

J. Y. Interpretation No.57 (January 6, 1956) *

ISSUE: Will a renouncement of one's inheritance right trigger the issue of inheritance in subrogation?

RELEVANT LAWS:

Article 1138, 1140 and 1176 of the Civil Code (民法第一千一百三十八條、第一千一百四十條及第一千一百七十六條) .

KEYWORDS:

inheritor, heir, successo (繼承人), ancestor (被繼承人), the right of inheritance (繼承權), inheritance in subrogation (代位繼承), adoptive daughter (養女), surrenders (拋棄), married daughter (已婚女兒), bequest (遺產), heir apparent (法定繼承人) .**

HOLDING: In terms of Article 1140 of the Civil Code, inheritance in subrogation refers to the circumstance where an heir of the first order as provided in Article 1138 of the Civil Code has died or lost the right of inheritance before the initiation of the succession; his lineal descendants shall inherit in

解釋文：民法第一千一百四十條所謂代位繼承，係以繼承人於繼承開始前死亡或喪失繼承權者為限。來文所稱某甲之養女乙拋棄繼承，並不發生代位繼承問題。惟該養女乙及其出嫁之女如合法拋棄其繼承權時，其子既為民法第一千一百三十八條第一款之同一順序繼承人，依同法第一千一百七十六條第

* Translated by Lawrence L. C. Lee.

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subrogation. Based on the interpretation application document, the adoptive daughter B of the ancestor A abandons the right of inheritance. B's surrender does not arise out of the prerequisite of inheritance in subrogation. According to Article 1138, Paragraph 1, of the Civil Code stating that the ancestor's children have the identical order of inheritance and Article 1176, Paragraph 1, of the Civil Code stating that where one of the heirs of the first order as provided in Article 1138 waives his or her right of inheritance, his or her successional portion accrues to the other heirs who inherit concurrently with him or her, therefore, under the circumstance that the adoptive daughter B and B's married daughter surrender their rights of inheritance legally, B's son is able to legally inherit the bequest of the ancestor as heir apparent rather than inheritance in subrogation.

一項前段規定，自得繼承某甲之遺產。