

J. Y. Interpretation No.18 (May 29, 1953) *

ISSUE: Does a mere failure of a married woman to return to her husband's home after visiting her own parents' constitute willful abandonment as a ground for divorce under Article 1052 (v) of the Civil Code?

RELEVANT LAWS:

Article 1052 of the Civil Code (民法第一千零五十二條) .

KEYWORDS:

cohabitation (同居) , willful abandonment (惡意遺棄) .**

HOLDING: At the Ninth Meeting of the Grand Justices Council, it was resolved on the first ad hoc proposal: "Petitions submitted by the Central or local government agencies pertinent to Interpretations of the Judicial Yuan that occurred prior to the promulgation of the Constitution may be considered as in compliance with Article 4 of the Regulation Governing the Adjudication of Grand Justices Council." In accordance with the above resolution, the present case that derived

解釋文：查大法官會議第九次會議臨時動議第一案決議：「中央或地方機關，對於行憲前司法院所為之解釋發生疑義聲請解釋時，得認為合於司法院大法官會議規則第四條之規定」，本案最高法院對本院院字第七五零號解釋發生疑義，依照上項決議，自應予以解答。

* Translated by Professor Andy Y. Sun.

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from the Supreme Court's questions on Interpretation Yuan-Tze No. 750 must be resolved.

After the final and binding judgment on cohabitation is rendered, if one of the spouses nevertheless does not perform the obligation of cohabitation without proper cause while letting the status quo continue, it may be considered as meeting the requirement under Article 1052, Subparagraph 5, of the Civil Code.¹ The submitted record indicated that after marrying A, B went to stay with her family and never returned [to A]. Even after repeated requests from A's representatives, B still did not go back to live with A. Such situation may not be abruptly considered willful abandonment of the other party as indicated by the above provision.

夫妻之一方於同居之訴判決確定後仍不履行同居義務，在此狀態繼續存在中而又無不能同居之正當理由者，裁判上固得認為合於民法第一千零五十二條第五款情形。至來文所稱某乙與某甲結婚後歸寧不返，迭經某甲託人邀其回家同居，某乙仍置若罔聞。此項情形，尚難遽指為上項條款所謂以惡意遺棄他方之規定。

¹ Under this provision, one of the spouses who willfully abandons the other and let the status quo continue shall give rise to a cause of action that the abandoned spouse may petition the court to issue a divorce judgment (on the ground of willful abandonment).