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(Grand Justices Council)
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Nos. 1～233

（1949～1988）

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Dr. Yueh-Sheng Weng

President of Judicial Yuan

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RECOMPILATION OF THE R.O.C. CONSTITUTIONAL COURT REPORTER:

A Short History of the J.Y. Interpretation English Translation Project

by Yueh-Sheng Weng
President, Judicial Yuan
Chief Justice, Constitutional Court
March 20, 2007

More than half a century has passed since the system of constitutional interpretation was established in this land, forging a very significant link in the historical development of democracy and rule of law in this nation. Constitutional interpretations given by the Justices also serve as important information to help our international friends around the world to understand the development of democracy and rule of law in our nation while promoting the international exchange of jurisprudential thought. In order to provide other countries with an introduction to the R.O.C. judicial practice in constitutional interpretation, the Judicial Yuan devised a plan in 1999 to make English translations of the J.Y. interpretations available and put this plan high on the Yuan's administrative agenda for the year 2000.

In January 2000, the Honorable Vincent Sze was unanimously elected by the other Justices as the convener for the "Preparatory Meeting for the Task Force on the English Translation of the J.Y. Interpretations," and soon thereafter the Honorable Yueh-Sheng Weng, President of the Judicial Yuan, and the Honorable Sze co-chaired and convened said meeting, inviting over a dozen people, including law professors and lawyers, to discuss matters relating to the translation project. A preliminary conclusion was reached at the meeting, which was to initially select and translate those interpretations of greater import in terms of constitutional government and rule of law, and then to move on to complete the translation of all of the interpretations. At the meeting, Professor Syue-Ming Yu was invited to serve as the editor-in-chief, and N. T. Li, Esq. (Lee and Li, At-

torneys-at-Law), John C. Chen, Esq. (Formosa Transnational Attorneys at Law), C. Y. Huang, Esq. (Tsar & Tsai Law Firm), and David T. Liou, Esq. (Baker & McKenzie) were invited to serve as the executive editors. The translation work commenced soon after the meeting.

In order to establish a uniform style of translation, the task force convened a number of meetings to discuss such issues as form, translation of keywords and so on. It was also decided that the work would be titled "The Republic of China Constitutional Court Reporter." In December 2000, Volume One was published, consisting of 64 interpretations; in December 2001, another 78 interpretations were compiled into Volume Two; in December 2002, Volume Three—with 91 interpretations—was published; and then in September 2003, with an additional 117 interpretations, Volume Four was compiled.

At the end of September 2003, the Justices from the sixth term were honorably discharged from their office. The Honorable In-Jaw Lai, the Honorable Syue-Ming Yu and the Honorable Tzu-Yi Lin were elected by the Justices who took office in October as the co-conveners for the matters relating to the English translation of the interpretations. In December of that same year, 81 interpretations were compiled into Volume Five; in July 2006, 169 interpretations were compiled into Volume Six (129 interpretations) and Volume Seven (40 interpretations). Thanks to the unceasing efforts of the various translators, by February 2007, the translation of all of the 622 interpretations given by the Constitutional Court as of the end of 2006 had been completed. What a remarkable feat!

For the purposes of preciseness and convenience, a re-review and re-compilation of the English translation of all of the interpretations has been initiated. Mr. Vincent C. Kuan was entrusted to conduct a number-by-number review of the contents of the various interpretations. After completion of the review, the interpretations are to be divided into five volumes by the year of their production; that is, J.Y. Interpretations Nos. 1 to 233 (1949 to 1988) will be compiled into Volume I; J.Y. Interpretations Nos. 234 to 392 (1989 to 1995) will be compiled into Volume II; J.Y. Interpretations Nos. 393 to 498

(1996 to 1999) will be compiled into Volume III; J.Y. Interpretations Nos. 499 to 570 (2000 to 2003) will be compiled into Volume IV; and J.Y. Interpretations Nos. 571 to 622 (2004 to 2006) will be compiled into Volume V.

For over seven years, through the English translations of the J.Y. interpretations, the international community has not only learned more about our nation's system of constitutional interpretation, but has also gained a deeper appreciation of the spirit of democracy and rule of law embodied in said system. Moreover, this translation project certainly has expanded beyond the bounds of the translations themselves to encompass the publicity of the nation's development of constitutional government and rule of law, as well as the promotion of exchange of experiences in the judicial practice of constitutional interpretation. As of the year 2007, translators began translating the J.Y. interpretations into Japanese with an aim to helping more foreign friends become aware of our nation's development in constitutional interpretation.

The untiring and unceasing participation by and devotion of the translators and the staff of this Yuan in the translation work and planning are deeply appreciated. Thanks to all your efforts, the various volumes of this great work will be available in printed form in a brand-new layout, adding a precious page to the annals of the Judiciary.

Yueh-sheng Weng

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Where the court failed to serve a copy of the private prosecution upon the accused, who nevertheless appeared in court and participated in oral argument, could the accused still claim that the judgment is illegal due to failure of service of process?
No. 135 285
In a civil or criminal action where the judgment of a lower court is erroneously reversed, vacated, or remanded by a court of appeal, may the party file an appeal, motion for a new trial, or petition for extraordinary appeal, or seek other legal remedies?
No. 136 288
May a court order the party in a civil action to pay execution fees for provisional attachment and preliminary injunction proceedings?
No. 137 291
Should a judge be bound by an administrative order issued for purpose of interpreting a law or regulation while hearing a case?
No. 138 294
Is the power to prosecute in criminal law subject to the statute of limitations despite the fact that the case is on trial upon the institution of public or private prosecution?
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May an owner of immovable property create a mortgage on the property on which he has already created a right of dien to another person?
No. 140 299
What remedy should be sought where a public prosecutor unlawfully issued a non-prosecution ruling as to a case already prosecuted?
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In case a real property is held by the co-owners, does a co-owner have the right to mortgage his share of title to the property without the consent of the other co-owner?
No. 142 303
Where a matter of tax evasion occurred prior to the amendment and im-

plementation of the Business Tax Act on December 30, 1965, may the tax be levied according to the new law?

No. 143 305

Is a person who resells a train ticket for profits subject to the offense of fraud?

No. 144 309

How should a court deal with the situation where a crime whose penalty is convertible into fines becomes inconvertible due to merger with another crime whose penalty is not convertible into fines for purpose of determining the punishment?

No. 145 313

Does the term “majority of people” elaborated in Interpretation Y.T. No. 2033 regarding Article 234 of the Criminal Code include “a specific majority of people”?

No. 146 316

What remedy should be sought where, after a criminal judgment becomes final and conclusive, the facts turned out to be inconsistent with the evidence presented?

No. 147 318

Does the husband’s taking a concubine constitute a justifiable reason for his wife to apply for judicial separation?

No. 148 322

Does the competent authority's alteration of an urban plan constitute an administrative act not directed to any specific person, thus entitling him to institute administrative litigation?

No. 149 325

Who shall be ordered to make good the payment of the court costs derived from the decision made before the remanded trial?

No. 150 328

Is the Executive Yuan's decree suspending further filling of vacancies left by the term of the Legislative Yuan constitutional?

No. 151 333

Is the tax authority permitted to levy tax for any lost inspection certificate in accordance with Article 128 of the Regulation Governing the Levy of Taxes on Commodity?

No. 152 336

What is the meaning of “identical charge” as provided in the Criminal Code?

No. 153 339

Where there is an appeal against the ruling without the payment of court costs, and the presiding judge immediately dismisses the appeal by a ruling without fixing a period and ordering the defects to be amended within such period, is there any issue of whether the application of laws or regulations violates the Constitution if the said ruling becomes final?

No. 154 343

The Administrative Court in its precedent held that a party in an administrative litigation may not petition for a retrial on the same facts and causes over which an initial motion for a retrial was denied. Does the said precedent violate the constitutional protection of the people's rights to litigate, thus being null and void?

No. 155 349

Is it constitutionally permissible for the nation's highest examination body to enact rules and regulations on the methods of civil examinations and on-the-job training for those who wish to work as civil servants?

No. 156 354

Does the competent authority's alteration of an urban plan constitute an administrative act, thus justifying the individuals whose rights and interests are so affected to institute appeals or administrative litigations as a form of relief?

No. 157 360

May a public functionary without the supervisory power over private schools serve concurrently as a chairman or director of a private school?

No. 158 364

Are the relevant provisions of the Public Functionaries Appointment Act regarding the passive qualifications of a public functionary applicable to a briber?

No. 159 369

How should the publication of a written criminal judgment in a newspaper be enforced?

No. 160 372

Is the provision constitutional that no appeal may be filed with the court of third instance where the potential benefits of a successful appeal will not exceed the statutory minimum amount?

No. 161 375

How should the effective date of a statute or regulation be calculated?

No. 162 377

1. Is Article 81 of the constitution applicable to the Chief Judge of the Administrative Court or the Chairperson of the Commission on the Disciplinary Sanction of Functionaries?
2. Is a judge of the Administrative Court or a commissioner of the Commission on the Disciplinary Sanction of Functionaries considered as a "judge" under the Constitution?

No. 163 382

Shall income tax be levied on the compensation left, if any, acquired by the lessee of a farmland for the termination of the lease contract after the deduction of necessary expenses and actual losses?

No. 164 386

Is there any application of the provisions of the extinctive prescription on the right to claim the removal of the interference by the owner of a registered estate?

No. 165 389

Articles 32, 73 and 101 of the Constitution provide that no member of the National Assembly, Legislature and Control Yuan shall be held liable for opinions expressed and votes cast during his attendance at its respective

session, should the-said provisions be applicable *mutatis mutandis* to the delegates of the Provincial Assemblies and Local Councils?

No. 166 394

The Act Governing the Punishment of Police Offences permits the police to impose sanctions of administrative detention and forced labor upon offenders. Does the said Act constitute an infringement of physical freedom guaranteed by the Constitution?

No. 167 397

Is a company which has changed its organization from a limited company to a company limited by shares required to pay deed tax for its immovable property?

No. 168 401

Should a judgment on the merits of a re-litigated case be dismissed if that final and binding judgment is rendered prior to an earlier judgment of the same case being finalized?

No. 169 405

Is a judicial judgment based on an alleged unconstitutional administrative ordinance that had been repealed before the cause of action accrued unconstitutional?

No. 170 408

Does the Administrative Proceedings Act constrain the people's right of instituting legal proceedings protected by the Constitution in providing that the administrative court shall dismiss a suit if it finds that an administrative litigation should not have been instituted or that the suit has been instituted against the legal procedure?

No. 171 411

Article 1090 of the Civil Code stipulates: “When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may admonish the parent.” Is the specified wording of ‘the nearest senior relative(s)’ meant to refer to the nearest senior relative of ‘the abusive parent’ or ‘the abused child’?

No. 172 415

Is there any conflict with the Constitution when the Regulation for the Correction of Birth Date on the Household Registration Record provides that the so-called other satisfactory credentials shall be limited to those believable original credentials?

No. 173 420

Is the directive issued by the Ministry of Finance unconstitutional to the effect that a person receiving more value of jointly owned land gratuitously transferred upon partition than prior to the partition should pay land value increment tax?

No. 174 427

What is the force and effect of an interpretation issued by the Judicial Yuan where the law or regulation based on which the interpretation was made has changed but a new interpretation has yet to be issued?

No. 175 432

May the Judicial Yuan propose and present bills of act to the Legislative Yuan?

No. 176 438

Does the criminal act stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Criminal Code include causing the circulation of documents specified in Articles 210, 212, 213 and 215 of the Criminal Code?

No. 177 442

Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure permits initiation of an action for retrial if the final judgment is based upon "apparently erroneous application of law or regulation." Does the said provision cover the situation where the Court consciously or unconsciously fails to apply the relevant provision of law in rendering its final judgment in order to implement the protection of the rights and interests guaranteed by the Constitution?

No. 178 449

Does the fact that the judge who did take part in the previous trial of a case rendering a decision thereto constitute such a ground for him to recuse

himself from rehearing the same case regardless of whether it is an appeal or retrial?

No. 179 452

Under Article 9 of the Enforcement Act of the Code of Civil Procedure, if an appellant represented by an attorney as his agent ad litem fails to pay court costs, the court may determine not to order that the defect be amended within a fixed time limit and dismiss an action for retrial on the ground that the action is not brought in the proper form prescribed by law. Does this Act interfere with the exercise of the right of litigation and the equality of legal standing of the people, and is it thus unconstitutional?

No. 180 457

Are the relevant provisions of the Equalization of Land Rights Act and the Land Tax Act regarding the collection of land value increment tax and the calculation of the total amount of increased value of land unconstitutional?

No. 181 464

Where evidence is not properly investigated during adjudication, thus leading to be clearly erroneous in the application of law, which has an observable impact on the final and binding judgment, should the said judgment be classified as a judgment that is illegal in substance to which Article 447 of the Code of Criminal Procedure governing extraordinary appeals applies?

No. 182 467

The Supreme Court in its precedent held that debtors or other third parties, unless otherwise provided by the law, are not allowed to apply for a withholding of the compulsory enforcement process via the process of preliminary injunction. Is the said precedent constitutional if it is relied upon as a legal basis to deny the mortgagor's request for a withholding of the auction of mortgaged property?

No. 183 471

What are the requirements to be satisfied before the people may apply for a constitutional interpretation? And to what extent will the interpretation so rendered be valid?

No. 184 ·····474

Does the information which may be requested by the local council in deliberating the audit reports submitted by the audit office after its review of the local government's annual audit include original documentations as defined under the Audit Act?

No. 185 ·····479

Concerning the statute or ordinance upon which a final and irrevocable judgment relies or the opinion expressed on such statute or ordinance wherein is held unconstitutional by the Grand Justices Council upon a petition by the interested person for interpretation, is the party against whom such final and irrevocable judgment is entered entitled to file for a retrial or an extraordinary appeal on the basis of said interpretation?

No. 186 ·····485

Is a person who has suffered injury as a result of his right to corporate stocks being invalidated by a court judgment entitled to make a claim for damages sustained or for restitution on the ground of unjust enrichment if his right cannot be restored despite the revocation of such judgment?

No. 187 ·····488

Are civil servants' rights to retirement and pension guaranteed by the Constitution and protected through the administrative appeal process?

No. 188 ·····492

(1) On which date shall a uniform interpretation of this Yuan become effective? On the date of its declaration or the date as specifically indicated in the interpretation?

(2) How far may the validity of a Constitutional Court interpretation extend? Shall it be binding on all government agencies in dealing with cases of the same or similar nature or be invoked as a ground for a motion for a new trial if the opinions expressed by the court on the law or regulation in an irrevocable final judgment are held to be inconsistent with the purpose of the said law or regulation?

No. 189 ·····496

Is the Regulation Governing the Retirement of the Factory Workers of

Taiwan Province enacted by the provincial government without specific authorization of a law unconstitutional?

No. 190 499

Is the Equalization of Land Rights Act constitutional in providing that the competent authority may levy land tax based upon the government-assessed (or publicly notified) value if the parties concerned failed to declare the transfer value within the specified period or the declared value is lower than the assessed value?

No. 191 502

Does the directive issued by the Department of Health requiring a pharmacist who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine to apply for a druggist registration and a business license violate the right to work as guaranteed by Article 15 of the Constitution?

No. 192 507

Is a court ruling to order payment of costs non-appealable under the Code of Civil Procedure and does it thus constitute a hindrance to the exercise of the people's right of litigation as protected by the Constitution?

No. 193 510

Shall Interpretations delivered by this Yuan upon the people's petitions be applied to all the cases involving the same petitioners, and the same law or regulation on which the petitions are made therefor?

No. 194 515

Does the mandatory death penalty according to Article 5, Paragraph 1, of the Drug Control Act during the Period for Suppression of the Communist Rebellion violate the Constitution?

No. 195 518

Is the provision of Paragraph 2 of Article 25 of the Enforcement Rules of the Act of Encouragement of Investment in conflict with the Constitution?

No. 196 523

Are the relevant provisions of the Enforcement Rules of the Land Tax Act regarding the calculation of the total amount of increased value of land un-

constitutional ?

No. 197 527

Is the Supreme Administrative Court precedent constitutional in holding that a motion for retrial on the ground of errors in the original judgment must be filed within two months from the time of receipt of the issuance of such judgment?

No. 198 530

Is the Income Tax Act constitutional in defining, under Article 7, Paragraph 2, that a person who has a domicile and regularly resides in the Republic of China is an "individual residing within the republic of China" for the purpose of filing final tax return?

No. 199 533

Should the persons who are elected to the National Assembly pursuant to the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion take an oath under the Organic Act of National Assembly or under the of Oath Act like other original Assemblymen?

No. 200 536

Is the provision of the Act of the Supervision of Temples, prescribing that the competent authority may replace an abbot of a temple if the temple delayed in registering the fundraising and/or construction of the temple, in violation of the Constitution?

No. 201 540

The Administrative Court in its precedent held that the imposition of administrative sanctions on public functionaries, incommensurable with the damages incurred by civilians, is not subject to administrative appeals or litigations. Does the said precedent contravene the people's rights of litigation protected by the Constitution?

No. 202 544

Should imprisonment terms imposed for offences committed after a final and binding judgment run concurrently with the sentences for multiple offences meted out by the said final and binding judgment and be subject to

the twenty-year limitation on imprisonment terms?

No. 203 550

Does the process regarding not rehiring a teacher whose employment contract has ended contradict Articles 15 and 165 of the Constitution?

No. 204 553

Does the imposition of criminal punishment under Article 142, Paragraph 2, of the Act of Negotiable Instruments on people who overdraw their checks contravene Articles 15 and 22 of the Constitution?

No. 205 558

Do the terms of the Guidelines for Examinees stating that the assignment of persons who passed the Rank B examination is limited to military officers and the persons who have recently been replaced and resettled and will not be reassigned contradict the Constitution?

No. 206 564

Is the provision of the Physician Act, prescribing to the effect that a non-physician placing an advertisement regarding medical treatment shall be subject to fines, in violation of the Constitutional?

No. 207 568

Shall council members or the Speaker of the Provincial or City Councils concurrently hold the position of a private school principal?

No. 208 573

What does the lessee of tillage mean under the Equalization of Land Rights Act?

No. 209 577

Where a party in a civil action institutes a proceeding of new retrial or files a motion for new trial on the ground that the court has erred in the application of a law or regulation in its irrevocable final adjudication, or the opinion expressed by the court on the said law or regulation in its irrevocable final judgment had been interpreted by this Court as contrary to the intent of the said law or regulation, is the institution of such proceeding or the filing of such motion subject to the statutory peremptory period of limitation?

No. 210 582

Does Article 23, Paragraph 3, of the Act of Encouragement of Investment amended on December 30, 1984, regarding certain types of interest exempted from income tax include interest on loans raised among private persons?

No. 211 587

Does Article 49 of the Customs Smuggling Control Act violate Articles 7 and 16 of the Constitution?

No. 212 593

Shall the community development fees be levied if that public work satisfies the requirements for a levy under Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects?

No. 213 598

Do the provisions in Article 101 of the Patent Act with respect to the opposition proceeding and Article 110 of the same Act with application *mutatis mutandis* of the first paragraph of Article 26 concerning loss of validity if application for patent rights and any other proceedings made were delayed beyond the statutory peremptory period violate the people's litigation and property rights? The Administrative Court in its precedents ruled that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to an appeal for retrial against a judgment rendered in an administrative procedure. Do the said precedents violate the people's right of litigation? Are the Administrative Court precedents constitutional in ruling that there is no need to institute the litigation or continue the process of litigation if in fact the original administrative act ceases to exist at the commencement of litigation or in the course of action, or if the administrative act ceases to be effective due to lapse of a specified period or other reasons and the party concerned has recoverable interests under law?

No. 214 608

Do the Executive Yuan Order, stating that “credit cooperatives can no longer be established in any township,” and the Provisional Regulation

Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives, contradict the Constitution?

No. 215 613

Does the handling process for obstacle constructions, which originally existed within the sphere of land used for public roads prescribed in Article 11 of the Urban Roads Act, contradict Articles 15 and 143 of the Constitution?

No. 216 617

Are the MOJA letters stipulating that the court in conducting a public auction of imported goods with customs duties on credit shall reveal in an auction notice the unpaid duties existing thereon, and the purchaser thereof must pay the said duties before the goods may be delivered congruous with the intent of the Constitution to protect the people's property rights?

No. 217 623

Is the Ministry of Finance directive constitutional in instructing tax collection offices to assess and collect, based on information obtained from a land administration office, income tax from a creditor on interest agreed with the debtor on loans secured by mortgage recorded with such office?

No. 218 629

Are the Ministry of Finance directives in conflict with the Constitution and inconsistent with the Income Tax Act in fixing an invariable percentage of tax upon income from the sale of a house by an individual who fails to produce proof to show the actual price of the deal?

No. 219 636

Does Article 16 of the Regulation Governing the Customs Supervision of Containers violate Article 19 of the Constitution?

No. 220 640

Does the first sentence of Article 8 of the Regulation Governing Settlement of Labor Disputes During the Period of National Mobilization for Suppression of the Communist Rebellion stating that “If either party disobeys the ruling of the Labor-Management Arbitration Committee, the competent authority may strictly execute that ruling” infringe upon the

people's right of instituting legal proceedings under Article 16 of the Constitution?

No. 221 644

Where the heir fails to account for the use of the money borrowed or the proceeds from the sale of property by the decedent during the time when the decedent was incapable of managing his business due to serious illness, is Article 13 of the Enforcement Rules of the Estate and Gift Taxes Act, providing to the effect that such money or proceeds shall be included in the estate for tax purposes, contrary to the Constitution by imposing an extra taxation on the people?

No. 222 649

Do Articles 2 and 4 of the Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants promulgated by the Securities and Exchange Commission, contradict the Constitution?

No. 223 655

Do the terms of Ordinance (1985) J.J.T. No. 3217 issued by the Kinmen War Zone Political Affairs Committee respectively prescribing the speed limit for each section of road in each area contradict the Constitution?

No. 224 658

Are the relevant provisions of the Tax Levy Act, in requiring that a person who wishes to petition for a tax review pay a proportional amount of tax so defaulted or post adequate security as a condition for submission of such a petition, in violation of the Constitution?

No. 225 662

Is the Code of Civil Procedure constitutional in providing that the plaintiff bears the court costs where the suit is withdrawn after it is instituted?

No. 226 665

Should a worker who handles administrative matters be treated as a worker under the Enforcement Rules of the Factory Act?

No. 227 669

Is the guarantor in a transaction punishable as the subject of the offence

specified by Article 38 of the Act of Secured Transactions for Movable Property?

