, the portion of the Enforcement Act regarding the community property which does not belong to either the husband or wife should be reviewed by the relevant authorities. Then, the authorities should amend the current provision because the right of management and ownership of community property should be protected under the existing legal order. Article 16, Subparagraph 11, of the Estate and Gift

Taxes Act mentions that the total amount of the inherited property excludes the surviving spouse's and heir's separate property or contributed property, which is officially registered or has a deed. The term "survivor spouse" that appears in the Estate and Gift Taxes Act is not limited to the husband or wife. This provision does not breach Article 7 of the Constitution emphasizing the principle of gender equity. It is hard to allege that the Estate and Gift Taxes Act breaches Article 7 of the Constitution emphasizing the principle of gender equity, because it creates different amounts of inheritance calculated under Article 1 of the Enforcement Act.