

J. Y. Interpretation No.91 (June 21, 1961) *

ISSUE: May an adoptee marry his or her adopter's legitimate child prior to the termination of the adoption?

RELEVANT LAWS:

Articles 983 and 1080 of the Civil Code (民法第九百八十三條及第一千零八十條) ; J.Y. Interpretation No.32 (司法院釋字第三十二號解釋) .

KEYWORDS:

terminate unilaterally (一方終止) , adoptive relationship (收養關係) .**

HOLDING: After adoptive parents pass away, an adopted child can not terminate the adoptive relationship unilaterally and marry a legitimate child of said adoptive parents. One of the reasons a couple may adopt a child is to have the adoptive child marry their legitimate child. Hence, the adoptive relationship should not be restricted by J.Y. Interpretation No. 32.

解釋文：養親死亡後，養子女之一方無從終止收養關係，不得與養父母之婚生子女結婚。但養親收養子女時本有使其與婚生子女結婚之真意者，不在此限。

REASONING: Pursuant to J. Y. Interpretation No. 32, an adopted child

解釋理由書：查被收養為子女後而另行與養父母之婚生子女結婚者，

* Translated by Lawrence L. C. Lee.

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must first terminate the adoptive relationship and then he/she can marry the legitimate child of said adoptive parents. However, if the adoptive parents did not approve of the marriage, which situation is explained in J.Y. Interpretation No. 58, between the adopted child and legitimate child before they passed away, the adopted child can not terminate the adoptive relationship unilaterally. His/her marriage with the legitimate child of adoptive parents would be unlawful; even so, this circumstance only concerns an adoptive relationship under the Civil Code. If adoptive parents intended to have an adoptive child marry their legitimate child when they adopted the child, such as adopt a girl to marry a legitimate male child or adopt a boy to marry a legitimate female child when they grow up, this is not “adoption” according to the Civil Code and thus such cases should not be restricted by Interpretation No. 32.

Justice Cheng-Ming Huang filed dissenting opinion, in which Justice Han Hu joined. Justice Fan-Kang Tseng filed dissenting opinion.

應先終止收養關係，已有本院釋字第三十二號解釋可據，倘養親死亡而其生前又無本院釋字第五十八號解釋所謂主持養子女與其婚生子女結婚情事，則在養子女一方自無從終止收養關係，其與養親之婚生子女結婚即非法律所許，然此亦僅限於有民法上之收養關係者而言，若按其實情在收養時養親本有使其與婚生子女結婚之真意，如將女抱男或將男抱女等並非民法上之所謂收養（參照本院釋字第三十二號解釋前段），自不受此限制。

本號解釋黃大法官正銘與胡大法官翰共同提出不同意見書；曾大法官繁康提出不同意見書。