No. 228 672

Is Article 13 of the State Compensation Act constitutional in providing specifically for the liability of the State where a "public functionary with the duty of trial or prosecution" infringes upon the freedom or right of a person while taking part in the trial or prosecution of a case, in distinction from the situation involving other public functionaries?

No. 229 678

(1) Is the restriction imposed by the proviso to Article 107 of the Code of Civil Procedure on the one who applies for procedural relief under the system of litigation *in forma pauperis* contrary to Article 16 of the Constitution?

(2) Is the provision of Paragraph 3 of Article 380 of the Code of Civil Procedure requiring that a motion for further proceedings after the conclusion of a settlement in a lawsuit be filed within a specified time limit contrary to Article 16 of the Constitution?

No. 230 683

It is held by the Administrative Court in its precedent that a mere description of facts or statement of reasons made by a government agency is not an administrative act within the meaning defined in the Administrative Appeal Act and that no administrative appeal against such description or statement is legally permissible. Does this precedent impose a limitation on the right of the people under the Administrative Appeal Act and thereby contradict Article 16 of the Constitution?

No. 231 688

Should a special budget proposed in response to an emergency or a serious event be included in the total national budget?

No. 232 690

Does Article 25 of the Land Act apply in the case where the joining of publicly owned lands to those of landowners, who under Article 58 of the Equalization of Land Rights Act voluntarily compose a rezoning commit-

tee to deal with the rezoning of urban lands, is a disposal activity rendering alteration of right based on the landowner's self-intent?

No. 233 695

Does Article 108, Paragraph 1, of the Code of Criminal Procedure regarding the court's decree for extending detention contradict Article 8 of the Constitution?

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J. Y. Interpretation No.1（January 6, 1949）*

ISSUE: May a member of the Legislative Yuan concurrently take another government post?

RELEVANT LAWS:

Article 75 of the Constitution（憲法第七十五條）.

KEYWORDS:

Member of the Legislative Yuan（立法委員）, government post（官吏）, resign（辭職）.**

HOLDING: Article 75 of the Constitution provides that no Member of the Legislative Yuan shall concurrently hold a government post. Those members who wish to take a government post shall immediately resign from office in the Legislative Yuan. If a member took the government post without formally resigning from office in the Legislative Yuan, it would appear that he or she has no intention to stay in the Legislative Yuan. Therefore, he or she shall be deemed to have resigned from office in the Legislative

解釋文：立法委員依憲法第七十五條之規定不得兼任官吏，如願就任官吏，即應辭去立法委員。其未經辭職而就任官吏者，亦顯有不繼續任立法委員之意思，應於其就任官吏之時視為辭職。

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* Translated by Robert Huai-Ching Tsai.

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Yuan at the time he or she took the government post.

J. Y. Interpretation No.2（January 6, 1949）*

ISSUE: Where a government agency's view in applying a law or regulation differs from the view previously held by the same or another agency in applying the same law or regulation, should such government agency file a petition for uniform interpretation of the law or regulation except where, by law, it should be bound by the previous view or may change its current view?

RELEVANT LAWS:

Articles 78 and 173 of the Constitution（憲法第七十八條、第一百七十三條）.

KEYWORDS:

interpretation [of the Constitution]（憲法解釋）,unified interpretation（統一解釋）.**

HOLDING: Article 78 of the Constitution stipulates that the Judicial Yuan shall have the power to interpret the Constitution and to unify the interpretation of laws and regulations. It is referred to as an interpretation in regard to the Constitution and a unified interpretation in regard to laws and regulations, with the

解釋文：憲法第七十八條規定司法院解釋憲法並有統一解釋法律及命令之權，其於憲法則曰解釋，其於法律及命令則曰統一解釋，兩者意義顯有不同，憲法第一百七十三條規定憲法之解釋由司法院為之，故中央或地方機關於其職權上適用憲法發生疑義時，即得聲請司法解釋，法律及命令與憲法有無牴

* Translated by Professor Andy Y. Sun.

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two carrying distinctive meanings. Article 173 of the Constitution provides that the Judicial Yuan shall interpret theConstitution. Thus, in the event that questions are raised in the application of the Constitution while central and local agencies are discharging their duties, said agencies may petition the Judicial Yuan for an interpretation. The same [rule] applies in dealing with questions concerning whether a [given] statute or regulation contradicts the Constitution. With regard to other [types of] questions in the application of a law [or statute] or regulation, the authorized central or local agencies must initiate their own research to ensure the meaning before such application. Hence, there is no cause upon which a petition for judicial interpretation as such should be granted. If and when the opinions of an agency department in its application of a law or regulation are different from the opinions of the same agency or another agency in applying the same law [statute] or regulation, unless by law the department's opinions are to be restricted within the confines of the opinion of that agency or another agency, or may be

觸，發生疑義時亦同。至適用法律或命令發生其他疑義時，則有適用職權之中央或地方機關，皆應自行研究，以確定其意義而為適用，殊無許其聲請司法院解釋之理由，惟此項機關適用法律或命令時所持見解，與本機關或他機關適用同一法律或命令時所已表示之見解有異者，苟非該機關依法應受本機關或他機關見解之拘束，或得變更其見解，則對同一法律或命令之解釋必將發生歧異之結果，於是乃有統一解釋之必要，故限於有此種情形時始得聲請統一解釋。本件行政院轉請解釋，未據原請機關說明所持見解與本機關或他機關適用同一法律時所已表示之見解有異，應不予解釋。

adjusted, there is then the necessity to have a unified interpretation before a conflicting interpretation over the same law [statute] or regulation results. Thus, a petition for unified interpretation may be granted only under this circumstance. There will be no interpretation [offered] to the present petition, as retransmitted by the Executive Yuan, since it was not based upon the differences of opinions between the original agency department and the same or another agency in the application of the same law [or statute].

J. Y. Interpretation No.3（May 21, 1952）*

ISSUE: May the Control Yuan propose and present statutory bills to the Legislative Yuan?

RELEVANT LAWS:

Articles 34, 53, 62, 64, 71, 77, 83, 87, and 90 of the Constitution（憲法第三十四條、第五十三條、第六十二條、第六十四條、第七十一條、第七十七條、第八十三條、第八十七條及第九十條）.

KEYWORDS:

Control Yuan（監察院）, Examination Yuan（考試院）, *expressio unius est exclusio alterius*（明示規定其一者應認為排除其他）, Judicial Yuan（司法院）, the Premier（行政院院長）, statutory bill（法律提案）.**

HOLDING: The Constitution does not expressly provide whether the Control Yuan may propose bills of act to the Legislative Yuan concerning matters within its authority. Yet Article 87 of the Constitution stipulates that the Examination Yuan may propose bills of act to the Legislative Yuan for matters within its

解釋文：監察院關於所掌事項是否得向立法院提出法律案，憲法無明文規定，而同法第八十七條則稱考試院關於所掌事項得向立法院提出法律案，論者因執「省略規定之事項應認為有意省略」（Casus omissuspro omisso habendus est）以及「明示規定其一者應認為排除其他」（expressio uniusest

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authority. Those who argue that the Control Yuan may not propose bills of act to the Legislative Yuan base their argument on the Latin maxim [in statutory construction] that casus omissus pro omisso habendus est ("a case omitted is to be held as intentionally omitted") and *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of another").[1] In reality, however, this maxim is not applicable under all circumstances. For example, it is not applicable if there are apparent omissions or there is room for interpretation among related statutory provisions. Such omissions can be found in our Constitution as well. For example, for government bodies created by election, Article 34 and Article 64, Paragraph 2, expressly stipulate that the election of the delegates to the National Assembly and the members of the Legislative Yuan "shall be regulated by [the enactment of] statute," yet [somehow] only the election of members cannot be considered to be because the of the Control Yuan does not have a similar rule. Obviously, this

exclusio alterius）之拉丁法諺，認為監察院不得向立法院提案，實則此項法諺並非在任何情形之下均可援用，如法律條文顯有闕漏或有關法條尚有解釋之餘地時，則此項法諺，即不復適用，我國憲法間有闕文，例如憲法上由選舉產生之機關，對於國民大會代表及立法院立法委員之選舉，憲法則以第三十四條、第六十四條第二項載明「以法律定之」。獨對於監察院監察委員之選舉則並無類似之規定，此項闕文，自不能認為監察委員之選舉可無需法律規定，或憲法對此有意省略，或故予排除，要甚明顯。

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[1] See BLACK'S LAW DICTIONARY, 6TH ED., at 219, 581 (1990).

omission election of members of the Control Yuan does not require statutory regulation, or that the Constitution intentionally omits or purposefully precludes [the need for an election statute] as such.

Article 71 of the Constitution, as [derived from] Article 73 of the Constitution Draft, originally stated, "[a]t the meetings of the Legislative Yuan, the Premier of the Executive Yuan and the heads of all ministries and commissions may be present to express viewpoints." Delegates of the Constitutional Conference [2] later proposed to amend "Premier of the Executive Yuan" to "Head of other Branches concerned" for the reason that "as far as the Examination Yuan, Judicial Yuan and Control Yuan are concerned, their Heads may naturally be present at the Legislative Yuan to present viewpoints on any statutory bill related to their discharged duties." amendment was accepted by the [Constitutional] Conference as in the

憲法第七十一條，即憲草第七十三條，原規定「立法院開會時，行政院院長及各部會首長得出席陳述意見」，經制憲當時出席代表提出修正，將「行政院院長」改為「關係院院長」。其理由為「考試院、司法院、監察院就其主管事項之法律案，關係院院長自得列席立法院陳述意見」，經大會接受修正如今文，足見關係院院長係包括立法院以外之各院院長而言。又憲法第八十七條，即憲草第九十二條，經出席代表提案修正，主張將該條所定「考試院關於所掌事項提出法律案時，由考試院秘書長出席立法院說明之」。予以刪除，其理由即為「考試院關於主管事項之法律案，可向立法院提送，與他院同，如須出席立法院說明，應由負責之院長或其所派人員出席，不必於憲法中規定秘書

[2] The term "Constitution Conference" is an American legal and political terminology used herein in reference to the 1946 National Assembly for the Enactment of the Constitution (「制憲國民大會」).

current text, this and is sufficient to demonstrate that Heads of other Branches concerned includes all Branch heads other than the Legislative Yuan. Also, Delegates of the Constitutional Conference proposed that [the language] in Article 87 of the Constitution, as [derived from] Article 92 of the Constitution Draft, "[w]hen the Examination Yuan proposes bills of act that are related to its duties of discharge, the Executive Secretary of the Examination Yuan shall be present at the Legislative Yuan to explain [the bill]" be deleted, the reason being "the Examination Yuan, as with other Branches, may submit bills of act concerning its duties of discharge to the Legislative Yuan. If explanations need to be provided to the Legislative Yuan, the Head or his/her authorized representative responsible [for the bill] shall be present so that it is not necessary to provide that the Executive Secretary shall be present [at the Legislative Yuan] in the Constitution." Having thoroughly examined the Records and all the propositions of the National Assembly (Constitutional Conference), there was not a single objection or difference of opinion concerning this issue, nor were there any other particular

長出席」，足徵各院皆可提案，為當時制憲代表所不爭，遍查國民大會實錄及國民大會代表全部提案，對於此項問題曾無一人有任何反對或相異之言論，亦無考試院應較司法監察兩院有任何特殊理由，獨需提案之主張。

reasons why the Examination Yuan should independently be granted the power to propose [bills of act] than the Judicial Yuan and Control Yuan. It is sufficient to demonstrate that it was without question that each Branch [of the Government] might propose [statutory] bills.

As stated in the Preamble, our Constitution was created from the teachings bequeathed by Dr. Sun Yat-sen, who founded the Republic of China. The Five Branches were established in accordance with Article 53 (the Executive Yuan), Article 62 (the Legislative Yuan), Article 77 (the Judicial Yuan), Article 83 (the Examination Yuan), and Article 90 (the Control Yuan). Each Branch is the highest state agency independently discharging its duties, and is equal to the other Branches, within the scope of each respective power as originally bestowed by the Constitution. As far as the duties are concerned, it is necessary for the Control Yuan and Judicial Yuan, as with the Examination Yuan, to respectively propose bills of act to the Legislative Yuan on matters within their authority. While the Examination

我國憲法依據孫中山先生創立中華民國之遺教而制定，載在前言，依憲法第五十三條（行政）、第六十二條（立法）、第七十七條（司法）、第八十三條（考試）、第九十條（監察）等規定建置五院。本憲法原始賦與之職權各於所掌範圍內，為國家最高機關獨立行使職權，相互平等，初無軒輊。以職務需要言，監察、司法兩院，各就所掌事項，需向立法院提案，與考試院同。考試院對於所掌事項，既得向立法院提出法律案，憲法對於司法、監察兩院，就其所掌事項之提案，亦初無有意省略或故予排除之理由。法律案之議決雖為專屬立法院之職權，而其他各院關於所掌事項知之較稔，得各向立法院提出法律案，以為立法意見之提供者，於理於法均無不合。

Yuan may propose bills of act to the Legislative Yuan on matters within their authority, there is no reason for the Constitution to purposefully omit or intentionally preclude the granting of [the same] proposition [power] to the Judicial Yuan and Control Yuan. Whereas it is within the exclusive authority of the Legislative Yuan to resolve a [given] statutory bill, for other Branches, being more familiar with matters under their respective authorities and as providers of legislative opinions, it is not without reason or in violation of [any] law that they may indeed propose bills of act to the Legislative Yuan.

In sum, since the Examination Yuan may propose bills of act to the Legislative Yuan for matters within its authority in accordance with Article 87 of the Constitution, based upon the system of the separation of the Five Powers and equal interdependence, [further] in reference to the legislative history of that Article and Article 71, it is in compliance with the spirit of the Constitution that the Control Yuan may propose bills of act to the Legislative Yuan concerning matters within its authority.

綜上所述，考試院關於所掌事項，依憲法第八十七條，既得向立法院提出法律案，基於五權分治，平等相維之體制，參以該條及第七十一條之制訂經過，監察院關於所掌事項，得向立法院提出法律案，實與憲法之精神相符。

J. Y. Interpretation No.4（June 20, 1952）*

ISSUE: Is the ROC associate representative to the UN Korean Committee a government official under Article 75 of the Constitution?

RELEVANT LAWS:

Article 75 of the Constitution（憲法第七十五條）.

KEYWORDS:

associate representative（副代表）, the United Nations（聯合國）, government official（官吏）.**

HOLDING: The associate representative of the Republic of China in the Korean Committee of the United Nations is delegated by the government and has a one-year term of office. Whether the organization is temporarily or permanently established, the associate representative shall be considered as a government official under Article 75 of the Constitution.

解釋文：聯合國韓國委員會我國副代表，既係由政府派充，且定有一年任期，不問其機構為臨時抑屬常設性質，應認其係憲法第七十五條所稱之官吏。

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* Translated by Li-Chih Lin, Esq., J.D.

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

J. Y. Interpretation No.5（August 16, 1952）*

ISSUE: Are the political party administrators considered as civil servants under the Criminal Code?

RELEVANT LAWS:

the Constitution（憲法）; the Criminal Code（刑法）.

KEYWORDS:

implementation of the Constitution（行憲）, political party（政黨）, affairs of the party（黨務）, civil servant（公務員）. **

HOLDING: After implementation of the Constitution, the personnel of any political party in charge of the affairs of the party shall not be considered as civil servants under the Criminal Code.

解釋文：行憲後各政黨辦理黨務人員，不能認為刑法上所稱之公務員。

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* Translated by Li-Chih Lin, Esq., J.D.

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

J. Y. Interpretation No.6（September 29, 1952）*

ISSUE: May a civil servant concurrently serve as a newspaper or magazine publisher or editor?

RELEVANT LAWS:

Article 14, Paragraph 1 of the Public Functionary Service Act（公務員服務法第十四條第一項）.

KEYWORDS:

civil servant（公務員）, publisher（發行人）, editor（編輯人）.**

HOLDING: Except as otherwise provided for in other laws, a civil servant cannot serve concurrently as a civil servant and the publisher or editor of any newspaper and magazine under Article 14, Paragraph 1, of the Public Functionary Service Act.

解釋文：公務員對於新聞紙類及雜誌之發行人、編輯人，除法令別有規定外，依公務員服務法第十四條第一項之規定，不得兼任。

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* Translated by Li-Chih Lin, Esq., J.D.

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J. Y. Interpretation No.7（September 29, 1952）*

ISSUE: Is the political party secretary a civil servant?

RELEVANT LAWS:

the Constitution（憲法）.

KEYWORDS:

implementation of the Constitution（行憲）, Secretary General（書記長）, political party（政黨）, civil servant（公務員）.**

HOLDING: After implementation of the Constitution, the secretary general at any level in any political party cannot be considered as a civil servant.

解釋文：行憲後各政黨、各級黨部之書記長，不得認為公務員。

* Translated by Li-Chih Lin, Esq., J.D.

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J. Y. Interpretation No.8（October 27, 1952）*

ISSUE: Is an employee of a state-owned enterprise considered as a civil servant under the Criminal Code?

RELEVANT LAWS:

the Corporate Act（公司法）; the Criminal Code（刑法）.

KEYWORDS:

corporation limited by shares（股份有限公司）, state-owned enterprise（公營事業機關）, corporate affairs（公司職務）, civil servant（公務員）.**

HOLDING: Where a corporation limited by shares is incorporated under the Company Act, such a corporation is deemed a state-owned enterprise if the government owns more than 50 percent of the total shares of the corporation. All personnel who are engaged in corporate affairs pursuant to the law shall be considered as civil servants under the Criminal Code.

解釋文：原呈所稱之股份有限公司，政府股份既在百分之五十以上，縱依公司法組織，亦係公營事業機關，其依法令從事於該公司職務之人員，自應認為刑法上所稱之公務員。

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* Translated by Li-Chih Lin, Esq., J.D.

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

J. Y. Interpretation No.9（October 27, 1952）*

ISSUE: May a party concerned indicate in the appeal that the adjudication violates the Constitution?

RELEVANT LAWS:

Article 172 of the Constitution（憲法第一百七十二條）.

KEYWORDS:

violation of constitution（違憲）, discrepancies（歧異）.**

HOLDING:

1. Should a judgment violate the Constitution, the party concerned may, in the process of litigating, indicate the claimed violation in its reasoning.

2. According to the submitted opinions, the second point therein failed to indicate any discrepancies between the submitted opinions and the opinions which were issued by the concerned authority or other authorities. It therefore does not comply with Article 4 of the Regulation Governing the Adjudication of Grand Justices Council and, as a result, the request for uniform interpretation is thus denied.

解釋文：

一、裁判如有違憲情形，在訴訟程序進行中，當事人自得於理由內指摘之。

二、來文所稱第二點，未據說明所持見解與本機關或其他機關所已表示之見解有何歧異，核與大法官會議規則第四條之規定不合，礙難解答。

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* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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J. Y. Interpretation No.10（November 22, 1952）*

ISSUE: Is the stealing of the rails during wartime that were laid down by a governmental or private entity responsible for public transportation and supervised by the authorities in charge of transportation subject to the penalty as provided in the Act on the Protection of Communicatory Electric Equipment and Facilities during Wartime?

RELEVANT LAWS:

Act on the Protection of Communicatory Electric Equipment and Facilities during Wartime（戰時交通電業設備及器材防護條例）.

KEYWORDS:

light rails（輕便軌道）, transportation（運輸）, public or private（公私營）.**

HOLDING: If the rails or related equipment constructed by public or private business sectors, which are de facto responsible for public transportation and are simultaneously supervised by the transportation competent authorities, are stolen during wartime, the "Act on the

解釋文：公私營事業機關所敷設之鐵道，事實上已負公共運輸責任，又同受交通主管機關之監督管理者。其器材被盜，在戰時自得適用戰時交通器材防護條例之規定，至輕便軌道（俗稱車線）既有別於通常鐵道，即不得併予援用。

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* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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Protection of Communicatory Electric Equipment and Facilities during Wartime" should apply. In the case of light rails, which are different from normal rails as indicated above, the Act does not apply.

J. Y. Interpretation No.11（November 22, 1952）*

ISSUE: May a civil servant concurrently serve as a newspaper or magazine director, manager, reporter or any other staff?

RELEVANT LAWS:

Article 14, Paragraph 1 of the Public Functionary Service Act（公務員服務法第十四條第一項）.

KEYWORDS:

civil servant（公務員）, director（社長）, manager（經理）, reporter（記者）.**

HOLDING: The J.Y. Interpretation No.6 had previously held that, except as otherwise provided for in other laws, a civil servant cannot serve concurrently as a civil servant and the publisher or editor of any newspaper and magazine under Article 14, Paragraph 1, of the Public Functionary Service Act. Based on the same rationale, a civil servant cannot serve concurrently as a civil servant and the director, manager, reporter or employee of any newspaper and magazine

解釋文：公務員不得兼任新聞紙類及雜誌之編輯人、發行人，業經本院釋字第六號解釋有案，至社長、經理、記者及其他職員，依公務員服務法第十四條第一項之規定，自亦不得兼任。

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* ranslated by Li-Chih Lin, Esq., J.D.

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under Article 14, Paragraph 1, of the Public Functionary Service Act.

J. Y. Interpretation No.12（December 20, 1952）*

ISSUE: Should Article 983 of the Civil Code apply to a marriage between an adoptee and his adopter's daughter at the time of adoption?

RELEVANT LAWS:

Article 983 of the Civil Code.（民法第九百八十三條）.

KEYWORDS:

adoptee（被收養人）, adopter（收養人）, marriage（婚姻）.**

HOLDING: The marriage between an adopted son and the adopter's daughter, which arises out of the custom of adopting a son for the purpose of marriage to the daughter, is not subject to the prohibition of Article 983 of the Civil Code, since the adoptee and the adopter's daughter are not biologically related.

解釋文：某甲收養某丙，同時以女妻之，此種將女抱男習慣，其相互間原無生理上之血統關係，自不受民法第九百八十三條之限制。

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* Translated by Chi-Chang Yu.

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J. Y. Interpretation No.13（January 31, 1953）*

ISSUE: Is the term "judge" as specified in Article 81 of the Constitution inclusive of a public prosecutor? Is the job guarantee for a commissioned public prosecutor identical with that for a commissioned judge other than transfer?

RELEVANT LAWS:

Articles 80, 81 and 82 of the Constitution（憲法第八十條、第八十一條、第八十二條）; Article 40 of the Court Organic Act（法院組織法第四十條）.

