

J. Y. Interpretation No.45 (March 11, 1955) *

ISSUE: Shall the effect of probation have any impact on any confiscated objects whose confiscation was separately declared?

RELEVANT LAWS:

Articles 39, 40 and 74 of the Criminal Code (刑法第三十九條、第四十條及第七十四條) ; Interpretation Yuan Tzu No. 781 (司法院院字第七八一號解釋) .

KEYWORDS:

Confiscation (沒收) , primary sentence (主刑) , probation (緩刑) , subordinate sentence (從刑) .**

HOLDING: Based upon this Yuan's Interpretation Yuan-Tze No. 781, while the effect of probation on a primary sentence also reaches its subordinate sentence, by reference to Article 39 of the Criminal Code on exclusive confiscation and Article 40 on individual declaration to confiscate, however, it is sufficient to prove that although originally a subordinate sentence in nature, confiscation is not necessarily connected to a primary

解釋文：主刑宣告緩刑之效力，依本院院字第七八一號解釋，雖及於從刑，惟參以刑法第三十九條所定得專科沒收與第四十條所定得單獨宣告沒收，足證沒收雖原為從刑，但與主刑並非有必然牽連關係。其依法宣告沒收之物，或係法定必予沒收者，或係得予沒收而經認定有沒收必要者，自與刑法第七十四條所稱以暫不執行為適當之緩刑本旨不合，均應不受緩刑宣告之影響。

* Translated and edited by Professor Andy Y. Sun.

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sentence. The matters subject to confiscation may be either those that must be confiscated in accordance with the law or may be confiscated while being determined as a matter of necessity, which is not compatible with the meaning of Article 74 of the Criminal Code that probation is an appropriate [disposition] in tentatively not carrying out the [primary] sentence.