

J. Y. Interpretation No.132 (February 21, 1972) *

ISSUE: Is the right of the debtor to claim withdrawal from the court of the property lodged by him for payment of a debt barred by lapse of time if not exercised within the period of prescription specified by the Civil Code?

RELEVANT LAWS:

Article 125 and 326 of the Civil Code (民法第一百二十五條、第三百二十六條); Article 11 and 13 of the Lodgment Act (提存法第十一條、第十三條); J. Y. Interpretation No. 39 (司法院釋字第三十九號解釋); Interpretation Yuan-je Tzu No. 3239 (司法院院解字第三二三九號解釋); Supreme Court's Precedent T. S. T.1702 (Supreme Court 1958) (最高法院四十七年臺上字第一七〇二號判例) .

KEYWORDS:

Lodgment (提存), property lodged (提存物), withdraw (取回), period of prescription (消滅時效期間) .**

HOLDING: The term “lodgment”¹ in this Yuan’s Interpretation No. 39 does not include lodgment made for the purpose of payment of a debt. Need

解釋文：本院釋字第三十九號解釋所謂之提存，不包括債務人為債權人依民法第三百二十六條所為之清償提存在內。惟清償提存人如依法得取回其

* Translated by Raymond T. Chu.

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

¹ The term “lodgment” is translated by Dr. Hsia Ching-ling from the Chinese term ti chun (提存) in his English translation of the Civil Code collected in Laws of the Republic of China, First Series --- Major Laws, published by Law Revision Planning Group, CUSA, Taipei,

less to say, however, where the person making such lodgment is legally entitled to withdraw the property lodged, the provision of Article 125 of the Civil Code will govern.

REASONING: This Yuan's Interpretation No. 39 is intended to address the questions of application of Interpretation Yuan-tze No. 3239, and the expressions therein contained, to wit, "moneys paid into court in respect of a lawsuit, which must be legally refunded to the party" and "the claim for withdrawal of the property lodged" refer only to lodgment made for safe custody and do not include lodgment made by a debtor for the creditor under Article 326 of the Civil Code. This will become more easily understandable by reading the following text in Code for the purpose of payment of a Interpretation Yuan-tze No.3239: "The deposit made in a criminal action and all

提存物時，自仍有民法第一百二十五條規定之適用。

解釋理由書：本院釋字第三十九號解釋，係就院解字第三二三九號解釋之適用疑義，而為解釋，其所稱「依法應予發還當事人各種案款」及「此項取回提存物之請求權」，當僅指保管提存而言，並不包括債務人為債權人依民法第三百二十六條所為之清償提存在內，此參照院解字第三二三九號解釋所稱：「應發還當事人具領之刑事案件繳納之保證金及民事繳案各種款項，仍應由法院保管，設法發還」等語，更屬明顯。惟清償提存人如有提存法第十一條或第十三條得取回其提存物之情形時，其行使取回請求權之期間，提存法既無特別規定，自仍有民法第一百二十五條之適用。至於聲請機關原函謂清償提存後之通知，非提存之生效要件，民法第

Taiwan (1961). The ti chun provisions in the Civil Code are mainly based on the German Civil Code articles on hinterlegun, which can be translated into "deposit" or "lodge". While the nearest equivalent common law terms are "deposit in court" and "payment into the court," see F.R.C.P. 67, 28 U.S.C. Sec. 2041, 2042, the translator has decided to follow Dr. Hsia's translation to avoid possible confusions in case readers wish to look up the texts of the relevant articles in the Civil Code and the Lodgment Law of the Republic of China.

moneys paid into the court in a civil litigation, which the party is legally entitled to withdraw, must be kept by the court in safe custody before being returned to the party.” However, while the person making the lodgment is entitled under either Article 11 or 13 of the Lodgment Act to withdraw the property lodged, the Lodgment Act is silent on the period within which the claim for withdrawal must be brought.² Obviously, Article 125 of the Civil Code will apply in such a case. With regard to the petitioner’s assertion that the notice required to be given after the lodgment has been made is not an essential element for the lodgment to become effective, and that the ten-year period specified in Article 330 of the Civil Code shall begin from the day following the date of lodgment, we see no disagreement there with the opinion of the Supreme Court as given in 1958 in its judgment No. Tai-Shang-1702. Nor does it raise any doubt as to our Interpretation No. 39, and

三百三十條之十年期間，應自提存之翌日起算等語，與最高法院四十七年臺上字第一七〇二號判例見解上並無歧異，亦難認為係對本院第三十九號解釋發生疑義，該部分無庸解釋，併予指明。

² The current Lodgment Law, as amended in 1973 and 1980, provides in Article 15, Paragraph 2, that a claim for withdrawal of the property lodged with court must be brought within a period of ten years beginning from the day following the date of lodgment. Any property unclaimed upon lapse of such period shall go to the State Treasury.

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therefore needs no interpretation to be made by us.

Justice Shueh-Teng Lee filed dissenting opinion.

本號解釋李大法官學燈提出不同意見書。