KEYWORDS:

Judge（法官）, Prosecutor（檢察官）.**

HOLDING: The Judge referred to in Article 81 of the Constitution means the Judge that Article 80 of the Constitution refers to and does not include the Prosecutor. However, the guarantee of tenured prosecutors, according to Article 82 of the Constitution and Article 40, Paragraph 2, of the Court Organic Act, apart from their transfer, is the same as that of tenured judges.

解釋文：憲法第八十一條所稱之法官，係指同法第八十條之法官而言，不包含檢察官在內。但實任檢察官之保障，依同法第八十二條，及法院組織法第四十條第二項之規定，除轉調外，與實任推事同。

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* Translated by Dr. Fu-Te Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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J. Y. Interpretation No.14（March 21, 1953）*

ISSUE: Are members of the National Assembly, the Legislative and Control Yuan, as well as provincial and county councils subject to impeachment?

RELEVANT LAWS:

Articles 97-99 of the Constitution（憲法第九十七條至第九十九條）.

KEYWORDS:

control power（監察權）, impeachment（彈劾）.**

HOLDING: Articles 97, 98 and 99 of the Constitution that are related to the present issue concerned are derived from Articles 102, 103 and 104 of the Constitution Draft. Article 102 originally stated that the Control Yuan may institute an Impeachment upon its finding of neglect of duties or violation of law regarding personnel of the Executive Yuan or its ministries or commissions. Article 103 concerned impeachment against Central and local administrative officials. Article

解釋文：查憲法與本問題有關之第九十七條、第九十八條、第九十九條，係由憲法草案第一百零二條、第一百零三條、第一百零四條而來。第一百零二條原稱監察院對於行政院或其各部會人員認為有違法失職情事，得提出彈劾案。第一百零三條則為中央及地方行政人員之彈劾。第一百零四條則為法官及考試院人員之彈劾。在制憲會議中，若干代表認為監察院彈劾權行使之對象應包括立法委員、監察委員在內。曾經提出修正案數起，主張將第一百零二條

* Translated by Professor Andy Y. Sun.

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104 dealt with impeachment against judges and Examination personnel. Several Delegates of the Constitutional Conference believed that those who may be subject to the control power of the Control Yuan should include Members of the Legislative Yuan and Control Yuan, and proposed a number of bills to insert [the language] "personnel of each Yuan and its ministries or commissions" in lieu of "personnel of the Executive Yuan or its ministries or commissions" so as to include personnel of the Legislative Yuan and Control Yuan and to delete Article 104 concerning judges and personnel of the Examination Yuan. The results showed that none of the amendments carried, which clearly demonstrates that Members of the Legislative and Control Yuan are exempt. It is also difficult, through the route of interpretation, by stretching the language "officials of the Central Government" to argue that Members of the Legislative and Control Yuan shall [all] be included. It is the intention of the Constitution drafters that Members of the Legislative and Control Yuan are representatives of public opinion, either

行政院或其各部會人員改為各院及其各部會人員，包括立法院、監察院人員在內，並將第一百零四條有關法官及考試院人員之條文刪去。討論結果，對此毫無疑義之修正文均未通過，即所以表示立監委員係屬除外。若謂同時，復以中央公務人員字樣可藉解釋之途徑，使立監委員包括在內，殊難自圓其說。在制憲者之意，當以立監委員為直接或間接之民意代表，均不認其為監察權行使之對象。至立監兩院其他人員與國民大會職員，總統府及其所屬機關職員，自應屬監察權行使範圍。故憲法除規定行政、司法、考試三院外，復於第九十七條第二項及第九十八條，另有中央公務人員之規定。

directly or indirectly, and are not subject to the exercise of control power. Yet other personnel of the Legislative and Control Yuan as well as staff of the National Assembly, the Presidential Office and its affiliated agencies are within the scope of control power. Therefore, except for provisions on the Executive, Judicial and Examination Yuan, Article 97, Paragraph 2, and Article 98 of the Constitution further separately stipulate [impeachment and other control power against] public officials of the Central Government.

Delegates to the National Assembly are [also] representatives of public opinion, and it goes without saying that they are not subject to the control power. There were no propositions on the impeachment of Delegates to the National Assembly within the Constitutional Draft or each respective amending bill, which is consistent with the fact that none of the amendments concerning the impeachment of Members of the Legislative and Control Yuan was adopted.

國民大會代表為民意代表，其非監察權行使對象更不待言。憲法草案及各修正案，對於國大代表均無可以彈劾之擬議，與立、監委員包括在內之各修正案不予採納者，實為制憲時一貫之意思。

Autonomy personnel who belong to

自治人員之屬於議事機關者，如

a parliamentary agency, such as members of the provincial or county council, are also representatives of public opinion and naturally are not subject to the exercise of control power.

省縣議會議員，亦為民意代表，依上述理由，自亦非監察權行使之對象。

J. Y. Interpretation No.15（April 24, 1953）*

ISSUE: May a member of the Control Yuan concurrently serve as a delegate of the National Assembly?

RELEVANT LAWS:

Articles 27, 100 and 103 of the Constitution（憲法第二十七條、第一百條及第一百零三條）.

KEYWORDS:

concurrent occupation（兼任）, Control Yuan（監察院）, Legislative Yuan（立法院）, National Assembly（國民大會）.**

HOLDING: It is a public duty for Delegates to the National Assembly to discharge their political power on behalf of the nationals. In accordance with Article 103 of the Constitution, no Members of the Control Yuan may concurrently hold another public office. Articles 100 and 27 distinguish the impeachment and recall of the President and Vice President, which are discharged by the Control Yuan and the National Assembly, respectively.

解釋文：國民大會代表代表國民行使政權，自係公職。依憲法第一百零三條之規定，監察委員不得兼任。查憲法第一百條及第二十七條，將對於總統、副總統之彈劾與罷免劃分，由監察院與國民大會分別行使，若監察委員得兼任國民大會代表，由同一人行使彈劾權與罷免權，是與憲法劃分其職權之原意相違，其不應兼任更屬明顯。再查憲法草案第二十六條第一款及第二款，原列立法委員、監察委員得為國民大會代

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It contradicts the original intent of the Constitution to distinguish and separate these powers if a Member of the Control Yuan were to concurrently serve as a Delegate to the National Assembly, which amounts to having the same individual exercise the power of impeachment and recall. It is all the more clear that there should not be concurrent occupation of both offices. Further evidence on the prohibition of concurrent occupation [of offices] can be found [in the legislative process]. Article 26, Subparagraphs 1 and 2, of the Constitution Draft initially provided that any Member of the Legislative Yuan or Control Yuan may concurrently serve as a Delegate to the National Assembly. Many [Constitutional Conference] Delegates considered this improper and filed several amending bills, with the result that the Constitutional Conference eventually consolidated the opinions of the Review Committee and deleted the two Subparagraphs.

表，嗣有代表多人，認為於理無當，提出修正案若干起，制憲大會依綜合審查委員會之意見，將該條第一、第二兩款刪去，亦可為不得兼任之佐證。

J. Y. Interpretation No.16（May 15, 1953）*

ISSUE: May a compulsory execution be carried out by an administrative agency after the Compulsory Execution Act was put into force?

RELEVANT LAWS:

Article 8 of the Constitution（憲法第八條）; Compulsory Execution Act（強制執行法）.

KEYWORDS:

compulsory enforcement（強制執行）, due process of court（依法移送法院辦理）.**

HOLDING: Given the enactment of the Compulsory Enforcement Act, only the court has the authority to execute a compulsory enforcement. Without following the due process of the court, any fine imposed by executive agencies in accordance with law is not readily enforceable against the properties of the person who failed to make due payment voluntarily. The interpretive ruling of this Yuan Interpretation Yuan-tze No. 3308, is still in force.

解釋文：強制執行法施行後，強制執行僅得由法院為之。行政官署依法科處之罰鍰，除依法移送法院辦理外，不得逕就抗不繳納者之財產而為強制執行。本院院解字第三三零八號解釋，仍應適用。

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* Translated by LEE & LI, ATTORNEYS-AT-LAW.

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J. Y. Interpretation No.17（May 15, 1953）*

ISSUE: May a member of the Control Yuan（Ombudsman）concurrently serve as a compiler for the National Institute of Compilation and Translation?

RELEVANT LAWS:

the Organic Act of the National Institute of Compilation and Translation（國立編譯館組織條例）; Article 103 of the Constitution（憲法第一百零三條）.

KEYWORDS:

compiler（編纂）, the National Institute of Compilation and Translation（國立編譯館）, government employment（公職）, member of the Control Yuan（監察委員）.**

HOLDING: A compiler of the National Institute of Compilation and Translation falls within the scope of government employment. A member of the Control Yuan cannot serve concurrently as a member of the Control Yuan and the compiler of the National Institute of Compilation and Translation under the provisions of the Organic Act of the

解釋文：國立編譯館編纂，按照該館組織條例規定，係屬公職。依憲法第一百零三條，監察委員不得兼任。

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* Translated by Li-Chih Lin, Esq., J.D.

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National Institute of Compilation and Translation.

J. Y. Interpretation No.18（May 29, 1953）*

ISSUE: Does a mere failure of a married woman to return to her husband's home after visiting her own parents' constitute willful abandonment as a ground for divorce under Article 1052 (v) of the Civil Code?

RELEVANT LAWS:

Article 1052 of the Civil Code（民法第一千零五十二條）.

KEYWORDS:

cohabitation（同居）, willful abandonment（惡意遺棄）.**

HOLDING: At the Ninth Meeting of the Grand Justices Council, it was resolved on the first ad hoc proposal: "Petitions submitted by the Central or local government agencies pertinent to Interpretations of the Judicial Yuan that occurred prior to the promulgation of the Constitution may be considered as in compliance with Article 4 of the Regulation Governing the Adjudication of Grand Justices Council." In accordance with the above resolution, the present case that derived

解釋文：查大法官會議第九次會議臨時動議第一案決議：「中央或地方機關，對於行憲前司法院所為之解釋發生疑義聲請解釋時，得認為合於司法院大法官會議規則第四條之規定」，本案最高法院對本院院字第七五零號解釋發生疑義，依照上項決議，自應予以解答。

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from the Supreme Court's questions on Interpretation Yuan-Tze No. 750 must be resolved.

After the final and binding judgment on cohabitation is rendered, if one of the spouses nevertheless does not perform the obligation of cohabitation without proper cause while letting the status quo continue, it may be considered as meeting the requirement under Article 1052, Subparagraph 5, of the Civil Code.[1] The submitted record indicated that after marrying A, B went to stay with her family and never returned [to A]. Even after repeated requests from A's representatives, B still did not go back to live with A. Such situation may not be abruptly considered willful abandonment of the other party as indicated by the above provision.

夫妻之一方於同居之訴判決確定後仍不履行同居義務，在此狀態繼續存在中而又無不能同居之正當理由者，裁判上固得認為合於民法第一千零五十二條第五款情形。至來文所稱某乙與某甲結婚後歸寧不返，迭經某甲託人邀其回家同居，某乙仍置若罔聞。此項情形，尚難遽指為上項條款所謂以惡意遺棄他方之規定。

[1] Under this provision, one of the spouses who willfully abandons the other and let the status quo continue shall give rise to a cause of action that the abandoned spouse may petition the court to issue a divorce judgment (on the ground of willful abandonment).

J. Y. Interpretation No.19（June 3, 1953）*

ISSUE: Is the scope of prohibiting members of the Legislative Yuan from concurrently serving in other official capacities the same as that for members of the Control Yuan?

RELEVANT LAWS:

Articles 75 and 103 of the Constitution（憲法第七十五條、第一百零三條）.

KEYWORDS:

concurrently serving（兼職）, public officers（公職）, government positions（官吏）.**

HOLDING: The prohibition against concurrently serving in other public offices in accordance with Article 103 of the Constitution is different from the exclusive prohibition against the concurrent holding of a public office in accordance with Article 75 of the Constitution, and its meaning is not limited to government positions only.[1]

解釋文：憲法第一百零三條所稱不得兼任其他公職，與憲法第七十五條之專限制兼任官吏者有別，其含義不僅以官吏為限。

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[1] Therefore, for example, positions in state-own enterprises or many government-sponsored non-profit organization are within the scope of coverage under Article 103 of the Constitution.

J. Y. Interpretation No.20（July 10, 1953）*

ISSUE: Are the cadres of a local political party, medical personnel of a public-run hospital "public officers"?

RELEVANT LAWS:

Articles 103 of the Constitution（憲法第一百零三條）.

KEYWORDS:

public office（公職）.**

HOLDING: Provincial (political) party headquarters and women's provincial working committees are civil organizations, so naturally their director and trustee positions are not the so-called public offices in accordance with Article 103 of the Constitution. As to medical personnel, since their practice is dependent upon the obtaining of a license and is under the constant supervision of authorized government agencies, their business is clearly incompatible with the control power and should be regarded as a profession as indicated in the same provision. Public

解釋文：省黨部、省婦女工作委員會均係人民團體，其主任委員及理事，自非憲法第一百零三條所謂公職。至醫務人員，既須領證書始得執業，且經常受主管官廳之監督，其業務與監察職權顯不相容，應認係同條所稱之業務，公立醫院為國家或地方醫務機關，其院長及醫生並係公職，均在同條限制之列。

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hospitals are state or local medical agencies whose director and doctors hold public offices and are subject to the restriction of the same provision.

J. Y. Interpretation No.21（July 10, 1953）*

ISSUE: How will the 90-day period prior to the expiry of the presidential term as provided in Article 29 of the Constitution be calculated?

RELEVANT LAWS:

Articles 29 and 47 of the Constitution（憲法第二十九條及第四十七條）.

KEYWORDS:

the term of the Presidency（總統任期）, the National Assembly（國民大會）, the end of the Presidential term（每屆總統任滿）, implementation of the Constitution（憲法實施）, inaugurate（就職）.**

HOLDING: Article 47 of the Constitution provides that the term of the Presidency is six years. Article 29 of the Constitution provides that the National Assembly shall call a meeting ninety days before the end of the Presidential term. After implementation of the Constitution, the first President of the Republic of China was inaugurated on May 20th, 1948.

解釋文：憲法第四十七條規定總統任期為六年，同法第二十九條規定，國民大會於每屆總統任滿前九十日集會。憲法實施以後，首屆總統係於民國三十七年五月二十日就職，應至民國四十三年五月二十日任滿。所謂任滿前九十日，應自總統任滿前一日起算，以算足九十日為準。

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The first Presidential term shall end on May 20th, 1954. The calculation of ninety days before the end of the Presidential term shall start from the day before the end of the Presidential term and run for ninety full days.

J. Y. Interpretation No.22（August 4, 1953）*

ISSUE: Are the members of both Legislative and Control Yuans paid government employees?

RELEVANT LAWS:

Article 18 of the Constitution（憲法第十八條）.

KEYWORDS:

Legislator（立法委員）, member of the Control Yuan（監察委員）, within the scope of public officers（在公職範圍內）, annual expense（歲費）, government fund（公費）, paid position（有給職）.**

HOLDING: The Legislators and members of the Control Yuan, who are authorized by the Constitution to discharge their duties, fall within the scope of public officers. The Legislators and members of the Control Yuan who receive annual expenses and government funds, are to be considered as holding paid positions.

解釋文：立法委員、監察委員係依法行使憲法所賦予之職權，自屬公職，既依法支領歲費公費，應認為有給職。

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J. Y. Interpretation No.23（August 4, 1953）*

ISSUE: What is the proper procedure for an interested party to raise objection to another party's trademark that is already reviewed?

RELEVANT LAWS:

Articles 3 and 26 of the Trademark Act（商標法第三條及第二十六條）.

KEYWORDS:

trademark registration（商標註冊）, the same or similar trademark（相同或近似商標）, prior actual and continuous use（實際使用在先）.**

HOLDING: The first part of Article 3 of the Trademark Act provides that when two or more trademark owners respectively register the same or similar trademark for an identical product, the registration will only be granted to the mark which is the first in actual and continuous use within the territory of the Republic of China. The trademark registration is a substantive review of the

解釋文：商標法第三條前段規定，二人以上於同一商品，以相同或近似之商標，各別呈請註冊時，應准在中華民國境內實際最先使用並無中斷者。註冊，係為審查准駁之實質標準，如利害關係人，在同法第二十六條審定後之六個月公告期間內，另以與他人審定商標相同或近似之商標呈請註冊，並以自己之商標實際使用在先，而未中斷為理由，對他人已審定商標提出異議，自應

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trademark. Within six months after the approved trademark is published in the Official Gazette of the Trademark Office pursuant to Article 26 of the Trademark Act, an interested trademark owner may challenge the validity of a prior registrant's trademark by filing an opposition proceeding on the ground of prior actual and continuous use. The opposition proceeding shall be adjudicated pursuant to the opposition procedures and the provisions set forth in Article 3 of the Trademark Act.

依異議程序及同法第三條規定辦理。

J. Y. Interpretation No.24（September 3, 1953）*

ISSUE: Are directors, supervisors and the president of a state-run enterprise as well as civil and military personnel "public officers"?

RELEVANT LAWS:

Articles 75 and 103 of the Constitution（憲法第七十五條、第一百零三條）.

KEYWORDS:

concurrent serving（兼職）, public officers（公職）, state-owned enterprises（公營事業）.**

HOLDING: Directors (members of the board), supervisors and the president of a state-owned enterprise as well as civil and military public officials are all within the scope of the Public Functionary Service Act, and should be within the scope of the so-called public officers and positions in accordance with Articles 103 and 75 of the Constitution. No Members of the Control Yuan and Legislative Yuan may concurrently serve as such.

解釋文：公營事業機關之董事、監察人及總經理，與受有俸給之文武職公務員，均適用公務員服務法之規定，應屬於憲法第一百零三條、第七十五條所稱公職及官吏範圍之內。監察委員、立法委員均不得兼任。

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J. Y. Interpretation No.25（September 3, 1953）*

ISSUE: May members of the Legislative and Control Yuans concurrently serve as directors or supervisors of a province-run bank?

RELEVANT LAWS:

Articles 75 and 103 of the Constitution（憲法第七十五條、第一百零三條）.

KEYWORDS:

concurrent serving（兼職）, state-owned enterprises（公營事業）.**

HOLDING:

(1) Directors (members of the board) of a provincial bank and its supervisors all serve in a state-owned enterprise. No Members of the Legislative Yuan or Control Yuan may concurrently serve as such (See J. Y. Interpretation No. 24).

(2) Points Nos. 1, 3, 4 and 5 in the submitted record are related to the issue of unified interpretation of laws and regulations. Given that it did not illustrate what the differences are between its opinions

解釋文：

一、省銀行之董事及監察人均為公營事業機關之服務人員。立法委員、監察委員不得兼任，已見本院釋字第二十四號解釋。

二、來文所列第一、第三、第四、第五各點，事屬統一法令解釋問題，既未據說明所持見解與本機關或他機關所已表示之見解有何歧異，核與大法官會議規則第四條之規定不合，礙難

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and the expressed opinions of this or other agencies, the requirement of Article 4 of the Regulation Governing the Adjudication of the Grand Justices Council is not met and no interpretations will be provided.

解答。

J. Y. Interpretation No.26（October 9, 1953）*

ISSUE: Does Article 17 of the Regulation Governing the Supervision of Pawnshops contradict with Articles 949 and 950 of the Civil Code?

RELEVANT LAWS:

Article 17 of the Regulation Governing the Supervision of the Pawn Business（典押當業管理規則第十七條）; Articles 949 and 950 of the Civil Code（民法第九百四十九條、第九百五十條）.

KEYWORDS:

pawn business（典押當業）. **

HOLDING: Since the pawnshop business is publicly operated and under the supervision of an authorized government agency, it shall be protected under the law unless its operator has knowledge that the object to be pawned has been stolen or looted. Article 17 of the Regulation Governing the Supervision of the Pawn Business is for the purpose of harmonizing and reconciling the interests between

解釋文：典押當業既係受主管官署管理並公開營業，其收受典押物除有明知為贓物而故為收受之情事外，應受法律之保護。典押當業管理規則第十七條之規定，旨在調和回復請求權人與善意占有人之利害關係，與民法第九百五十條之立法精神尚無違背，自不發生與同法第九百四十九條之牴觸問題。

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the claimant of recovery rights and bona fide possessor, which does not contradict the legislative spirit of Article 950 of the Civil Code.[1] Hence, there is no issue of contradiction with Article 949 of the same Code.[2]

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[1] Article 950 of the Civil Code states, "If the possessor of the stolen, looted or misplaced article should have purchased that article from an auction, public market, or merchant who is engaged in the selling of the same kind of article with bona fide intent, no recovery shall take place unless and until the consideration [of that purchase] is reimbursement." The Rules Governing the Supervision of Pawnshops has been repelled.

[2] Article 949 of the Civil Code states: " In the event the possessed article is stolen, looted or misplaced, the infringed or misplaced party may recover from the possessor the article within two years since the time of stealing, looting or misplacement."

J. Y. Interpretation No.27（November 27, 1953）*

ISSUE: Is an employee of the Central Trust Company serving pursuant to law a "public functionary" as provided under the Public Functionary Service Act?

RELEVANT LAWS:

Article 24 of the Public Functionary Service Act（公務員服務法第二十四條）; J. Y. Interpretations Nos. 6 and 11（司法院釋字第六號、第十一號解釋）.

KEYWORDS:

public official（公務員）, state-owned enterprise（公營事業機關）. **

HOLDING: At the twenty-Ninth Meeting of the Grand Justices Council, it was resolved on the first ad hoc proposal: "Petitions submitted by the Central or local government agencies pertinent to Interpretations of the Judicial Yuan may be considered as in compliance with Article 4 of the Regulation Governing the Adjudication of the Grand Justices Council." In accordance with the above resolution,

解釋文：查大法官會議第二十九次會議臨時動議第一案決議：「中央或地方機關，就其職權上適用法律或命令，對於本會議所為之解釋發生疑義聲請解釋時，得認為合於本會議規則第四條之規定」。本件係對於本院釋字第六及第十一兩號解釋。發生疑義，依照上項決議，認為應予解答。

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the present case concerns questions about Interpretations Nos. 6 and 11 and must be resolved.

In accordance with Article 24 of the Public Functionary Service Act, all personnel within state-owned enterprise are expressly under the scope of that law. The Central Trust of China is a state-owned business entity, thus all personnel serving in that agency naturally are public officials in accordance with the Public Functionary Service Act, and shall be subject to the restriction of J. Y. Interpretations Nos. 6 and 11.

公營事業機關服務人員均適用公務員服務法，為該法第二十四條所明定，中央信託局係國營事業機關，其依法令在該局服務人員自屬公務員服務法上之公務員，仍應受本院釋字第六號及第十一號解釋之限制。

J. Y. Interpretation No.28（December 16, 1953）*

ISSUE: Is a biological parent entitled to bring a suit on his or her own initiative for the interests of a child who is already adopted by another?

