

J. Y. Interpretation No.147 (December 24, 1976) \*

**ISSUE:** Does the husband's taking a concubine constitute a justifiable reason for his wife to apply for judicial separation?

**RELEVANT LAWS:**

Articles 1001 and 1052 of the Civil Code (民法第一千零一條、第一千零五十二條).

**KEYWORDS:**

marital obligation of fidelity (貞操義務), marital obligation to cohabit (同居義務), judicial separation (裁判分居、裁判別居). \*\*

**HOLDING:** The act of a husband to take a concubine is in violation of the marital obligation of fidelity. Such act constitutes a legally justifiable reason to release the lawful wife from her marital obligation to cohabit, as provided in the proviso of Article 1001 of the Civil Code. The wife is thus entitled to claim that until the act terminates, she is no longer legally bound by the marital obligation to cohabit. A 'justifiable reason' does not have to be

**解釋文：**夫納妾，違反夫妻互負之貞操義務，在是項行為終止以前，妻主張不履行同居義務，即有民法第一千零一條但書之正當理由；至所謂正當理由，不以與同法第一千零五十二條所定之離婚原因一致為必要。本院院字第770號解釋(二)所謂妻請求別居，即係指此項情事而言，非謂提起別居之訴，應予補充解釋。

\* Translated by Professor Dr. Amy H.L. SHEE.

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

one of the grounds for divorce as enumerated in Article 1052 of the Civil Code. The wording of ‘the wife may make a claim to separate’ as cited from this Yuan’s Interpretation Yuan-tze No.770 actually means: ‘the wife is no longer legally bound by the marital obligation to cohabit’ as provided in the said proviso of Article 1001. This Interpretation reaffirms the Interpretation No.770 has by no means rendered a spousal right to apply to the court for judicial separation.

**REASONING:** The resolution of the 180th Meeting of the Judicial Yuan Grand Justices Council reads: “When a central or local government agency, in the application of the Constitution, laws or administrative orders, encounters doubts about any Interpretation of the Judicial Yuan and consequently submits a petition for a further Interpretation, this meeting may make a re-interpretation under Article 4 or Article 7 of the Grand Justices Council Adjudication Act.” The present case concerns doubts raised by the Supreme Court about this Yuan’s Interpretation Yuan-tze No.770, thus it shall be re-

**解釋理由書：查司法院大法官會議第一百十八次會議議決：「中央或地方機關就職權上適用憲法、法律或命令對於本院所為之解釋發生疑義聲請解釋時，本會議得依司法院大法官會議法第四條或第七條之規定再行解釋」，本件係最高法院對於本院院字第七七〇號解釋(二)發生疑義，依照上項決議，認為應予解釋。**

interpreted in accordance with the above resolution.

Article 1001 of the Civil Code provides that a husband and wife have a mutual marital obligation to cohabit, unless there are legally justifiable reasons for not doing so. The act of a husband to take a concubine is in violation of the marital obligation of fidelity, which constitutes a justifiable reason to release the lawful wife from her marital obligation to cohabit, as provided in the proviso of Article 1001. The wife is thus entitled to claim that until the act is terminated, she will no longer be legally bound by the marital obligation to cohabit. A 'justifiable reason' does not have to be one of the grounds for divorce as enumerated in Article 1052 of the Civil Code. Nevertheless, as the marriage still legally exists, the wife shall fulfill her marital obligation to cohabit with the husband once the 'justifiable' reason is removed. The wording of 'the wife may make a claim to separate' as cited from this Yuan's Interpretation Yuan-tze No.770 actually means: 'the wife is no longer legally bound by the marital obligation to

按民法第一千零一條規定，夫妻互負同居之義務，但有不能同居之正當理由者，不在此限。夫納妾，違反夫妻互負之貞操義務，在是項行為終止以前，妻主張不履行同居義務，即有上開法條但書規定之正當理由，所謂正當理由，不以與同法第一千零五十二條所定離婚之原因一致為必要；惟其婚姻關係既仍存續，在不能同居之理由消滅時，自仍應履行同居之義務。本院院字第七七〇號解釋(二)所謂妻請求別居，即係指妻得主張不履行同居義務而言，非謂如外國別居立法例之得提起別居之訴，應予補充解釋。

cohabit' and thus, the Interpretation has by no means rendered a spousal right to apply to the court for judicial separation as may have been provided in foreign laws concerning judicial separation and divorce.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Yu-Ling Yang filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、楊大法官與齡與姚大法官瑞光分別提出不同意見書。