RELEVANT LAWS:

Article 17 of the Regulation Governing the Adjudication of the Grand Justices Council（大法官會議規則第十七條）; Articles 967, 1077 and 1083 of the Civil Code（民法第九百六十七條、第一千零七十七條及第一千零八十八條）; Article 582 of the Code of Civil Procedure（民事訴訟法第五百八十二條）; Article 214 of the Code of Criminal Procedure（刑事訴訟法第二百十四條）.

KEYWORDS:

Extraordinary appeal（非常上訴）, non-appellable judgment（終審判決）, original sentence（原審判決）, adopted children（養子女）, adoptive parents（養父母）, biological parents（生父母）, biological siblings（親兄弟）, immediate family member（直系血親）, non-immediate family member（非直系血親）.**

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* Translated by Lawrence L. C. Lee.

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HOLDING: The ultimate judgment of extraordinary appeal that was made by the Supreme Court concerning this case of litigation between adopted children and adoptive parents may restrain future judgments. However, the grounds of the case stated or claimed in the original sentence were presented to competent official agencies for opinions pursuant to Article 17 of the Regulation Governing the Adjudication of the Grand Justices Council. The Supreme Court replied that the forgoing sentence is based on Yuan No.2747 (Judicial Yuan) and Interpretation No. 3004 (Judicial Yuan). Furthermore, the Public Prosecutor's Office for the Supreme Court replied that if the reasoning made in the forgoing sentence is the result of the explanations of the Judicial Yuan set prior to the enforcement of the Constitution (effective on October 25, 1946), it is necessary for the Judicial Yuan to provide an appropriate explanation in order to ensure that there will not be any ambiguities in legal terminologies afterwards.

解釋文：最高法院對於非常上訴所為之判決，係屬終審判決，自有拘束該訴司法院大法官解釋彙編訟之效力。惟關於本件原附判決所持引用法條之理由，經依大法官會議規則第十七條向有關機關徵詢意見，據最高法院覆稱，該項判決係以司法院院字第二七四七號及院解字第三零零四號解釋為立論之根據。復據最高法院檢察署函復，如該項判決所持見解，係由大院行憲前之解釋例演繹而來，亦請重為適當之解釋，以便今後統一適用各等語。

Due to questions about the forgoing

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explanations (Yuan No.2747 (Judicial Yuan)) and Interpretation No. 3004 (Judicial Yuan) set forth before the enforcement of the Constitution Law, we agreed that an explanation would be provided for this case according to a non-agenda proposal presented at the Ninth Council of the Grand Justices on August 16, 1952.

述解釋發生疑義，依四十一年八月十六日，本會議第九次會議臨時動議第一案之決議，認為應予解答。

Under Article 967 of the Civil Code, adopted children and their biological parents and adopted children and their biological siblings are considered immediate and non-immediate family members, respectively. Although Article 1077 of the Civil Code states that the relationship between adoptive parents and their adopted children is recognized as akin to that of a legal family member and his/her biological children, there is an additional legal requirement that the biological blood relations between adopted children and their biological parents remain intact.

養子女與本生父母及其兄弟姊妹原屬民法第九百六十七條所定之直系血親與旁系血親。其與養父母之關係，縱因民法第一千零七十七條所定，除法律另有規定外，與婚生子女同，而成為擬制血親，惟其與本生父母方面之天然血親仍屬存在。

The relationship between biological parent and child will be recovered upon the cessation of the relationship between

同法第一千零八十三條所稱養子女自收養關係終止時起，回復其與本生父母之關係。所謂回復者，係指回復其

adopted children and adoptive parents under Article 1083 of the Civil Code. Since the natural blood relations between adoptive children and their biological parents can never be changed, the change from adoptive child status to biological child status results in the recovery of legal duties and responsibilities between adopted children and biological parents.

相互間之權利義務，其固有之天然血親自無待於回復。

When there is a conflict of interest in litigation between adopted children and adoptive parents, the biological parents of the adopted children can initiate litigation on behalf of the adoptive children under Article 582 of the Code of Civil Procedure. As a result, the agent role of biological parents in litigation suggests that biological parents are likely to protect their adopted children's legal interest in terms of relative regulations during the period of adoption.

當養父母與養子女利害相反涉及訴訟時，依民事訴訟法第五百八十二條規定，其本生父母得代為訴訟行為，可見雖在收養期間，本生父母對於養子女之利益，仍得依法加以保護。

In this case, Article 214 of Criminal Code provides that the victim's immediate family can independently bring a suit against the tortfeasor, who has no reason to exclude the biological parents.

就本件而論，刑事訴訟法第二百十四條後段所稱被害人之血親得獨立告訴，尤無排斥其天然血親之理由。

Yuan No.2747 (Judicial Yuan) and Interpretation No. 3004 (Judicial Yuan) should be supplemented with an extensive explanation because their respective explanations only focused on the basis of the relationship between adopted children and their adoptive parents rather than the legal relationship between adopted children and their biological parents.

本院院字第二七四七號及院解字第三零零四號解釋，僅就養父母方面之親屬關係立論，初未涉及其與本生父母方面之法律關係，應予補充解釋。

J. Y. Interpretation No.29（December 29, 1953）*

ISSUE: May an extraordinary session of the National Assembly exercise the same authority as granted to a regular session?

RELEVANT LAWS:

Articles 29 and 30 of the Constitution（憲法第二十九條、第三十條）.

KEYWORDS:

extraordinary session（臨時會）, National Assembly（國民大會）.**

HOLDING: In the event one of the conditions listed under Article 30 of the Constitution occurred and the National Assembly convokes an extraordinary session, the authority discharged is nevertheless part of the power and duty of the National Assembly and the National Assembly convoked in accordance with Article 29 of the Constitution may naturally exercise such authority.

解釋文：國民大會遇有憲法第三十條列舉情形之一召集臨時會時，其所行使之職權，仍係國民大會職權之一部份，依憲法第二十九條召集之國民大會，自得行使之。

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* Translated by Professor Andy Y. Sun.

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

J. Y. Interpretation No.30（January 15, 1954）*

ISSUE: May a member of the Legislative Yuan concurrently be a delegate to the National Assembly?

RELEVANT LAWS:

Articles 25, 27, 62 and 75 of the Constitution（憲法第二十五條、第二十七條、第六十二條及第七十五條）.

KEYWORDS:

Member of the Legislative Yuan（立法委員）, delegate to the National Assembly（國民大會代表）, initiative（創制權）, referendum（複決權）.**

HOLDING: Although Article 75 of the Constitution merely prohibits a Member of the Legislative Yuan from holding a government post at the same time, it does not connote that any concurrent holding of a non-government position would be permissible. It would still depend on whether the nature of that position is compatible with the function of a Member of the Legislative Yuan. Article 27 of the Constitution empowered the

解釋文：憲法第七十五條雖僅限制立法委員不得兼任官吏，但並非謂官吏以外任何職務即得兼任，仍須視其職務之性質，與立法委員職務是否相容。同法第二十七條規定國民大會複決立法院所提之憲法修正案，並制定辦法行使創制、複決兩權，若立法委員得兼國民大會代表，是以一人而兼具提案與複決兩種性質不相容之職務，且立法委員既行使立法權，復可參與中央法律之創制與複決，亦顯與憲法第二十五條及

* Translated by Robert Huai-Ching Tsai.

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National Assembly to amend the Constitution and to make laws exercising the rights of initiative and referendum. Were a Member of the Legislative Yuan able to become concurrently a delegate to the National Assembly, he or she would then be able to submit a legislative bill and cast a vote of referendum on that same bill. This is a conflict of interest. Besides, allowing a Member of the Legislative Yuan to exercise legislative power, while at the same time participating in the initiative and referendum of national laws, is in congruent with the spirit of Articles 25 and 62 of the Constitution. Therefore, no Member of the Legislative Yuan shall concurrently be a delegate to the National Assembly.

第六十二條規定之精神不符，故立法委員不得兼任國民大會代表。

J. Y. Interpretation No.31（January 29, 1954）*

ISSUE: While reelection of the second-term Members of both Legislative and Control Yuans is de facto impossible due to the severe calamity, shall the first-term Members of both Yuans be allowed to remain in their offices after expiration of their respective terms as provided in Articles 65 and 93 of the Constitution?

RELEVANT LAWS:

Articles 65 and 93 of the Constitution（憲法第六十五條、第九十三條）.

KEYWORDS:

Legislative Yuan（立法院）, Control Yuan（監察院）, Five-Yuan System（五院制度）, re-election（再選舉）.**

HOLDING: Article 65 of Constitution provides that Members of the Legislative Yuan shall serve a term of three years; and Article 93 provides that Members of the Control Yuan shall serve a term of six years. Terms shall start from the date when those Members take office, and expire at the end of the term as provided in the Constitution. However, our

解釋文：憲法第六十五條規定立法委員之任期為三年；第九十三條規定監察委員之任期為六年。該項任期本應自其就職之日起至屆滿憲法所定之期限為止，惟值國家發生重大變故，事實上不能依法辦理次屆選舉時，若聽任立法、監察兩院職權之行使陷於停頓，則顯與憲法樹立五院制度之本旨相違，故在第二屆委員，未能依法選出集會與召

* Translated by Professor Jau-Yuan Hwang.

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state has been undergoing a severe calamity, which makes re-election of the second term of both Yuans de facto impossible. It would contradict the purpose of the Five-Yuan system as established by the Constitution, if both the Legislative and Control Yuans ceased to exercise their respective powers. Therefore, before the second-term Members are elected, convene and are convoked in accordance with the laws, all of the first-term Members of both the Legislative and Control Yuans shall continue to exercise their respective powers.

集以前，自應仍由第一屆立法委員，監察委員繼續行使其職權。

J. Y. Interpretation No.32（March 26, 1954）*

ISSUE: Would it be a simple adoption or an adoption for purpose of accepting one's son-in-law as a son if, at the time of the adoption, the adopter's daughter is married to the adoptee? May the adoptee marry the adopter's biological child prior to the termination of the adoption?

RELEVANT LAWS:

Article 983 of the Civil Code（民法第九百八十三條）; J.Y. Interpretation No. 12（司法院釋字第十二號解釋）.

KEYWORDS:

adoptee（被收養人）, adopter（收養人）, adoption（收養）.**

HOLDING: J.Y. Interpretation No. 12 states that the custom of adopting a son for the purpose of marriage to the adopter's daughter, which means that the adoptee and the adopter's daughter are not biologically related, effectively constitutes the act of "taking in a husband"[1] rather than "adoption" as meant by the Civil Code.

解釋文：本院釋字第十二號解釋所謂將女抱男之習慣，係指於收養同時以女妻之，而其間又無血統關係者而言。此項習慣實屬招贅行為，並非民法上之所謂收養，至被收養為子女後而另行與養父母之婚生子女結婚者，自應先行終止收養關係。

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* Translated by Chi-chang Yu.

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[1] A customer exists in the Chinese society ,which the husband marries the wife and taking after her family name as well as living with her family.

If the son were adopted as meant by the Civil Code, the adoption relationship between the adoptee and the adoptive parents should be terminated before the adoptee marries the adopters' daughter.

J. Y. Interpretation No.33（April 2, 1954）*

ISSUE: Is the provincial or local council speaker's improper conduct subject to the supervisory action of the Control Yuan?

RELEVANT LAWS:

Articles 97, Paragraph 2 and Article 98 of the Constitution（憲法第九十七條第二項及九十八條）.

KEYWORDS:

Control Yuan（監察院）, sanction（制裁）.**

HOLDING: This Yuan's Interpretation No. 14 has held that elected representatives are not subject to the control power of the Control Yuan. Provincial and county councils are institutions for elected representatives. Elected by fellow representatives and charged with the responsibility of managing the council's business, a council speaker's status as an elected representative is not altered, and he or she should not be considered as a public official, under Article 97, Paragraph 2, and

解釋文：查民意代表並非監察權行使對象，業經本院釋字第十四號解釋有案，省縣議會為民意代表機關，其由議員互選之議長，雖有處理會務之責，但其民意代表身分並無變更，應不屬憲法第九十七條第二項及第九十八條所稱之公務人員，至議長處理會務如有不當情事，應由議會本身予以制裁。

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* Translated by Professor Andy Y. Sun.

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Article 98 of the Constitution. The Speaker is subject to the council's self-imposed sanctions for any improper conduct committed in the course of the speaker's duties.

J. Y. Interpretation No.34（April 28, 1954）*

ISSUE: Is the marriage between the adopter's son and the adopted daughter of the adopter's mother prohibited?

RELEVANT LAWS:

Article 983 of the Civil Code（民法第九百八十三條）; J.Y. Interpretation No. 12（司法院釋字第十二號解釋）.

KEYWORDS:

one's mother's adopted daughter（母之養女）, one's adopted son（養子）, marriage（婚姻）, statutory blood relatives（擬制血親）.**

HOLDING: According to the provision of Article 983, Paragraph 1, Subparagraph 2, of the Civil Code, the marriage between one's mother's adopted daughter and adopted son is prohibited because the parties involved are subject to statutory blood relations between different generations. J. Y. Interpretation No. 12 is not applicable in this case since the circumstances are dissimilar.

解釋文：母之養女與本身之養子係輩分不相同之擬制血親，依民法第九百八十三條第一項第二款之規定，不得結婚，本院釋字第十二號解釋與此情形有異，自不能援用。

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* Translated by Chi-chang Yu.

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J. Y. Interpretation No.35（June 14, 1954）*

ISSUE: May a public document manifesting an administrative fine imposed on a private citizen by a government agency be treated as a ground for compulsory execution?

RELEVANT LAWS:

Article 8 of the Constitution（憲法第八條）; Article 4 of the Compulsory Enforcement Act（強制執行法第四條）.

KEYWORDS:

compulsory enforcement（強制執行）.**

HOLDING: Compulsory enforcement against properties of private citizens may not be engaged unless certain entitlement foreclosure, as specified in Article 4 of the Compulsory Enforcement Act, has been obtained and relied upon. An official document issued by an administrative agency imposing fines according to law, may be taken as the entitlement foreclosure as specified in Article 4, Subparagraph 6, of the same Act, if there exists a law authorizing such compulsory

解釋文：對人民財產為強制執行，非有強制執行法第四條所列之執行名義，不得為之。行政機關依法科處罰鍰之公文書，如法律定有送由法院強制執行或得移送法院辦理者，自得認為同法第四條第六款所規定之執行名義，否則不能逕據以為強制執行。

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* Translated by LEE & LI, ATTORNEYS-AT-LAW.

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enforcement through court proceedings or in care of the court; otherwise, it is not to be taken as the basis for compulsory enforcement.

J. Y. Interpretation No.36（June 23, 1954）*

ISSUE: Does it constitute a criminal offense of forging public document to have the meat of an illegally butchered cattle impressed with the tax authority's forged stamps for certifying the payment of tax duties?

RELEVANT LAWS:

Articles 211, 216 and 220 of the Criminal Code（刑法第二百十一條、第二百十六條及第二百二十條）; Interpretation Yuan-je Tzu No. 3364（司法院院解字第三三六四號解釋）.

KEYWORDS:

tax certification（繳稅證明）, public document（公文書）, printed public document（公印文書）.**

HOLDING: In accordance with Article 220 of the Criminal Code, the certification tax that authorities stamp on objects as proof of duties having been paid is considered a public document. Distribution and sales of privately butchered beef with a forged tax certification constitutes the crime of using forged public documents under Article 216 of the

解釋文：稅務機關之稅戳蓋於物品上用以證明繳納稅款者，依刑法第二百二十條之規定，應以文書論，用偽造稅戳蓋於其所私宰之牛肉從事銷售，成立刑法第二百十六條之行使偽造公文書罪，應依同法第二百十一條處斷。本院院解字第三三六四號解釋所謂公印文書之印字，當係衍文。

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Criminal Code, and should be disposed of in accordance with Article 211 of the same Code. The word “printed” in the so-called public printed documents in Interpretation Yuan-je Tze No. 3364 is thus deemed redundant.

J. Y. Interpretation No.37（July 23, 1954）*

ISSUE: Shall the properties seized by the law-enforcement authority in enforcing special criminal cases be subject to the creditor's legitimate claims attached thereon?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）; Compulsory Execution Act（強制執行法）; Article 475 of the Code of Criminal Procedure（刑事訴訟法第四百七十五條）.

KEYWORDS:

enforcing authority（執行機關）, the debts of the prisoner（受刑人所負債務）, seized properties（沒收之財產）, personal properties（人民財產權）, bona fides third party（善意第三人）, creditor's rights（債權人之權利）.**

HOLDING: The enforcing authority in the event of enforcing special criminal cases is not obligated to pay the debts of the prisoner with the seized properties. However, based on the spirit of Article 15 of the Constitution under which personal properties shall be protected, in the event that a bona fide third party

解釋文：執行機關執行特種刑事案件沒收之財產，對於受刑人所負債務固非當然負清償之責。惟揆諸憲法第十五條保障人民財產權之精神，如不知情之第三人就其合法成立之債權有所主張時，依刑事訴訟法第四百七十五條之規定，應依強制執行法有關各條規定辦理。

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* Translated by Ken-Ying Tseng, Lee and Li, Attorneys-At-Law.

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claims creditor's rights, the enforcing authority shall, under Article 475 of the Code of Criminal Procedure, proceed in accordance with the Compulsory Enforcement Act.

J. Y. Interpretation No.38（August 27, 1954）*

ISSUE: What is the intent of the phrase "hold trials in accordance with law" as used in Article 80 of the Constitution? Furthermore, may a county council abridge the freedom of the people while exercising its legislative powers?

RELEVANT LAWS:

Articles 23, 80, 124 and 125 of the Constitution（憲法第二十三條、第八十條、第一百二十四條、第一百二十五條）.

KEYWORDS:

independent adjudication（獨立審判）, ordinances and regulations（規章）, county council（縣議會）, constitutional or statutory authorization（憲法或法律之根據）.**

HOLDING: The aim of Article 80 of the Constitution is to ensure independent adjudication of judges, free from any interference. The term "in accordance with law" denotes that statutes are the primary basis of adjudication. It does not exclude ordinances and regulations that do not contradict the Constitution and statutes as a source of law. When a county

解釋文：憲法第八十條之規定旨在保障法官獨立審判不受任何干涉。所謂依據法律者，係以法律為審判之主要依據，並非除法律以外與憲法或法律不相牴觸之有效規章均行排斥而不用。至縣議會行使縣立法之職權時，若無憲法或其他法律之根據，不得限制人民之自由權利。

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* Translated by Eric Yao-kuo Chiang.

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council performs its legislative function, it shall not abridge the freedoms and rights of the people unless there is a constitutional or statutory authorization.

J. Y. Interpretation No.39（August 27, 1954）*

ISSUE: Shall the right to claim for the funds lodged with the court be subject to the period of prescription as provided in Article 125 of Civil Code?

RELEVANT LAWS:

Article 125 of the Civil Code（民法第一百二十五條）; the Lodgment Act（提存法）; Interpretation Yuan-je Tzu No. 3239（司法院院解字第三二三九號解釋）.

KEYWORDS:

Distribution of funds（款項發還）, statute of limitation（時效）.**

HOLDING: For various kinds of funds that should be returned to [different] parties involved in the litigations in accordance with law but remain unclaimed after the issuance of a summons or deadline-imposed public notice, while courts must maintain the safety and find ways to refund in accordance with Interpretation Yuan-je Tze No. 3239, it is nevertheless subject to the prescription in accordance

解釋文：依法應予發還當事人各種案款，經傳案及限期通告後仍無人具領者，依本院院解字第三二三九號解釋，固應由法院保管設法發還。惟此項取回提存物之請求權提存法既未設有規定，自應受民法第一百二十五條消滅時效規定之限制。

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* Translated and edited by Professor Andy Y. Sun.

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with Article 125 of the Civil Code, since the Lodgment Act is silent on the right to request the return of lodged subject matter.

J. Y. Interpretation No.40（October 6, 1954）*

ISSUE: May Taiwan Resources Bureau bring forth an administrative action under the Code of Administrative Procedure?

RELEVANT LAWS:

Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）; Article 32 of the Customs Smuggling Control Act（海關緝私條例第三十二條）; Interpretation Yuan-je Tzu No. 2990（司法院院解字第二九九〇號解釋）.

KEYWORDS:

Administrative litigation（行政訴訟）, petitioner（原告）.**

HOLDING: Article 1 of the Administrative Proceedings Act states, a national shall have the cause of bringing forth an administrative litigation for damages to his/her rights resulting from the Central or local government agency's unlawful action or disposition. Thus, only a national can serve as petitioner in an administrative litigation. In accordance with its organization rules, the Taiwan

解釋文：行政訴訟法第一條規定，人民因中央或地方官署之違法處分致損害其權利者，得依法定程序提起行政訴訟，是僅人民始得為行政訴訟之原告。臺灣省物資局依其組織規程係隸屬於臺灣省政府之官署，與本院院解字第二九九零號解釋所稱之鄉鎮自治機關不同，自不能類推適，用此項解釋。至海關緝私條例第三十二條對於提起行政訴訟之原告，並無特別規定，要非官署所

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Bureau of Commodities is a bureaucratic office of the Taiwan Provincial Government, which is different from a county or town autocratic administration under Interpretation Yuan-je Tze No. 2990, and should not apply that Interpretation mutatis mutantis. Nor can a government agency rely upon Article 32 of the Customs Smuggling Control Act to bring forth an administrative litigation on the ground that it is silent on the qualification of a petitioner.

得引為提起行政訴訟之根據。

J. Y. Interpretation No.41（October 20, 1954）*

ISSUE: Shall an enterprise be regarded as a state-owned enterprise if the capital invested in the said enterprise by a state-owned enterprise exceeds 50 percent of the said enterprise's total capital?

RELEVANT LAWS:

Article 3, Paragraph1, Subparagraph 3 of the Act Governing the Management of State-owned Enterprises（國營事業管理法第三條第一項第三款）.

KEYWORDS:

capital（資本）, state-owned enterprise（國營事業）, capital of the government（政府資本）.**

HOLDING: The capital invested in another enterprise by a state-owned enterprise should be considered as capital of the government. If the amount of the capital invested by a state-owned enterprise exceeds 50 percent of the total capital of another enterprise, such enterprise falls within the type of state-owned enterprise defined in Article 3, Paragraph 1, Subparagraph 3, of the Act Governing the Management of State-owned Enterprises.

解釋文：國營事業轉投於其他事業之資金，應視為政府資本，如其數額超過其他事業資本百分之五十者，該其他事業即屬於國營事業管理法第三條第一項第三款之國營事業。

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* Translated by Li-Chih Lin, Esq., J.D.

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

J. Y. Interpretation No.42（November 17, 1954）*

ISSUE: Are the elected representatives at all levels, public functionaries of central and local agencies and other people engaged in official affairs by law considered as holders of public offices under Article 18 of the Constitution?

RELEVANT LAWS:

Article 18 of the Constitution（憲法第十八條）.

KEYWORDS:

the scope of "public office"（公職範圍）, civil servant（公務員）, the central government agency（中央機關）, the local government agency（地方機關）, official affairs（公務）, elected representative（民意代表）.**

HOLDING: The scope of "public office" under Article 18 of the Constitution is extensive. All levels of elected representatives, civil servants of the central and local government agencies and other personnel who are engaged in official affairs pursuant to the law, fall within the scope of public office as defined by Article 18 of the Constitution.

解釋文：憲法第十八條所稱之公職涵義甚廣，凡各級民意代表、中央與地方機關之公務員及其他依法令從事於公務者皆屬之。

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* Translated by Li-Chih Lin, Esq., J.D.

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

J. Y. Interpretation No.43（December 29, 1954）*

ISSUE: What remedy should be sought when a judgment was mistaken about the identity of an accused that was a related party in the action? And, what if the accused was not a related party in the action?

RELEVANT LAWS:

Articles 199 and 245 of the Code of Criminal Procedure（刑事訴訟法第一百九十九條、第二百四十五條）; Article 232 of the Code of Civil Procedure（民事訴訟法第二百三十二條）.

KEYWORDS:

clerical error（誤寫）, correctional judgment（判決更正）.**

HOLDING: Based on the petition, the original judgment was mistakenly issued against John Doe as Jane Doe. Such a judgment violates the law and should be corrected through proper procedures such as appeal, extraordinary appeal and retrial if there is in fact a Jane Doe as a related party in the case and Jane Doe

解釋文：來呈所稱：原判誤被告張三為張四，如全案關係人中別有張四其人，而未經起訴，其判決自屬違背法令，應分別情形依上訴、非常上訴及再審各程序糾正之。如無張四其人，即與刑事訴訟法第二百四十五條之規定未符，顯係文字誤寫，而不影響於全案情節與判決之本旨。除判決宣示前得依同

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was never formally prosecuted. If Jane Doe does not exist, then this [situation] is clearly a case of clerical error, which does not qualify under Article 245 of the Code of Criminal Procedure and should impact neither the facts of the case nor the gist of judgment. Corrections of such a judgment may then be added to, deleted from or modified in the judgment itself if [the error is] found before public announcement. For judgments [of this kind] that have already been announced or service [of notice] is rendered, reference may be made to Article 232 of the Code of Civil Procedure, and in accordance with Article 199 of the Code of Criminal Procedure, by having the original trial court issue a correctional judgment either in response to a petition or ab initial so as to demonstrate [the court's] authority.

法第四十條增刪予以訂正外，其經宣示或送達者，得參照民事訴訟法第二百三十二條，依刑事訴訟法第一百九十九條由原審法院依聲請或本職權以裁定更正，以昭鄭重。

J. Y. Interpretation No.44（February 21, 1955）*

ISSUE: Is a contract providing for rent payment in kind in lieu of payment in cash as agreed upon by the contracting parties in conflict with applicable provisions of the Civil Code regarding lease?

RELEVANT LAWS:

Article 421, Paragraph 2 of the Civil Code（民法第四百二十一條第二項）.

KEYWORDS:

parties of the contract（契約當事人）.**

HOLDING: Except as otherwise prohibited in other laws, the agreement of parties of a contract to pay the rent with rice does not contradict Article 421, Paragraph 2, of the Civil Code and should be allowed under the Civil Code.

解釋文：契約當事人雙方約定以白米給付房租，核與民法第四百二十一條第二項尚無牴觸，除其他法令別有禁止之規定外，自非法所不許。

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* Translated by Li-Chih Lin, Esq., J.D.

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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。

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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.

J. Y. Interpretation No.46（May 9, 1955）*

ISSUE: In the event of discrepancies between the two amounts as indicated in the taxing authorities' and the Ministry of Audit's audit reports regarding the income of a state-owned enterprise, which audit results shall govern?

RELEVANT LAWS:

Audit Act（審計法）.

KEYWORDS:

Audit report（審計報告）, Ministry of Audit（審計部）, state-owned enterprises（公營事業）.**

HOLDING: The Ministry of Audit has the final approval power over the audit reports submitted by each agency. For any discrepancies between the income of state-owned enterprises determined by the collection agency and the revenue of the same enterprises approved by the Ministry of Audit, it is the Ministry-approved figures stated in the audit report that has precedence.

解釋文：審計部對於各機關編送之決算有最終審定權。徵收機關核定公營事業之所得額，與審計部審定同一事業之盈餘如有歧異，自應以決算書所載審計部審定之數目為準。

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J. Y. Interpretation No.47（June 20, 1955）*

ISSUE: Where two offenses were committed consecutively by the same individual in two different jurisdictions, and the court having jurisdiction over the latter offense has combined the two cases and rendered a final judgment, how should the first court deal with the situation?

RELEVANT LAWS:

Articles 5, 8, and 294 of the Code of Criminal Procedure（刑事訴訟法第五條、第八條及第二百九十四條）.

KEYWORDS:

larceny（竊盜罪）, lexi fori（審判地法、法院地法）, dismissal judgment（免訴判決）.**

HOLDING: The main purpose of Article 8 of the Code of Criminal Procedure is to avoid the problems of several courts having jurisdiction over the same case. Based on the petition, having been prosecuted for grand larceny in County X, A later committed larceny in County Y. There is no issue of whether this Article should apply since the public prosecution

解釋文：刑事訴訟法第八條之主要用意，係避免繫屬於有管轄權之數法院對於同一案件均予審判之弊。據來呈所稱，某甲在子縣行竊，被在子縣法院提起公訴後，復在丑縣行竊，其在丑縣行竊之公訴部分原未繫屬於子縣法院，自不發生該條之適用問題。又丑縣法院係被告所在地之法院，對於某甲在子縣法院未經審判之前次犯行，依同法

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in County Y was not relevant to the case in County X's court. If the court in County Y is the lexi fori of the defendant, in accordance with Article 5 of the same Code, it may combine and try A's previous, untried criminal act in County X [with the present case]. Once the judgment [in County Y] is affirmed, the court in County X should then issue a dismissal judgment in accordance with Article 294, Section 1, of the same Act.

第五條之規定，得併案受理，其判決確定後，子縣法院對於前一犯行公訴案件，自應依同法第二百九十四條第一款規定，諭知免訴之判決。

J. Y. Interpretation No.48（July 11, 1955）*

ISSUE: Where the complaint filed by the injured party is unlawful or the complaint should not be filed for a criminal action requiring a private cause of action, should the prosecutor issue a non-prosecutorial disposition? Is the principle of *res judicata* applicable?

RELEVANT LAWS:

Articles 234, Paragraph 1 and 239 of the Code of Criminal Procedure（刑事訴訟法第二百三十四條第一項及第二百三十九條）; Interpretation Yuan-Tze No.2292（司法院院字第二二九二號解釋）.

KEYWORDS:

private cause of action（告訴乃論）, non-prosecutorial disposition（不起訴處分）, unlawful complaint（告訴不合法）.**

HOLDING:

1. For criminal actions that require a private cause of action, the prosecutor shall issue a non-prosecutorial disposition in accordance with Article 234, Paragraph 1, of the Code of Criminal Procedure

解釋文：

一、告訴乃論之罪，其告訴不合法或依法不得告訴而告訴者，檢察官應依刑事訴訟法第二百三十四條第一項之規定為不起訴處分，如未經告訴自不生處分問題，院字第二二九二號解釋所謂

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when the complaint is unlawful or without cause of action. Such disposition issue naturally does not occur without the filing of a complaint. The part of the so-called "should be revised" as contained in Interpretation Yuan-Tze No.2292 is in reference to the situation when the complaint is unlawful or without cause of action.

應予變更部分，自係指告訴不合法及依法不得告訴而告訴者而言。

2. For a case dismissed by non-prosecutorial disposition due to unlawful complaint, it can nevertheless be prosecuted if and when a rightful individual files a complaint in due course, and is not restricted by Article 239 of the Code of Criminal Procedure.

二、告訴不合法之案件，經檢察官為不起訴處分後，如另有告訴權人合法告訴者，得更行起訴，不受刑事訴訟法第二百三十九條之限制。

J. Y. Interpretation No.49（July 27, 1955）*

ISSUE: What is the nature of penalty as prescribed under the Stamp Tax Act and the requisite elements of the liability thereunder?

RELEVANT LAWS:

the Stamp Tax Act（印花稅法）; Interpretation Yuan-Tze No.1464（司法院院字第一四六四號解釋）.

KEYWORDS:

administrative penalty（行政罰）, intent（故意）, pecuniary fine（罰鍰）.**

HOLDING: The pecuniary fine provided in the Stamp Tax Act is purely an administrative penalty. Such penalty should be imposed in accordance with the Act and based on the seriousness of the violation. Intent is not a prerequisite before a violation is committed. The rationale of this Yuan's Interpretation Yuan-Tze No.1464 was based upon the specific circumstances at the time and thus shall be altered.

解釋文：印花稅法所定罰鍰係純粹行政罰。納稅義務人如有違法事實，即應依法按其情節輕重，分別科處罰鍰。其違法行為之成立並不以故意為要件，本院院字第一四六四號解釋係就當時特定情形立論，應予變更。

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J. Y. Interpretation No.50（August 13, 1955）*

ISSUE: Should a person undertaking the military service in another's place be treated as a serviceman?

RELEVANT LAWS:

Armed Forces Criminal Act（陸海空軍刑法）; Conscription Act（兵役法）; Interpretation Yuan Tze No. 2684（司法院院字第二六八四號解釋）.

KEYWORDS:

military conscription duties（兵役義務）, forged identification（偽造身分）.**

HOLDING: It is illegal to fulfill military conscription duties by using the forged identification documents of another person. Thus, the person who uses forged identification does not have the status of being military personnel. This Yuan's Interpretation Yuan-Tze No. 2684 is thus upheld.

解釋文：頂替他人姓名而服兵役，係屬違法行為，自難認其有軍人身分。本院院字第二六八四號解釋，仍應予以維持。

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J. Y. Interpretation No.51（August 13, 1955）*

ISSUE: Should a soldier who, upon his absence without leave for over a month, committed another crime, be subject to military trial?

RELEVANT LAWS:

Article 20 of the Conscription Act（兵役法第二十條）; Article 5 of the Armed Forces Criminal Act（陸海空軍刑法第五條）; Article 1 of the Military Justice Act（軍事審判法第一條）; Interpretation Yuan-Tze No.2822（司法院院字第二八二二號解釋）.

KEYWORDS:

Permission（核准）, adjudicative body（審判機關）.**

HOLDING: Pursuant to Article 20, Paragraph 1, Subparagraph 3, of the Conscription Act, the soldier who is absent from duty over one month without permission will lose the status of active duty soldier. As a result, once a soldier is absent from duty over one month and commits a crime, the soldier will be judged on a civilian standing by the adjudicative body. Accordingly, Interpretation

解釋文：士兵未經核准離營已逾一個月者，依兵役法第二十條第一項第三款規定，已失現役軍人身分，如其另犯他罪，依非軍人之例定其審判機關。本院院字第二八二二號解釋，應予變更。

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Yuan-je Tze No.2822 [as explained in 1945] should be changed.

J. Y. Interpretation No.52（August 20, 1955）*

ISSUE: Is the protection conferred by the Constitution regarding a commissioned prosecutor only applicable to a prosecutor who is able to perform his/her duty?

RELEVANT LAWS:

Article 81 of the Constitution（憲法第八十一條）; Article 40 of the Court Organic Act（法院組織法第四十條）; Article 10 of the Regulation Governing the Public Functionaries' Request for Leave（公務員請假規則第十條）.

KEYWORDS:

Security（保障）, leave（請假）, commissioned prosecutor（實任檢察官）.**

HOLDING: The office of commissioned prosecutors shall be accorded security unless there has been reappointment of the office, pursuant to Article 40, Paragraph 2, of the Court Organic Act and as interpreted by Interpretation No.13 of this Yuan. Notwithstanding, the security so accorded shall be extended to prosecutors capable of performing their duties. A

解釋文：實任檢察官依法院組織法第四十條第二項規定，除轉調外應受保障，並經本院釋字第十三號解釋有案。惟此項保障係適用於能執行職務之檢察官，其因病請假逾一定期間事實上不能執行職務者，在未經依據此項保障精神另定辦法前，自得依公務員請假規則第十條暫令退職。

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* Translated by Melanie Nan of Lee and Li, Attorneys-at-Law.

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prosecutor who cannot perform his/her duties as a matter of fact as a result of having been on sick leave for over a certain period of time may be ordered to resign from his/her office pursuant to Article 10 of the Regulation Governing the Public Functionaries' Request for Leave before regulations are devised in accordance with the spirit of the aforementioned security to be afforded to such offices.

J. Y. Interpretation No.53（September 23, 1955）*

ISSUE: Where a complainant is found to have made a false and malicious accusation against the accused, should the public prosecutor issue a non-prosecutorial ruling in respect of the accused?

RELEVANT LAWS:

Article 230, 231 and 237 of the Code of Criminal Procedure（刑事訴訟法第二百三十條、第二百三十一條及第二百三十七條）.

KEYWORDS:

malicious accusation（誣告罪）, non-prosecutorial disposition （不起訴處分）.**

HOLDING: Where a prosecutor discovers that an accuser made a malicious accusation, the prosecutor should initiate a suit to indict the accuser for the malicious accusation and does not need to make a separate non-prosecution disposition of the person falsely charged. Nevertheless, the prosecutor should issue a non-prosecutorial disposition when the accuser applies in the original suit.

解釋文：檢察官發見原告訴人為誣告者，固得逕就誣告起訴，毋庸另對被誣告人為不起訴處分，但原告訴人對原告訴事件如有聲請時，檢察官仍應補為不起訴處分書。

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* Translated by Lawrence L. C. Lee.

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J. Y. Interpretation No.54（October 24, 1955）*

ISSUE: Does the Estate Tax Act have any retroactive effect?

RELEVANT LAWS:

Article 8 of the Estate Tax Act（遺產稅法第八條）.

KEYWORDS:

retroactive effect（溯及既往）.**

HOLDING: Since the current Estate Tax Act does not expressly provide any retroactive effect, the proviso of Article 8 of the Act does not apply to an inheritance that occurred before the Act was promulgated.

解釋文：現行遺產稅法既無明文規定溯及既往，則該法第八條但書對於繼承開始在該法公布以前之案件，自不適用。

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* Translated by Rebecca Hsiao, Lee and Li, Attorneys-at-Law.

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J. Y. Interpretation No.55（October 24, 1955）*

ISSUE: Should a pledgee obtain an enforcement title prior to filing a petition with the court for auction?

RELEVANT LAWS:

Article 893 of the Civil Code（民法第八百九十三條）; Article 14 of the Enforcement Act of the Obligations of the Civil Code（民法債編施行法第十四條）; Article 4 of the Compulsory Enforcement Act（強制執行法第四條）.

KEYWORDS:

Pawnee（質權人）, foreclosure（抵押權之實施）, collaterals（質物／抵押物）, enforcement title（執行名義）.**

HOLDING： When a pawnee forecloses collaterals under the circumstance related in Article 893 of the Civil Code, the pawnee should conduct the process according to the ruling of J.Y. Interpretation No. 98. If the pawnee does not auction the collateral by himself/herself but instead files for auction with the court, he or she should first receive the enforcement title.

解釋文：質權人因有民法第八百九十三條情形而拍賣質物者，仍應依照本院院字第九八零號解釋辦理，如不自行拍賣而聲請法院拍賣時，即應先取得執行名義。

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J. Y. Interpretation No.56（November 21,1955）*

ISSUE: May a public functionary, upon being sentenced with deprivation of civil rights but the principal punishment so imposed thereon being suspended, continuously serve as such during the period of probation?

RELEVANT LAWS:

Article 74 and 85 of the Criminal Code（刑法第七十四條及第八十五條）; Article 17 of the Public Functionaries Appointment Act（公務人員任用法第十七條）.

KEYWORDS:

public functionary（公務員）, deprivation of citizen's right（褫奪公權）, primary sentence（主刑）, suspension of punishment（緩刑）.**

HOLDING: Unless other limitations apply by law to a public functionary, a public functionary who has been sentenced for deprivation of a citizen's right is allowed to continue to serve during the period of probation with primary sentence reduced to suspension of punishment.[1]

解釋文：公務員被判褫奪公權，而其主刑經宣告緩刑者，在緩刑期內，除別有他項消極資格之限制外，非不得充任公務員。

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[1] According to Article 36 states that deprivation of citizen's rights is deprivation of the following categories of qualification: (1) qualification as a public official; (2) qualification as a candidate for public office; and (3) qualification for the exercise of the four rights of election, recall, initiative, and referendum.

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

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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。

J. Y. Interpretation No.58（February 10,1956）*

ISSUE: Where the substantive elements of termination of an adoption are present but the formal elements thereof are nonetheless missing, can a petition be filed with the court for a ruling in favor of termination of the adoption at issue?

RELEVANT LAWS:

Article 983, 1080, and 1081 of the Civil Code（民法第九百八十三條、第一千零八十條及第一千零八十一條）.

KEYWORDS:

adopted child（養子女）, adoptive parents（養父母）, mutual agreement（雙方合議）, in writing（書面）, adopted daughter（養女）, other serious reasons（其他重大事由）.**

HOLDING: Article 1080 of the Civil Code states that the relation between an adopted child and his/her adoptive parents might be terminated by mutual agreement of the parties in writing. If an adopted daughter marries the biological son of adoptive parents with their approval, the marriage arrangement changes

解釋文：查民法第一千零八十條終止收養關係須雙方同意，並應以書面為之者，原係以昭鄭重。如養女既經養親主持與其婚生子正式結婚，則收養關係人之雙方同意變更身分已具同條第一項終止收養關係之實質要件。縱其養親未踐行同條第二項之形式要件，旋即死亡，以致踐行該項程式陷於不能，則

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the adoption status, which substantially matches the requirement of mutual agreement to terminate the adoptive relationship between an adopted daughter and her adoptive parents. Appropriately, where enforcement of the termination of the adoptive agreement in writing is impossible because the adoptive parents both died before the completion of the change in the adoptive status procedure, the adopted daughter, therefore, is able to apply to the court for approval to terminate the adoptive agreement based on Article 1081, Subparagraph 6, of the Civil Code of which other serious reasons exist to terminate an adoptive relationship.

該養女之一方自得依同法第一千零八十一條第六款聲請法院為終止收養關係之裁定，以資救濟。

J. Y. Interpretation No.59（March 21, 1956）*

ISSUE: What is the force and effect of a surety provided by the responsible person of a corporation on the corporation's behalf when providing surety is not within the Corporation's scope of business?

RELEVANT LAWS:

Article 23 of the Corporation Act（公司法第二十三條）.

KEYWORDS:

suretyship（保證）, the responsible person of the corporation（公司負責人）.**

HOLDING: According to Article 23 of the Company Act, no company should provide suretyship to anyone except as otherwise prescribed in other laws or in the company's articles of incorporation. If the responsible person of the corporation violates Article 23 of the Company Act by providing suretyship to others on behalf of the corporation, the conduct of the responsible person is not considered as the conduct of the company

解釋文：依公司法第二十三條之規定，公司除依其他法律或公司章程規定以保證為業務者外，不得為任何保證人。公司負責人如違反該條規定，以公司名義為人保證，既不能認為公司之行為，對於公司自不發生效力。

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* Translated by Li-Chih Lin, Esq., J.D.

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under the law. Thus, the company is not liable for the conduct of its responsible person.

J. Y. Interpretation No.60（April 2, 1956）*

ISSUE: Under what circumstances may a case concerning any of the offenses listed in Article 61 of the Criminal Code be appealable to the court of third instance?

RELEVANT LAWS:

Article 61 of the Criminal Code（刑法第六十一條）; Articles 368 and 387 of the Code of Criminal Procedure (as amended on December 26, 1945)（刑事訴訟法第三百六十八條及第三百八十七條）; Article 4 of the Regulation Governing the Adjudication of the Grand Justices Council（司法院大法官會議規則第四條）.

KEYWORDS:

groundless judgment（無根據之判決）, relative relationship（牽連關係）, prerequisite of justice on processes（審級之先決問題）, appeal（上訴）, third instance（第三審）, oral argument（言詞辯論）.**

HOLDING: If the court of the second instance considers that an appeal of a decision made by the Supreme Court is groundless, it shall dismiss such appeal by a judgment. However, the present case,

解釋文：最高法院所為之確定判決有拘束訴訟當事人之效力，縱有違誤，亦僅得按照法定途徑聲請救濟。惟本件關於可否得以上訴於第三審法院，在程序上涉及審級之先決問題，既有歧

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which may or may not be appealed to the court of the third instance, involves a prerequisite point of justice on process. Since this is a mere difference in legal interpretation, it shall be resolved in conformity with Article 4 of the Regulation Governing the Adjudication of Grand Justices Council. Article 368 of the Code of Criminal Procedure has stipulated explicitly that cases which are judged by the court of the second instance under Article 61 of the Criminal Code may not be appealed to the court of the third instance. In the present case, the prosecutor did not dispute the articles adapted in the original court ruling but filed an appeal after judgment by the court of the second instance. In addition, this case has no relative relationship to other cases which may be appealed to the court of the third instance because it is not pursuant to Article 387 of the Code of Criminal Procedure, which provides that overruling a judgment is not in conformity with the legal process. As the litigants still dispute their respective degree of guilt under Article 61 of the Criminal Code, the court shall investigate whether the litigants had raised

異見解，應認為合於本會議規則第四條之規定予以解答。查刑法第六十一條所列各罪之案件，經第二審判決者，不得上訴於第三審法院，刑事訴訟法第三百六十八條定有明文，倘第二審法院判決後檢察官原未對原審法院所適用之法條有所爭執而仍上訴，該案件與其他得上訴於第三審之案件亦無牽連關係。第三審法院不依同法第三百八十七條予以駁回，即與法律上之程式未符。至案件是否屬於刑法第六十一條所列各罪之範圍，尚有爭執者，應視當事人在第二審言詞辯論終結前是否業已提出，如當事人本已主張非刑法第六十一條所列各罪，第二審仍為認係該條各罪之判決者，始得上訴於第三審法院。

this issue before oral arguments in the court of the second instance were closed. If the litigants had argued during the oral argument that Article 61 of the Criminal Code did not apply to their case, yet the court of the second instance held the opposite opinion and rendered judgment, then the litigants may appeal the case to the court of the third instance.

J. Y. Interpretation No.61（August 13, 1956）*

ISSUE: May a runaway serviceman wearing his own badge be subject to the penalty of the offense of common escape?

RELEVANT LAWS:

Article 95 of the Armed Forces Criminal Act（陸海空軍刑法第九十五條）; Judicial Yuan Explanation No. 2044（司法院院字第二〇四四號解釋）.

KEYWORDS:

escaped soldier（軍人脫逃）, escape soldier crime（軍人脫逃罪）, the essentially military materials（軍中重要物品）.**

HOLDING: Even if a soldier in uniform with his/her military stripes intact is suspected of being AWOL [absent without leave], this is not sufficient evidence to establish the crime of being AWOL because the essential military items, as designated in Article 95 of the Armed Forces Criminal Act, do not include such military stripes. Therefore, the Judicial Yuan Explanation No. 2044

解釋文：軍人逃亡如僅佩帶本人符號，尚難認為與陸海空軍刑法第九十五條所謂攜帶其他重要物品之情形相當，應以普通逃亡論罪。本院院字第二零四四號關於該部分之解釋，應予變更。

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issued on August 3, 1940, concerning essential military items should no longer apply.

J. Y. Interpretation No.62（August 13, 1956）*

ISSUE: What does the term "judicial personnel" mean under Article 37 of the Lawyer's Act?

RELEVANT LAWS:

Article 37 of the Lawyer's Act（律師法第三十七條）; Article 12 of the Enforcement Rules of the Lawyer's Act（律師法施行細則第十二條）; Article 44 of the Court Organic Act（法院組織法第四十四條）.

KEYWORDS:

Judicial personnel（司法人員）, legal matter（司法事務）, Legal Clerks（司法事務人員）, Accounting Clerks（會計書記人員）, accounting matter（會計事務）.**

HOLDING: According to Article 37 of the Lawyer's Act (as amended in 1941) and Article 12 of the Enforcement Rules of the Lawyer's Act (as amended in 1941), the term "legal clerk" refers to judicial personnel who are appointed based on the provisions of Article 44 of the Court Organic Act and are responsible for legal matters. As a result, a clerk, also

解釋文：律師法第三十七條所稱之司法人員，依律師法施行細則第十二條之規定雖列有書記官在內，然此係指依法院組織法任用並辦理司法事務之書記官而言。主計機關派駐各法院辦理會計事務之書記官，自不包括在內。

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known as an accounting clerk, who is appointed by a budgetary, accounting, or statistics agency and who does not deal with legal matters is not a legal clerk as referred to above because an accounting clerk is only responsible for accounting matters even though she/he is employed by a court.

J. Y. Interpretation No.63（August 29, 1956）*

ISSUE: How should an act of counterfeiting or altering New Taiwan Dollars be punished by law?

RELEVANT LAWS:

Article 3 of the Act Governing the Punishment for Damaging National Currency（妨害國幣懲治條例第三條）; Article 195 of the Criminal Code（刑法第一百九十五條）.

KEYWORDS:

counterfeit, forged（偽造）, alter（變造）, national currency（國幣）, local currency（地方貨幣）, New Taiwan Dollar（新臺幣）.**

HOLDING: Article 3 of Act Governing the Punishment for Damaging National Currency addresses the counterfeiting and forging of national currency. However, currencies not listed as national currencies will be not prosecuted based on the Act Governing the Punishment for Damaging National Currency. Because the New Taiwan Dollar is not recognized as national currency but local currency,

解釋文：妨害國幣懲治條例第三條所稱偽造變造之幣券，係指國幣幣券而言。新臺幣為地方性之幣券，如有偽造變造情事，應依刑法處斷。

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if someone counterfeits or alters the New Taiwan Dollar, he or she should be punished in terms of Article 95 of the Criminal Code rather than the Act Governing the Punishment for Damaging National Currency.

J. Y. Interpretation No.64（September 14, 1956）*

ISSUE: On what day does a law come into force if it is to be implemented on the date of promulgation?

RELEVANT LAWS:

Article 1 of the Act Governing the Dates for Enforcement of Laws（法律施行日期條例第一條）.

KEYWORDS:

effective date（生效日）, deadline for arrival at each authority（依限應到達各主管官署之日）.**

HOLDING: The phrase "deadline to be received by each authority" in Article 1 of the Act Governing the Dates for Enforcement of Laws means the date which is stipulated in the List of the Act Governing the Dates for Enforcement. When legislation has been explicitly stipulated to be enforced on a published date, it shall take effect after the expiration date which is stipulated in the List of the Act Governing the Dates for Enforcement except when there are other stipulations.

解釋文：法律施行日期條例第一條所謂依限應到達各主管官署之日，係指依法律施行到達日期表所列之日期而言。凡明定自公布日施行之法律，除依法另有規定外，仍應自該表所列之日起發生效力。

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J. Y. Interpretation No.65（October 1, 1956）*

ISSUE: What is the meaning of a "local public group" under the Act of the Supervision of Temples?

RELEVANT LAWS:

Article 3, Subparagraph 2 of the Act of the Supervision of Temples（監督寺廟條例第三條第二款）.

KEYWORDS:

a local public group（地方公共團體）, public affairs（公共事務）, custom（習慣）, a designated area（一定區域）.**

HOLDING: According to Article 3, Paragraph 2, of the Act of the Supervision of Temples, a local public group refers to a group which conducts public affairs by regulations or custom in a designated area.

解釋文：監督寺廟條例第三條第二款所謂地方公共團體，係指依法令或習慣在一定區域內，辦理公共事務之團體而言。

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J. Y. Interpretation No.66（November 2, 1956）*

ISSUE: May a public functionary who is sentenced on probation for corruption participate in a national exam or serve a public office prior to the expiry of the probation?

RELEVANT LAWS:

Article 74 of the Criminal Code（刑法第七十四條）; Article 8, Paragraph 1, Subparagraph 2 of the Examination Act（考試法第八條第一項第二款）; Article 17, Subparagraph 2 of the Public Functionaries Appointment Act（公務人員任用法第十七條第二款）.

KEYWORDS:

Graft（貪污）, irrevocable judgment（確定判決）, probation （緩刑）.**

HOLDING: All the conditions listed in Article 8, Paragraph 1, Subparagraph 2 of the Examination Act and Article 17, Subparagraph 2 of the Public Functionaries Appointment Act stipulate the negative qualifications of a public functionary in accordance with J.Y. Interpretation No.56.

解釋文：考試法第八條第一項第二款及公務人員任用法第十七條第二款所列情事，均屬本院釋字第五十六號解釋所謂他項消極資格，其曾服公務而有貪污行為經判決確定者，雖受緩刑之宣告，仍須俟緩刑期滿而緩刑之宣告並未撤銷時，始得應任何考試或任為公務人員。

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According to the forgoing J. Y. Interpretation, the term "negative qualifications" refers to, among others [Since the word "qualifications" is used here, other crimes besides graft or the taking of bribes must be included in the Law and Act mentioned above.], the act of taking graft, for which criminal act a public functionary has been sentenced by an irrevocable judgment. Even if such public functionary has been granted probation, he or she is not allowed to take a civil service examination or serve as a public functionary until the expiration of the probation period and the announcement of probation is quashed.

J. Y. Interpretation No.67（November 14, 1956）*

ISSUE: May a public functionary having served for more than three years in a middle-ranking auditing position be placed under review for the qualification as a certified public accountant?

RELEVANT LAWS:

Article 2-I (4) of the Certified Public Accountant Act（會計師法第二條第一項第四款）.

KEYWORDS:

Junior Rank Personnel（薦任）, auditing post（審計職務）.**

HOLDING: If a civil servant has held a junior rank personnel auditing post in a government department for more than three years and has also received certification, he shall be regarded as having fulfilled the requirements of Article 2-I (4) of the Certified Public Accountant Act.

解釋文：凡在政府機關曾任薦任審計職務三年以上，經銓敘合格者，均應認為合於會計師法第二條第一項第四款之規定。

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J. Y, Interpretation No.68（November 26, 1956）*

ISSUE: What is the meaning of "participating in a rebellion organization"?

RELEVANTLAWS:

Article 2 of the Criminal Code（刑法第二條）; Betrayers Punishment Act（懲治叛亂條例）; Decrees for Amnesty and Punishment Reduction of Criminals（罪犯赦免減刑令）.

KEYWORDS:

rebel（叛亂）.**

HOLDING: Anyone who participated in a rebel organization shall certainly be deemed to be still participating in the organization before he voluntarily submits himself to the authorities, or when there is no evidence to prove that he did withdraw from the organization. Even after the effective date of the Betrayers Punishment Act on June 21, 1949, if a person's act is in the state of continuousness, Article 2 of the Criminal Code shall not apply Because the law was not

解釋文：凡曾參加叛亂組織者，在未經自首或有其他事實證明其確已脫離組織以前，自應認為係繼續參加。如其於民國三十八年六月二十一日懲治叛亂條例施行後仍在繼續狀態中，則因法律之變更並不在行為之後，自無刑法第二條之適用。至罪犯赦免減刑令原以民國三十五年十二月三十一日以前之犯罪為限，如在以後仍在繼續犯罪中即不能援用。

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amended after the completion of the act. Because the scope of the Decrees for Amnesty and Punishment Reduction of Criminals is limited to the acts committed before December 31, 1946, the Decrees shall not apply to the acts that continue beyond said day.

J. Y. Interpretation No.69（December 5, 1956）*

ISSUE: May a public functionary holding two posts concurrently by law receive the benefits for the second post?

RELEVANT LAWS:

Article 14, Paragraph 2, of the Public Functionary Service Act（公務員服務法第十四條第二項）.

KEYWORDS:

concurrent serving（兼職）, public expenditure（公費）, salary（薪俸）.**

HOLDING: Pursuant to Article 14, Paragraph 2, of the Public Functionary Service Act, the sentence "A civil servant who serves concurrently as a legislator shall not draw salaries for both positions and receive benefits from the public expenditure for both" clearly means that a civil servant who is concurrently serving as a legislator may only draw the salary and receive benefits from the public expenditure for his or her original post. However, a civil servant may draw his or

解釋文：公務員服務法第十四條第二項所謂依法令兼職者不得兼薪及兼領公費，當係指兼職之公務員僅能支領本職之薪及公費而言。其本職無公費而兼職有公費者自得支領兼職之公費。

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her salary and receive benefits from the public expenditure under the circumstance where his or her original post is a non-paid position.

J. Y. Interpretation No.70（December 17, 1956）*

ISSUE: May a legitimate child of an adoptee, an adopted child of an adoptee, or an adopted child of a legitimate child be entitled to inherit by representation?

RELEVANT LAWS:

Articles 1077 and 1142 of the Civil Code（民法第一千零七十七條及第一千一百四十二條）.

KEYWORDS:

Constructive blood relative（擬制血親）, inheritor（繼承人）, inheritance（繼承）, legitimate child（婚生子女）.**

HOLDING: J.Y. Interpretation No.28 has explained that the relationship between an adoptive child and his biological parents is one of consanguinity-in-law. The situation where an inheritor dies before the beginning of an inheritance is different from the situation interpreted in J.Y. Interpretation No.57 where an inheritor relinquishes [or waives] his right of inheritance. The received document states that the biological children of adoptive

解釋文：養子女與養父母之關係為擬制血親，本院釋字第二十八號解釋已予說明。關於繼承人在繼承開始前死亡時之繼承問題，與釋字第五十七號解釋繼承人拋棄繼承之情形有別。來文所稱養子女之婚生子女、養子女之養子女，以及婚生子女之養子女，均得代位繼承。至民法第一千零七十七條所謂法律另有規定者，係指法律對於擬制血親定有例外之情形而言，例如同法第一千一百四十二條第二項之規定是。

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parents, the adopted children of adoptive parents and the adopted children of biological parents all have the right of representative inheritance. Concerning the other stipulations of Article 1077 of the Civil Code, the law has made allowance or consideration for exceptional situations of constructive blood relatives, such as the stipulation of Article 1142, Paragraph 2, of the Civil Code.

J. Y. Interpretation No.71（January 9, 1957）*

ISSUE: What are the requirements for a public functionary to serve concurrently in a foreign institution?

RELEVANT LAWS:

Article 14, Paragraph 1 of the Public Functionary Service Act（公務員服務法第十四條第一項）.

KEYWORDS:

temporary job（臨時工作）, public functionary（公務員）.**

HOLDING: J. Y. Interpretations Nos.6 and 11 have interpreted the restriction of Article 14, Paragraph 1 of the Public Functionary Service Act. A public functionary may not hold a temporary position at a foreign institution because holding such position violates the character and dignity of his office. Whether or not holding such temporary position is common practice, it does not conform to the spirit of the abovementioned Article.

解釋文：本院釋字第六號及第十一號解釋係依公務員服務法第十四條第一項所定限制而為解釋，如公務員於公餘兼任外籍機構臨時工作，祇須其工作與本職之性質或尊嚴有妨礙者，無論是否為通常或習慣上所稱之業務，均應認為該條精神之所不許。

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J. Y. Interpretation No.72（January 23, 1957）*

ISSUE: How should the Trademark Bureau treat any letter or document when the addressed party resides in an enemy-occupied area?

RELEVANT LAWS:

Article 30, Paragraph 2 of the Enforcement Rules of the Trademark Act（商標法施行細則第三十條第二項）.

KEYWORDS:

the Trademark Bureau（商標局）, petitioner（呈請人）, relevant party（關係人）, recipient（領受人）.**

HOLDING: If a letter which the Trademark Bureau should send or deliver to a petitioner or a relevant party cannot be sent or delivered because the recipient is in Mainland China, the Trademark Bureau should publish the letter in the Official Government Gazette in accordance with Article 30, Paragraph 2, of the Enforcement Rules of the Trademark Act.

解釋文：商標局應送達於呈請人或關係人之書件，如呈請人或關係人係在淪陷區域，即屬無從送達之件，自得依商標法施行細則第三十條第二項之規定於公報公示之。

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* Translated by Li-Chih Lin, Esq., J.D.

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J. Y. Interpretation No.73（March 13, 1957）*

ISSUE: Is an employee serving in a state-owned enterprise pursuant to law considered as a public functionary under the Criminal Code before such enterprise is privatized?

RELEVANT LAWS:

Article 3-III of the Act Governing the Management of State-owned Enterprises（國營事業管理法第三條第三項）; Article II (4) of the Act Governing the Conversion of State-owned Enterprises into Private Enterprises（公營事業移轉民營條例第二條第四款）.

KEYWORDS:

State-owned enterprises（國營事業）, Private Enterprises（私人企業）, Privatization（民營化／私有化）.**

HOLDING: When a government-owned enterprise organized under the Company Act is converted into a private enterprise, although the transfer date is announced to ensure the rights, duties and the stability of the government-owned enterprise, the transferring enterprise is not considered to be a private company

解釋文：依公司法組織之公營事業，縱於移轉民營時已確定其盈虧及一切權利義務之移轉日期，仍應俟移轉後之民股超過百分之五十以上時該事業方得視為民營。惟在尚未實行交接之前，其原有依法令服務之人員仍係刑法上之公務員。

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unless the amount of shares held by the private sector is above 50% pursuant to Article II (4) of the Act Governing the Conversion of State-owned Enterprises into Private Enterprises. Therefore, an employee appointed under the original regulations is still recognized as a public functionary under the Criminal Code until the conversion of the government-owned enterprise into a private enterprise has been completed.

J. Y. Interpretation No.74（March 22, 1957）*

ISSUE: May a delegate to the National Assembly serve concurrently as a provincial or county councilor?

RELEVANT LAWS:

Article 10 of the Constitution（憲法第十條）.

KEYWORDS:

delegate of National Assembly（國民大會代表）, serve currently（兼任）, delegate of provinces and counties/heien council（省縣議會議員）. **

HOLDING: A delegate of the National Assembly is elected in each statutory electoral district, assembles in accordance with the provisions of the Constitution and exercises political powers on behalf of the whole body of citizens. A delegate of the provincial and county/hsien council assembles in accordance with the provision of law and exercises the legislative power of each province and county/hsien. In order to implement the purpose of the Constitution,

解釋文：國民大會代表係各在法定選舉單位當選，依法集會，代表全國國民行使政權。而省縣議會議員乃分別依法集會，行使屬於各該省縣之立法權。為貫徹憲法分別設置各級民意機關賦予不同職權之本旨，國民大會代表自不得兼任省縣議會議員。

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which established different levels of local public opinion authority and endowed each level with different powers, a delegate of the National Assembly should not serve concurrently as a delegate of the provincial and county/hsien council.

J. Y. Interpretation No.75（April 8, 1957）*

ISSUE: May a delegate to the National Assembly concurrently hold a government post?

RELEVANT LAWS:

Article 28 of the Constitution（憲法第二十八條）.

KEYWORDS:

Delegate to the National Assembly（國民大會代表）, government official（官吏）.**

HOLDING: The Constitutional National Assembly did not adopt the proposition that a delegate to the National Assembly shall not hold a government post, nor did it adopt the proposition that an incumbent government official shall not be elected as a delegate to the National Assembly. Article 28, Paragraph 3, of the Constitution merely prohibits an incumbent government official from being elected to the National Assembly in the electoral area where he or she holds office. Suffice it to say that at the time the

解釋文：查制憲國民大會對於國民大會代表不得兼任官吏，及現任官吏不得當選為國民大會代表之主張，均未採納。而憲法第二十八條第三項僅限制現任官吏不得於其任所所在地之選舉區當選為國民大會代表。足見制憲當時並無限制國民大會代表兼任官吏之意，故國民大會代表非不得兼任官吏。

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* Translated by Robert Huai-Ching Tsai.

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

Constitution was created, the framers had no intention to prevent delegates to the National Assembly from occupying government positions. Therefore, a delegate to the National Assembly is not prohibited from holding a government post concurrently.

J. Y. Interpretation No.76（May 3, 1957）*

ISSUE: Shall the National Assembly, the Legislative Yuan and the Control Yuan be considered en masse as equal to parliaments of democratic nations?

RELEVANT LAWS:

Articles 25, 62 and 90 of the Constitution（憲法第二十五、第六十二條、第九十條）.

KEYWORDS:

the National Assembly（國民大會）, the Legislative Yuan（立法院）, the Control Yuan（監察院）, parliament（國會）, democratic nation（民主國家）.**

HOLDING: The Constitution was enacted according to the exhortation of Dr. Sun Yat-Sen. In addition to the National Assembly, five Yuans have been established, the concept of which is not really analogous to the separation of powers system. The National Assembly representing all the nationals exercises the political power, the Legislative Yuan is the highest legislative institution of the nation

解釋文：我國憲法係依據　孫中山先生之遺教而制定，於國民大會外並建立五院，與三權分立制度本難比擬。國民大會代表全國國民行使政權，立法院為國家最高立法機關，監察院為國家最高監察機關，均由人民直接間接選舉之代表或委員所組成。其所分別行使之職權亦為民主國家國會重要之職權。雖其職權行使之方式，如每年定期集會、多數開議、多數決議等，不盡與各民主

* Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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and the Control Yuan is the highest monitoring institution of the nation. All of them are composed of representatives or members that are directly or indirectly elected by the people. Their functions and powers are similar to those important powers exercised by the parliaments of democratic nations. Although some of their approachs to the exercise of power, such as a regular annual assembly, quorum and resolution by the majority are not the same as those of parliaments of democratic nations, the National Assembly, the Legislative Yuan and the Control Yuan, from the perspective of the nature of their statuses and functions in the Constitution, should be considered as equivalent to the parliaments of democratic nations.

國家國會相同，但就憲法上之地位及職權之性質而言，應認國民大會、立法院、監察院共同相當於民主國家之國會。

J. Y. Interpretation No.77（June 24, 1957）*

ISSUE: What is the base for calculating the percentage of the expenditures for education, science and culture?

RELEVANT LAWS:

Article 164 of the Constitution（憲法第一百六十四條）.

KEYWORDS:

Expenditure（經費）, supplement budget（追加預算）.**

HOLDING: Pursuant to Article 164 of the Constitution, the expenditure on educational programs, scientific studies and cultural services should not be, in respect of each county/hsien, less than 35 percent of the total county/hsien budget. This means the percentage of the total annual expenditures. As the matter of a supplemental budget shall only be raised when circumstances during enforcement of the budget are in accordance with Article 53 of the Budget Act, it is obvious that such supplemental budget shall not be included in the total county/hsien budget.

解釋文：憲法第一百六十四條所謂教育科學文化之經費在市縣不得少於其預算總額百分之三十五，原係指編製預算時在歲出總額所佔之比例數而言。至追加預算，實因預算執行中具有預算法第五十三條所定情事始得提出者，自不包括在該項預算總額之內。

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* Translated by Lawrence L. C. Lee.

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J. Y. Interpretation No.78（August 9, 1957）*

ISSUE: What are the requisite elements for the termination of a lease whose ground is that the tenant of the farmland voluntarily renounced his right to cultivate the said farmland?

RELEVANT LAWS:

Article 17 of the Act Governing the Reduction of Farm Rent to 37.5 Percent（耕地三七五減租條例第十七條）.

KEYWORDS:

Terminate（終止）, tenant（承租人）.**

HOLDING: Except for the situations stipulated in Article 17 of the Act Governing the Reduction of Farm Rent to 37.5 Percent, a cultivation lease can not be terminated before its expiration day. Pursuant to Article17, Paragraph 2, of said Act, if a tenant abandons the right of cultivation voluntarily, he must have legal ground for moving or switching to another line of work.

解釋文：耕地租約在租佃期限未屆滿前，非有耕地三七五減租條例第十七條所定各款情形不得終止。如承租人自動放棄耕作權時，依同條第二款規定亦須確有因遷徙或轉業之正當理由。

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* Translated by Lawrence L. C. Lee.

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J. Y. Interpretation No.79（October 7, 1957）*

ISSUE: May a public functionary having served for more than three years for the Ministry of National Defense in a middle-ranking auditing position be placed under review for the qualification as a certified public accountant?

RELEVANT LAWS:

J.Y. Interpretation No.67（司法院釋字第六十七號解釋）; Article 2 of the Certified Public Accountant Act（會計師法第二條）.

KEYWORDS:

Certificated（銓敘合格）.**

HOLDING: The phrase "certified" in J.Y. Interpretation No.67 refers to a civil servant who has been certified by the Ministry of Civil Service of the Republic of China. A civil servant who has held a junior rank personnel auditing position in the Ministry of National Defense for more than three years and has applied for registration with the Ministry of Civil Service should also be regarded as conforming to the stipulation of Article 2,

解釋文：本院釋字第六十七號解釋，所謂銓敘合格一語，係指經銓敘部銓敘合格者而言。其在國防部擔任薦任審計職務三年以上，並經銓敘部審查登記者，亦應認為合於會計師法第二條第一項第四款之規定。

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* Translated by Lawrence L. C. Lee.

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Paragraph 1, Subparagraph 4 of the Certified Public Accountant Act.

J. Y. Interpretation No.80（November 26, 1958）*

ISSUE: Which agency should be responsible for the determination as to whether participation in a rebellious organization in a district under martial law ever existed and whether such participation still exists?

RELEVANT LAWS:

J.Y. Interpretation No.68（司法院釋字第六十八號解釋）；Article 10 of the Betrayers Punishment Act（懲治判亂條例第十條）.

KEYWORDS:

insurrectional organization（判亂組織）, area of Martial（戒嚴地域）, military institution（軍事機關）, non-prosecutorial disposition（不起訴處分）, gangster（匪徒）, presumption（推定）.**

HOLDING:

Pursuant to Article 10 of the Betrayers Punishment Act, a person who is involved in an insurrectional organization in the period of martial law will be judged by a military institution, regardless of his status. Whether he is still involved in an insurrectional organization or is no longer

解釋文：

一、參加叛亂組織案件，在戒嚴地域犯之者，依懲治叛亂條例第十條後段之規定，既不論身分概由軍事機關審判，則有無參加叛亂組織及是否繼續之事實，均應由有權審判之軍事機關認定之。

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involved will be determined by a military institution of jurisdiction.

J.Y. Interpretation No. 68 has ruled that a person who confesses that he is no longer involved in an insurrectional organization but can not prove that he has left such organization is guilty of treason. However, the military institution of jurisdiction considered that the case in question did not conform to the stipulations of the Betrayers Punishment Act. Therefore, J.Y. Interpretation No. 68 does not apply.

二、本院釋字第六十八號解釋係為曾參加叛亂組織，未經自首或無其他事實證明其確已脫離組織者而發。如已由有權審判之軍事機關認其不屬於懲治叛亂條例上之犯罪自不適用。

REASONING: Because the military institution of jurisdiction in this case considered that the accused person was involved in activities before the enforcement of the Betrayers Punishment Act [Hereinafter "the Act" and was not continuously involved in an insurrectional organization, it issued a non-prosecutorial disposition and determined that the criminal activity of the person did not conform to the crime of treason under the Act. However, J.Y. Interpretation No.68 provides that until a person who has been involved in an insurrectional organization

解釋理由書：本件係因同一案件軍事機關謂其參加匪偽活動係在懲治叛亂條例施行前，其後又無繼續為匪工作情事，故以不起訴處分認其不屬於懲治叛亂條例上之犯罪，而司法機關以本院釋字第六十八號解釋載有，凡曾參加叛亂組織者在未經自首或有其他事實證明其確已脫離組織以前，自應認為係繼續參加等語，謂該案仍有懲治叛亂條例上之罪嫌。為解決此爭議，自應先審究此項案件在法律上究應以何方認定為主，茲查參加叛亂組織案件在戒嚴地域犯之者，依懲治叛亂條第十條後段之規定既不論身分概由軍事機關審判之，則

confesses his crime or provides evidence to prove he is no longer involved in an insurrectional organization, he should still be considered to be involved in such an organization. Therefore, such case still conforms to the stipulations of the Act. In order to resolve the issue, we should determine which the case should legally adopt . Pursuant to the first part of Article 10 of the Act, the case where an insurrection occurs within a military institution will be judged under martial law, regardless of its status. As to the presumption which was made by the military institution of jurisdiction that this case does not conform to the stipulations of the Act, we cannot deny its decree, which was based on the then current law. J.Y. Interpretation No. 68 interprets the situation such that a person who has been involved in an insurrectional organization but has not confessed or has not provided evidence to prove he is no longer involved with such insurrectional organization is still guilty of treason. Since it has already been determined by the military institution of jurisdiction that the above case does not come under the Act, J.Y. Interpretation No.68

關於軍事機關所為不屬於懲治叛亂條例上犯罪之認定，在未經合法變更前即難否認其效力，至本院釋字第六十八號解釋所謂應認係繼續參加云云，係為曾參加叛亂組織未經自首或無其他事實證明其確已脫離組織者而發，如已由有權審判之軍事機關認其不屬於懲治叛亂條例上之犯罪，即不發生釋字第六十八號解釋上之問題。

does not apply.

Justice Ji-Jong Wang filed dissenting opinion, in which Justice Shau-Shun Tseng and Justice Yien-Wou Huang joined.

本號解釋王大法官之倧、曾大法官邵勳與黃大法官演渥共同提出不同意見書。

J. Y. Interpretation No.81（December 17, 1958）*

ISSUE: May a member of the Control Yuan concurrently serve as either a director, a supervisor, or a manager of a privately owned enterprise?

RELEVANT LAWS:

Article 103 of the Constitution（憲法第一百零三條）.

KEYWORDS:

the member of the Control Yuan（監察委員）, civil servant（公務人員）, power of supervision（監察權）, directors（董事）, manager（經理人）, privately owned enterprise（民營公司）, administer of corporate affairs（執行公司業務）.**

HOLDING: The corporate affairs carried out by directors, supervisors and managers of a privately owned enterprise shall fall within the scope of business administration referred to in Article 103 of the Constitution.

解釋文：民營公司之董事、監察人及經理人所執行之業務，應屬於憲法第一百零三條所稱執行業務範圍之內。

REASONING: Article 103 of the Constitution specifically provides that a member of the Control Yuan can not

解釋理由書：查監察委員不得兼任其他公職或執行業務，為憲法第一百零三條所明定，其所以於不得兼任其

* Translated by Li-Chih Lin, Esq., J.D.

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serve concurrently as a member of the Control Yuan and a civil servant or business administrator. The reason for prohibiting a member of the Control Yuan from serving concurrently as a member of the Control Yuan and a civil servant or business administrator is that a member of the Control Yuan should remain impartial (unprejudiced) in exercising his or her power of supervision. A restriction is thus imposed upon the members of the Control Yuan. Directors, supervisors and managers of a privately owned enterprise are persons who administer the corporate affairs of the enterprise. The corporate affairs carried out by directors, supervisors and managers of a privately owned enterprise are in conflict with the power of supervision exercised by a member of the Control Yuan. Therefore, the corporate affairs administered by directors, supervisors and managers of a privately owned enterprise shall fall within the business administration restriction imposed upon a member of the Control Yuan under Article 103 of the Constitution.

他公職之外並不得執行業務者，乃為貫徹監察權之行使，保持監察委員之超然地位，故亦予以限制，民營公司董事監察人及經理人均為執行民營公司業務之人，其所執行之業務與監察委員職權之行使自不相宜，應屬於憲法第一百零三條所稱監察委員不得執行業務之範圍。

J. Y. Interpretation No.82（June 17, 1959）*

ISSUE: What is the punishment for a person who forges a document while forging a public seal?

RELEVANT LAWS:

Articles 212 and 218 of the Criminal Code（刑法第二百十二條及第二百十八條）.

KEYWORDS:

falsification of public seal（偽造公印）, simultaneously（同時地）, imprisonment（徒刑）, purpose of legislation（立法本意）.**

HOLDING: Article 218 of the Criminal Code stipulates specific punishment for falsification of the public seal, which is more serious than that of Article 212 of the Criminal Code. If a person falsifies a public document under Article 212 and the public seal under Article 218 of the Criminal Code simultaneously, he or she should be judged under Article 212 but not under Article 218 of the Criminal Code. Therefore, Interpretation (before

解釋文：偽造公印，刑法第二百十八條既有獨立處罰之規定，且較刑法第二百十二條之處罰為重，則於偽造刑法第二百十二條之文書同時偽造公印者，即難僅論以該條之罪而置刑法第二百十八條處刑較重之罪於不問。本院院解字第三零二零號第三項解釋於立法本旨並無違背，尚無變更之必要。

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* Translated by Lawrence L. C. Lee.

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1948) No.3020, Subparagraph 3, does not violate the purpose of legislation, and hence should not be amended.

REASONING: Pursuant to the Resolution of the 118th Meeting of the Grand Justices: The central or local authority has some doubts about when to apply the Constitution law or orders that were interpreted by the Judicial Yuan and has thus petitioned for interpretation. Pursuant to Article 4 or 7 of the Grand Justices Council Adjudication Act, the grand justices should convene to re-interpret the law.

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解字第三零二零號第三項解釋發生疑義，依照上項決議認為應予以解釋。

Because the case concerns the questions the Supreme Court has about Subparagraph 3 of Interpretation (before 1948) No.3020, it should be re-interpreted according to the abovementioned petition. Article 212 of the Criminal Code stipulates specific punishment for a person who falsifies public or private documents. Article 218 of the Criminal Code stipulates specific punishment for falsification of the public seal. If a person falsifies a public document under Article 212 and

按刑法第二百十二條係就公私特種文書之偽造及變造而為規定，偽造公印刑法第二百十八條既有獨立處罰之規定，則於偽造刑法第二百十二條之文書同時偽造公印者，即難僅論以該條之罪而置刑法第二百十八條之罪於不問，本院院解字第三零二零號解釋於立法本旨並無違背要難謂為不當，且依照刑法第二百十八條規定偽造公印者尚處以五年以下有期徒刑，倘於偽造同法第二百十二條之文書而又偽造公印者，反依同法第二百十二條之規定僅處以一年以下有

the public seal simultaneously, he should be judged under Article 212 but not under Article 218 of Criminal Code. Therefore, Interpretation (before 1948) No.3020, Subparagraph 3, does not violate the purpose of legislation. Moreover, pursuant to Article 218 of the Criminal Code, a person convicted of falsification of the public seal may be sentenced to imprisonment of up to five years. If a person falsifies a public document under Article 212 and the public seal under Article 218 simultaneously, he or she may be sentenced to imprisonment of not more than one year or subject to a fine of under NTS300 Thus, the punishment is unfair and violates the purpose of legislation.

期徒刑、拘役或三百元以下之罰金，尤恐輕重失衡，有違立法之本意。

Based on those reasons, Interpretation (before 1948) No.3020, Subparagraph 3, should not be amended.

基上理由，本院院解字第三零二零號第三項解釋尚無變更之必要。

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Yien-Wou Huang, Justice Fan-Kang Tseng and Justice Shi-Ding Chin joined.

本號解釋徐大法官步垣、黃大法官演渥、曾大法官繁康與金大法官世鼎共同提出不同意見書。

J. Y. Interpretation No.83（October 21, 1959）*

ISSUE: How does a court take under custody and calculate the interests for articles lodged with it?

RELEVANT LAWS:

Articles 4 and 8 of the Lodgment Act（提存法第四條及第八條）.

KEYWORDS:

agential bank（代理國庫銀行）, lodgment（提存）.**

HOLDING: When a district court is located near an agential bank of the national treasury, the district court should deposit the money, negotiable securities, and valuables of lodgment under the custody of the treasury sector of the agential bank, which should pay interest to the court pursuant to Article 8 of the Lodgment Act.

解釋文：地方法院所在地有代理國庫之銀行時，法院收受提存之金錢、有價證券或貴重物品，應交由該銀行之國庫部門保管，並依提存法第八條之規定給付利息。

REASONING: Pursuant to Article 4, Paragraph 2, of the Lodgment Act, the money, negotiable securities and

解釋理由書：查提存法第四條第二項特別規定交由代理國庫之銀行保管者，其目的在保障利害關係人之利

* Translated by Lawrence L. C. Lee.

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valuables of lodgment lodged at a court should be under the custody of the treasury sector of an agential bank of the national treasury. The purpose of the Article is to protect the benefits of the shareholders of the lodgment because a lodgment under the custody of the treasury sector of a bank is more secure than a lodgment in the business department of a bank. Furthermore, pursuant to Article 8 of the Lodgment Act, interest should be paid on the receiving by the court and saving at the treasury sector of an agential bank. According to a letter issued in reply to this matter by the Ministry of Finance, "Any deposit made into the national treasury can receive interest." This is in accordance with the content of Article 8 of the Lodgment Act, which provides that the money, negotiable securities and valuables of lodgment lodged in a court should be deposited into an agential bank of the national treasury.

益，交由代理國庫銀行之國庫部門保管，自較交由該行之營業部門保管更有保障。又查提存金應給付利息為提存法第八條所明定，茲經財政部函復國庫保管提存款亦可計息，衡之提存法第八條之規定正相符合，自以交由該行之國庫部門保管為宜。

Justice Ji-Dong Lin filed dissenting opinion.

本號解釋林大法官紀東提出不同意見書。

J. Y. Interpretation No.84（December 2, 1959）*

ISSUE: Will the official duties of a public functionary be automatically suspended if he is sentenced to deprivation of his civil rights and simultaneously to probation?

RELEVANT LAWS:

Article 17, Subparagraph 2, of the Public Functionaries Disciplinary Act（公務員懲戒法第十七條第二款）; Article 76 of the Criminal Code（刑法第七十六條）.

KEYWORDS:

final instance（確定判決）, civil death（褫奪公權刑）, probation（證明）, proclamation（宣告）.**

HOLDING: According to the final instance of the Criminal Code, a public functionary sentenced to civil death and probation should cease his function of office.

解釋文：公務員依刑事確定判決受褫奪公權刑之宣告者，雖同時諭知緩刑，其職務亦當然停止。

REASONING: Pursuant to Article 17, Subparagraph 2, of the Public Functionaries Disciplinary Act, Article 76 of the Criminal Code, and according to

解釋理由書：公務員依刑事確定判決受褫奪公權刑之宣告者，當然停止其職務，因罪科刑諭知緩刑者，須緩刑期滿緩刑之宣告未經撤銷時，其刑之

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the final instance of the Criminal Code, a public functionary sentenced to civil death should cease his function of office. For a person who has been granted probation even though he is guilty, the announcement of a term of imprisonment will lose its potency when probation expires and the announcement of probation is not rescinded. According to the final instance of the Criminal Code, if a public functionary is sentenced to civil death and is in the period of probation, the proclamation is still effective and the reason for ceasing his function of office still exists. Therefore, according to the probationary period stipulation, a public functionary should cease his function of office. Hence, J.Y. Interpretation No.56 does not exclude the adoption of Article 17, Subparagraph 2, of the Public Functionaries Disciplinary Act.

宣告始失其效力，此觀於公務員懲戒法第十七條第二款、刑法第七十六條之規定甚明，依刑事確定判決受褫奪公權刑之宣告者，雖同時諭知緩刑，在緩刑期內宣告既未失其效力，自難謂為其停職原因業經消滅，按之首開規定，公務員之職務當然停止，本院釋字第五十六號解釋並不排除公務員懲戒法第十七條第二款之適用。

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Pou-Yeh Hu and Justice Shi-Ding Chin joined.

本號解釋徐大法官步垣、胡大法官伯岳與金大法官世鼎共同提出不同意見書。

J. Y. Interpretation No.85（February 12, 1960）*

ISSUE: What is the basis for calculating the total number of delegates to the National Assembly?

RELEVANT LAWS:

Articles 30 and 174 of the Constitution（憲法第三十條、第一百七十四條）.

KEYWORDS:

National Assembly（國民大會）, total number of Delegates（代表總額）.**

HOLDING: Under the current circumstances, the "total number of National Assembly Delegates" as provided for in the Constitution shall be calculated based on the number of those delegates who were elected in accordance with the laws and are still able to convene.

解釋文：憲法所稱國民大會代表總額，在當前情形，應以依法選出而能應召集會之國民大會代表人數為計算標準。

REASONING: This Interpretation arises from two separate petitions by the Executive Yuan and the Secretariat of the National Assembly. Both petition-

解釋理由書：本件准行政院及國民大會秘書處先後以國民大會代表不能改選，其出缺者亦多無可遞補，國民大會第三次會議行將集會，即需依據國

* Translated by Professor Jau-Yuan Hwang.

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ers argue that it is infeasible to hold the reelection of the National Assembly Delegates and extremely difficult to fill most vacancies with substitutes. However, the Third Meeting of the National Assembly is soon to convene and the "total number of National Assembly Delegates" is the basis for fixing the quorum. Both petitioners therefore petitioned for constitutional interpretation to clarify such question. This Council finds that, at both the First and Second Meetings of the National Assembly, the "total number of National Assembly Delegates" as required in both the Constitution and relevant laws was calculated based on the "number of those delegates that shall be elected in accordance with the laws." Nevertheless, our state has lost the territory of the Chinese mainland and undergone tremendous changes for more than a decade. Many delegates have lost their freedom to move and can no longer attend the meetings. We are also unable to fill those vacancies with substitutes. Undoubtedly, all of the institutions established by the Constitution are supposed to exercise their respective powers. The framers of the Constitution

民大會代表總額計算集會人數，對於國民大會代表總額之計算標準發生疑義聲請解釋。查憲法及法律上所稱之國民大會代表總額在國民大會第一次會議及第二次會議時雖均以依法應選出代表之人數為其總額，但自大陸淪陷國家發生重大變故已十餘年，一部分代表行動失去自由，不能應召出席會議，其因故出缺者又多無可遞補，而憲法所設立之機構原期其均能行使職權，若因上述障礙致使國民大會不能發揮憲法所賦予之功能，實非制憲者始料所及，當前情況較之以往既顯有重大變遷，自應尊重憲法設置國民大會之本旨，以依法選出而能應召在中央政府所在地集會之國民大會代表人數為國民大會代表總額，其能應召集會而未出席會議者，亦應包括在此項總額之內。

certainly did not intend that circumstances such as the above might prevent the National Assembly from exercising its functions as granted by the Constitution. Since the present situation is very different from those in the past, we should respect the purposes of the Constitution in establishing the National Assembly. Therefore, the "total number of National Assembly Delegates" shall be calculated based on the number of those delegates who were elected in accordance with the laws and are still able to convene at the location of the Central Government. Those delegates who are able to convene but fail to attend the meetings shall be counted in fixing such a total number.

J. Y. Interpretation No.86（August 15, 1960）*

ISSUE: Shall High Courts and District Courts be subordinate to the Judicial Yuan as provided in Article 77 of the Constitution?

RELEVANT LAWS:

Articles 77 and 82 of the Constitution（憲法第七十七條、第八十二條）.

KEYWORDS:

the Judicial Yuan（司法院）, the High Court（高等法院）.**

HOLDING: Article 77 of the Constitution stipulates that the Judicial Yuan is the highest judicial organ of the State and holds the judicial power over trials of civil and criminal litigation, of which trials shall include civil and criminal litigation at courts of all levels. In view of the fact that different levels of courts and subsidiary courts below the High Court inclusively hold the judicial power over trials of civil and criminal litigation, these courts shall be subordinate to

解釋文：憲法第七十七條所定司法院為國家最高司法機關，掌理民事、刑事訴訟之審判，係指各級法院民事、刑事訴訟之審判而言。高等法院以下各級法院及分院既分掌民事、刑事訴訟之審判，自亦應隸屬於司法院。

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* Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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the Judicial Yuan.

REASONING: Article 77 of the Constitution stipulates that the Judicial Yuan is the highest judicial organ of the State and holds the judicial power over trials of civil and criminal litigation, the trials of which shall include trials of civil and criminal litigation at courts of all levels. In view of this fact, Article 82 of the Constitution, which stipulates that the structure of the Judicial Yuan and courts of all levels shall be organized by law and is incorporated into the chapter of the Judiciary intending to establish the consistency of the judicial system, contributes as cross-evidence. Based on this reason, all levels of courts and subsidiary courts below the High Court shall be subordinate to the Judicial Yuan. All relevant acts and regulations shall respectively be amended to comply with the concept of Article 77 of the Constitution.

解釋理由書：憲法第七十七條所定司法院為國家最高司法機關，掌理民事、刑事訴訟之審判。其所謂審判自係指各級法院民事、刑事訴訟之審判而言，此觀之同法第八十二條所定司法院及各級法院之組織以法律定之，且以之列入司法章中，其蘄求司法系統之一貫已可互證，基此理由則高等法院以下各級法院及分院自應隸屬於司法院，其有關法令並應分別予以修正，以期符合憲法第七十七條之本旨。

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王大法官之倧提出不同意見書。

J. Y. Interpretation No.87（December 9, 1960）*

ISSUE: What are the legal effects for an adoption carried out against the statutory restrictions on age?

RELEVANT LAWS:

Articles 72 and 1073 of the Civil Code（民法第七十二條及第一千零七十三條）.

KEYWORDS:

Revocation（撤銷）, indictment（起訴）, spirit of law（法意）.**

HOLDING: Pursuant to Article 1073 of the Civil Code, an adopter should be at least 20 years older than his adoptive child. Nevertheless, if the adoptive relationship violates the stipulation, it is certainly not invalid and revocation can only be filed for an adoptive relationship. Thus, the interpretation of Yuan-je Tze No.3120, Paragraph 5 (Judicial Yuan), should be upheld.

解釋文：收養子女違反民法第一千零七十三條收養者之年齡應長於被收養者二十歲以上之規定者，僅得請求法院撤銷之，並非當然無效。本院院解字第三一二零號第五項就此部分所為之解釋，應予維持。

REASONING: According to

解釋理由書：按收養子女違反

* Translated by Lawrence L. C. Lee.

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Yuan-je Tze No.3120 (Judicial Yuan), Paragraph 5, inferred from Yuan yuan No.2271, Article 1073 of the Civil Code has no stipulation similar to that of annulment of marriage against an adoptive relationship which violates the age restriction. However, marriage and adoption are acts which both involve relationships. Thus, the legal reason for annulling an illegal marriage and an illegal adoption are the same. Article 579 of the Code of Civil Procedure stipulates specific litigation to quash an adoption indictment, and the court determines whether there are grounds for such an indictment. However, the Civil Code does not stipulate specific litigation concerning an adoption indictment. Thus, an illegal adoption should fall under the same interpretation as that for an annulment of marriage. The Code of Civil Procedure was enacted after the enforcement of the Civil Code, and based on the spirit of said law, which stipulates specific litigation concerning an adoption indictment, what has already been elucidated should not be considered inapplicable. The abovementioned interpretation has been in force for a long time. If it

民法第一千零七十三條規定年齡之限制，業經本院院解字第三一二零號第五項參照本院院字第二二七一號解釋，以違反該條規定年齡限制之收養子女民法雖未設有類於撤銷結婚之規定，但結婚與收養子女同為發生身分關係之行為，關於撤銷違法結婚之規定在違法之收養亦有同一之法律理由，自應類推適用，況民事訴訟法第五百七十九條以下就撤銷收養之訴規定其特別訴訟程序，應以民法上認有撤銷收養之訴為前提，民法上既別無關於撤銷收養之訴之規定，則前開認為違法之收養，應類推適用關於違法結婚之撤銷程序之解釋，徵諸民法頒行後制定施行之民事訴訟法猶併就撤銷收養之訴規定其特別程序之法意，洵難謂為不當，解釋在案，此項解釋行之已久，若驟予變更，足使以前已經取得是項收養身分關係之多數人在家庭或社會發生種種糾紛甚至遭受無窮損害。至聲請解釋原函所指收養者別有非法利益之意圖，則屬民法第七十二條之問題，要與原解釋僅就違反民法第一千零七十三條規定收養年齡限制所為之解釋不生影響，不得執為聲請變更原解釋之論據。

were to be amended, it could harm many people who obtained adoptive relations under this interpretation and might cause family and social disputes. Concerning the petition stating that the adoptor has an illegal interest in this case, this issue should be considered under Article 72 of the Civil Code. It does not influence the adoption age restriction of Article 1073 of the Civil Code. Therefore, the original interpretation should be upheld.

Justice Shang-Kuan Shih filed dissenting opinion, in which Justice Ji-Jong Wang, Justice Yien-Cheng Shih, Justice Jou-Kang Jing, Justice Han Hu and Justice Fan-Kang Tseng joined.

本號解釋史大法官尚寬、王大法官之倧、史大法官延程、景大法官佐綱、胡大法官翰與曾大法官繁康共同提出不同意見書。

J. Y. Interpretation No.88（December 21, 1960）*

ISSUE: Is the "non-registrable loss" provision of the Act Governing the Issuance of Short-Term Government Bonds of 1959 exclusive of the application of the public notice procedure as provided in the Civil Code?

RELEVANT LAWS:

Article 725 of the Civil Code（民法第七百二十五條）; Article 3 of the Act Governing the Issuance of Short -Term Government Bonds of 1959（中華民國四十八年短期公債發行條例第三條）.

KEYWORDS:

The proceeding of public summons（公示催告程序）, register loss（掛失）, issuer（發行人）, possessor（持有人）.**

HOLDING: Article 725 of the Civil Code provides that a proceeding of public summons is to ensure the interests of confidentiality of those who legally possess security. Article 3 of the Act Governing the Issuance of Short -Term Government Bonds of 1959 had only stipulated the circumstance of a person who

解釋文：民法第七百二十五條所定之公示催告程序乃以保障無記名證券合法持有人之利益。中華民國四十八年短期公債發行條例第三條僅有「不得掛失」之規定，自不能據以排除上開民法條文之適用。

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* Translated by Li-Chih Lin, Esq., J.D.

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is "unable to register loss." Nevertheless, it shall not supersede the contents of the former Civil Code.

REASONING: The phrase "unable to register loss" means that the loss of security confidentiality should not be reported to the security issuer. As a proceeding of public summons is necessary when security confidentiality has been lost, the court may, on the application of the latest possessor, declare that such possessor may register his or her security rights to the court by a proceeding of public summons; after receiving the invalidating judgment, the possessor may reclaim the right which depends on the security issuer, so there is a difference between a proceeding of public summons and the registration of loss. Based upon the former reason, the stipulation of inability to register loss in Article 3 of the Act Governing the Issuance of Short -Term Government Bonds of 1959 only means that the security issuer is not responsible for registering the loss incurred by the possessor. Since the Act has not superseded Article 725 of the Civil Code, the stipula-

解釋理由書：查所謂「不得掛失」係指不得向無記名證券發行人掛失止付而言，至公示催告係指無記名證券之最後持有人於喪失其所持之證券時，得聲請法院以公示催告權利關係人向法院申報權利，經除權判決後得對發行人主張證券上之權利，故掛失與公示催告有別，根據前開理由，中華民國四十八年短期公債發行條例第三條「不得掛失」之規定，應祇能據以認定發行人對持有人不負掛失止付之義務，該條例既無排除民法第七百二十五條之明文，自難祇據該條例「不得掛失」之規定，遂謂持有人不得聲請公示催告。

tion that the possessor is unable to register his or her loss with the issuer shall not deny the possessor his or her right for registration of loss.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋金大法官世鼎提出不同意見書。

J. Y. Interpretation No.89（February 10, 1961）*

ISSUE: Which court has the jurisdiction over a dispute arising from the revocation or rescission of liberated public farmland?

RELEVANT LAWS:

Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）; Article 2 of the Court Organic Act（法院組織法第二條）.

KEYWORDS:

Revocation（撤銷）, open up receive（放領）, receive（承領）, person who has right to receive（承領人）.**

HOLDING: Pursuant to the Implemental Guide on the Release of Government-Owned Tillable Land to Self-tilling Farmers in the Taiwan Province, the government authority extends cultivation of public lands to farmers. Disputes that arise from revocation or dissolution of opening up these lands for cultivation should be resolved by civil procedure.

解釋文：行政官署依臺灣省放領公有耕地扶植自耕農實施辦法，將公有耕地放領於人民，其因放領之撤銷或解除所生之爭執，應由普通法院管轄。

REASONING: In order to help

解釋理由書：查臺灣省放領公

* Translated by Lawrence L. C. Lee.

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farmers, the government has enacted the Implemental Guide on the Release of Government-Owned Tillable Land to Self-tilling Farmers in the Taiwan Province and extended cultivation of public lands to farmers based on it. Whether a person receives such land or not, he who has the right to receive it can choose to receive private cultivated lands of his own free will. Reception of such land is not mandatory. To open up such land for cultivation is a commercial contract of private law between the county and the person who has the right to receive such land. Pursuant to Article 14, Paragraph 4, of the Implemental Guide on the Release of Government-Owned Tillable Land to Self-tilling Farmers in the Taiwan Province, a commercial contract has been established when a certificate for issuance of land has been received. Disputes over revocation or dissolution of the reception of such land which arise from this contract should be resolved by civil procedure. Disputes which arise from enforcing the Land-to-the-Tiller Act are under the jurisdiction of the administrative court. The Supreme Court and administrative court have both agreed with this conclusion.

有耕地扶植自耕農實施辦法係政府為扶植自耕農而將公有耕地放領於耕作人，私有耕作其是否承領，承領人本可自由選擇，並非強制，其放領行為屬於代表國家與承領人訂立私法上之買賣契約，經依該辦法第十四條第四款發給承領證書買賣契約即行成立，人民對於是項契約之撤銷或解除而發生之爭執，自應循民事訴訟程序以求解決。至因實施耕者有其田條例土地收回所生之爭執，向由行政法院管轄，此為最高法院及行政法院所不爭，自無庸解釋。

Justice Shi-Ding Chin filed dissenting opinion, in which Justice Pu-Yuan Hsu joined.

Justice Ji-Dong Lin filed dissenting opinion, in which Justice Lu Chu Ger and Justice Ji-Jong Wang joined.

本號解釋金大法官世鼎與徐大法官步垣共同提出不同意見書；林大法官紀東、諸葛大法官魯與王大法官之倧共同提出不同意見書。

J. Y. Interpretation No.90（April 26, 1961）*

ISSUE: What is the meaning of *flagrante delicto* as provided under the Constitution? Who may make the arrest therefor? Is any bribe received by an offender in corruption considered as spoils?

RELEVANT LAWS:

Article 8 of the Constitution（憲法第八條）; Article 88 of the Code of Criminal Procedure （刑事訴訟法第八十八條）.

KEYWORDS:

a person in *flagrante delicto*（現行犯）, hot pursuit and arrest without a warrant（逕行逮捕）, in commission of an offense（犯罪在實施中）, undetected offenses（未曾發覺之犯罪）, investigative authority（偵查權）, destroy criminal evidence（湮滅罪證）, stolen property（贓物）, the offense of receiving stolen property（贓物罪）.**

HOLDING: (1) The term "a person in *flagrante delicto*" has the same meaning in the Constitution and in Article 88, Paragraphs 2 and 3, of the Code of Criminal Procedure.

解釋文：一、憲法上所謂現行犯係指刑事訴訟法第八十八條第二項之現行犯，及同條第三項以現行犯論者而言。

(2) Any private citizen may engage

二、遇有刑事訴訟法第八十八條

* Translated by Li-Chih Lin, Esq., J.D.

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in hot pursuit and arrest a person in *flagrante delicto* without a warrant if the circumstances prescribed in Article 88, Paragraph 2, of the Code of Criminal Procedure occur. The privilege granted to a private citizen to engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant is not limited to offenses undetected by an officer with investigative authority.

所定情形，不問何人均得逕行逮捕之，不以有偵查權人未曾發覺之犯罪為限。

(3) A bribe accepted by a public official in violation of his official duties shall be considered stolen property as prescribed in Article 88, Paragraph 3, Subparagraph 2, of the Code of Criminal Procedure. By accepting a bribe sufficient to warrant a suspicion that he is an offender, a public official may be considered to be a person in *flagrante delicto* and subject to the provisions set forth in Article 88 of the Code of Criminal Procedure.

三、犯瀆職罪收受之賄賂，應認為刑事訴訟法第八十八條第三項第二款所稱之贓物。賄賂如為通貨，依一般觀察可認為因犯罪所得，而其持有並顯可疑為犯罪人者，亦有上述條款之適用。

REASONING: (1) Article 8 of the Constitution specifically provides that the arrest of a person in *flagrante delicto* shall be prescribed in other laws. Article 88, Paragraph 1, of the Code of Criminal Pro

解釋理由書：(一)憲法第八條既有現行犯之逮捕由法律另定之明文，刑事訴訟法第八十八條第一項規定現行犯不問何人得逕行逮捕之，其第二項復謂犯罪在實施中或實施後即時發覺者為

cedure provides that a private citizen may engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant. Article 88, Paragraph 2, of the Code of Criminal Procedure also provides that a person in *flagrante delicto* is a person who is discovered during the commission of an offense or immediately thereafter. Article 88, Paragraph 3, of the Code of Criminal Procedure further provides that a person is considered to be in *flagrante delicto* if one of the following circumstances occurs: (a) He is pursued by people who say he is an offender; or (b) He is found in possession of a dangerous weapon, stolen property, or other items sufficient to warrant a suspicion that he is an offender, or his person or clothes show(s) traces of crime to warrant a suspicion that he is an offender. Therefore, a person in *flagrante delicto* referred to in Article 8 or other provisions of the Constitution includes a person considered to be in *flagrante delicto* under Article 88, Paragraph 3, of the Code of Criminal Procedure. A person in *flagrante delicto* referred to in the Constitution shall not be construed to exclude a person considered

現行犯，而其第三項並規定有下列情形之一者以現行犯論，一為被追呼為犯罪人者，二為因持有兇器、贓物或其他物件、或於身體、衣服等處露有犯罪痕跡，顯可疑為犯罪人者，是憲法第八條所稱之現行犯，係包括刑事訴訟法第八十八條第三項以現行犯論者在內，憲法其他各條所稱之現行犯其涵義亦同，殊難謂為應將以現行犯論者排除在外，蓋在憲法上要不容有兩種不同意義之現行犯並存。(二)案件在偵查中如發覺其他犯罪之人，固得依法傳拘，但遇有刑事訴訟法第八十八條所定情形，則不問何人均得逕行逮捕之，不以有偵查權人未曾發覺之犯罪為限，因該條規定旨在防止犯人逃亡、湮滅罪證，並未設有此項限制。(三)犯瀆職罪收受之賄賂，雖非刑法贓物罪之贓物，但係因犯罪所得應認為刑事訴訟法第八十八條第三項第二款所稱之贓物，賄賂如為通貨，原有代替物之性質，若依一般觀察可認為因犯罪所得而其持有並顯可疑為犯罪人者，自亦有上述條款之適用。

to be in *flagrante delicto* under Article 88, Paragraph 3, of the Code of Criminal Procedure because a person in *flagrante delicto* shall have one single meaning under the Constitution. (2) While a person who is suspected to be an offender during a criminal investigation may be arrested by an officer based on a warrant issued in accordance with the law, any private citizen may also engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant if the circumstances prescribed in Article 88, Paragraph 2, of the Code of Criminal Procedure occur. The privilege granted to a private citizen to engage in hot pursuit and arrest a person in *flagrante delicto* without a warrant under Article 88, Paragraph 2, of the Code of Criminal Procedure is not limited to offenses undetected by an officer with investigative authority. The primary purpose of enacting Article 88, Paragraph 2, of the Code of Criminal Procedure is to prevent an offender from fleeing or destroying criminal evidence. No limitation is set forth in that provision as to what type of offender a private citizen may engage in hot pursuit of and arrest in *flagrante delicto* without a

warrant based on the privilege granted. (3) While a bribe accepted by a public official in violation of his official duties is not stolen property as referred to under the offense of receiving stolen property under the Criminal Code, the bribe nevertheless shall be considered stolen property as prescribed in Article 88, Paragraph 3, Subparagraph 2, of the Code of Criminal Procedure because it is illegally obtained. By accepting a bribe sufficient to warrant a suspicion that he is an offender, a public official may be considered to be a person in *flagrante delicto* and subject to the provisions set forth in Article 88 of the Code of Criminal Procedure.

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 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.

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。

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

Justice Fan-Kang Tseng filed dissenting opinion.

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。

J. Y. Interpretation No.92（August 16, 1961）*

ISSUE: Is the Public Functionary Service Act applicable to the board directors and supervisors representing civilian shareholders in a state-owned enterprise?

RELEVANT LAWS:

Article 24 of the Public Functionary Service Act（公務員服務法第二十四條）; the Act Governing the Management of State-owned Enterprises（國營事業管理法）.

KEYWORDS:

state-owned enterprise（公營事業機關）, directors（董事）, supervisors（監察人）, civilian shareholder（民股）, government employment（公職）.**

HOLDING: The Public Functionary Service Act is applicable to the directors and supervisors representing civilian shareholders in a state-owned enterprise.

解釋文：公營事業機關代表民股之董事、監察人，應有公務員服務法之適用。

REASONING: Article 24 of the Public Functionary Service Act explicitly provides that the Public Functionary Ser-

解釋理由書：公營事業機關服務人員均適用公務員服務法為該法第二十四條所明定，其代表民股之董事監察

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vice Act is applicable to all personnel working for a state-owned enterprise. The directors and supervisors representing civilian shareholders in a state-owned enterprise are personnel working for a state-owned enterprise. Therefore, the directors and supervisors representing civilian shareholders in a state-owned enterprise fall within the scope of government employment (See Interpretations Yuan-tze Nos. 24 and 27). As for Interpretation Yuan-je Tze No. 3486, since it was decided prior to the promulgation of the Act Governing the Management of State-owned Enterprises, it is therefore not applicable to any enterprise whose government capital exceeds 50 percent of the total capital of such enterprise.

人既係公營事業機關之服務人員，自亦不能除外（參照本院釋字第二十四號及第二十七號解釋）。至本院院解字第三四八六號解釋係國營事業管理法公布前所為之解釋，對於政府資本超過百分之五十之事業自不適用。

Justice Ji-Dong Lin filed dissenting opinion, in which Justice Han Hu, Justice Lu Chu Ger and Justice Jou-Kang Jing joined.

本號解釋林大法官紀東、胡大法官翰、諸葛大法官魯與景大法官佐綱共同提出不同意見書。

J. Y. Interpretation No.93（December 6, 1961）*

ISSUE: Is a light and portable track continuously attached to the land for certain economic purposes considered as a real property?

RELEVANT LAWS:

Article 66, Paragraph 1, of the Civil Code（民法第六十六條第一項）.

KEYWORDS:

Light rail（輕便軌道）, immovable property（不動產）.**

HOLDING: A light rail that is adjacent to contiguous plots of land and has some kind of economic purpose is considered to be immovable property, unless it is used for some temporary purpose.

解釋文：輕便軌道除係臨時敷設者外，凡繼續附著於土地而達其一定經濟上之目的者，應認為不動產。

REASONING: Pursuant to Article 66, Paragraph 1, of the Civil Code, "a fixed object" refers to something that is not a component of contiguous plots of land and is continuously adjacent to such land, has some kind of economic purpose

解釋理由書：查民法第六十六條第一項所謂定著物指非土地之構成分，繼續附著於土地而達一定經濟上目的不易移動其所在之物而言，輕便軌道除係臨時敷設者外，其敷設出於繼續性者，縱有改建情事，有如房屋等，亦不

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and is not easily moved. Unless it is used for some temporary purpose, a light rail should be continuously adjacent to land. Even if a structure is built on a light rail (such as a house), the light rail does not lose its nature of a fixed object. Thus, a light rail should be considered as immovable property.

失其為定著物之性質，故應認為不動產。

Justice Shi-Ding Chin filed dissenting opinion.

Justice Fan-Kang Tseng filed dissenting opinion.

本號解釋金大法官世鼎、曾大法官繁康分別提出不同意見書。

J. Y. Interpretation No.94（February 14, 1962）*

ISSUE: May a public functionary sentenced to deprivation of civil rights eligible to act as a lawyer?

RELEVANT LAWS:

Article 2, Subparagraph 4, of the Lawyer's Act（律師法第二條第四款）; Article 36, Subparagraph 1, of the Criminal Code（刑法第三十六條第一款）.

KEYWORDS:

civil death（褫奪公權）, public servant（公務員）, punishment of dismissing from office（受撤職之懲戒處分）.**

HOLDING: When civil death has been pronounced on a civil servant because he has committed repeat offenses, the punishment of dismissal from office is included in civil death. However, Article 2, Subparagraph 4, of the Lawyer's Act does not apply to this situation. Interpretation Yuan Tzu No. 2658 should thus be supplemented.

解釋文：公務員因同一行為經宣告褫奪公權者，其應受撤職之懲戒處分已為褫奪公權所吸收，初非無律師法第二條第四款之適用，本院院字第二六五八號解釋應予補充。

REASONING: Pursuant to Ar-

解釋理由書：按刑法第三十六

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ticle 36, Subparagraph 1, of the Criminal Code, pronouncing civil death on a person means to deprive that person of the opportunity to be qualified as a public servant. The effect of civil death is more serious than the punishment of dismissal from office. When civil death is pronounced on a public servant because he has committed repeat offenses, the punishment of dismissal from office is included in civil death. In procedure, such person should not be punished again. The stipulation of Article 25 of the Public Functionaries Disciplinary Act is clear on this matter. However, Article 2, Subparagraph 4, of the Lawyer's Act does not apply to this situation. Interpretation Yuan Tzu No. 2658 should thus be supplemented.

條第一款規定褫奪公權係褫奪為公務員之資格，其效果原較撤職之懲戒處分為重，公務員既因同一行為經宣告褫奪公權，則其應受撤職之懲戒處分即為褫奪公權所吸收，在程序上自無庸再為懲戒處分，此觀於公務員懲戒法第二十五條之規定至為明顯，實難排除律師法第二條第四款之適用，本院院字第二六五八號解釋應予補充。

Justice Ji-Jong Wang filed dissenting opinion, in which Justice Jou-Kang Jing, Justice Fan-Kang Tseng and Justice Yien-Wou Huang joined.

本號解釋王大法官之倧、景大法官佐綱、曾大法官繁康與黃大法官演渥共同提出不同意見書。

J. Y. Interpretation No.95（February 28, 1962）*

ISSUE: Are the passive qualifications for a public functionary still applicable upon his or her appointment?

RELEVANT LAWS:

Article 17, Subparagraph 2, of the Public Functionaries Appointment Act（公務人員任用法第十七條第二款）.

KEYWORDS:

negative qualification（消極資格）, legislative purpose（立法本意）.**

HOLDING: The restriction stipulated in Article 17, Subparagraph 2, of the Public Functionaries Appointment Act applies to a public servant who is guilty of derelict behavior after appointment .

解釋文：公務人員任用法第十七條第二款所定之限制，即在任用後發生者亦有其適用。

REASONING: Article 17, Subparagraph 2, of the Public Functionaries Appointment Act stipulates the negative qualifications of a public servant. Article 2 of the Public Functionaries Disciplinary

解釋理由書：查公務人員任用法第十七條係規定公務人員不得具有之消極資格，與公務員懲戒法第二條所定懲戒原因之限於違法廢弛職務或其他失職行為者其意旨顯有不同，其有公務人

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Act stipulates reasons that are limited to illegal use of position and other derelict behavior. The main purposes of the Functionaries Appointment Act and the Public Functionaries Disciplinary Act are different. A person who is guilty of the above-mentioned acts cannot be a public servant. However, if such acts are committed by an appointed public servant, he can be removed from office based on the legislative purpose. Pursuant to J.Y. Interpretation No.66, if a public servant has been granted probation after being found guilty of corruption, he is still considered a public servant after the expiration of the probation. However, he will be demoted and his salary will be reduced (See Yuan Tzu Interpretation No. 2451).

員任用法第十七條第二款所定之情形者既不得任為公務人員，則於被任為公務人員後而始發生該項情事時，依立法本意自非不得免去其現職，至公務人員因貪污行為經判決確定受緩刑之宣告者，依本院釋字第六十六號解釋，於緩刑期滿再任公務人員時，其所受降級減俸之懲戒處分仍應依法執行（參照本院院字第二四五一號解釋）。

Justice Ji-Dong Lin filed dissenting opinion.

本號解釋林大法官紀東提出不同意見書。

J. Y. Interpretation No.96（June 27, 1962）*

ISSUE: Is bribery considered as an offense of dereliction of duty?

RELEVANT LAWS:

Article 122, Paragraph 3, of the Criminal Code（刑法第一百二十二條第三項）.

KEYWORDS:

offering bribes（行賄）, malfeasance（瀆職）, aiding or abetting bribery（幫助或教唆）, specific identity （特定身分）.**

HOLDING: The conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance in nature. Any person who aids and abets in the conduct of offering bribes is also not considered to have committed an offense of malfeasance.

解釋文：刑法第一百二十二條第三項之行賄行為，性質上不屬於瀆職罪，其幫助或教唆者亦同。

REASONING: To be guilty of the offense of malfeasance, the offender must have a specific identity (civil

解釋理由書：查刑法瀆職罪以具有特定身分之人為犯罪主體，刑法第一百二十二條第三項所規定之行賄行為

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servant). However, in regard to the offering of bribes prescribed in Article 122, Paragraph 3, of the Criminal Code, the offender need not have a specific identity (civil servant). Thus, the elements of offense, criminal sanction, and reduction or exemption of sentence for those offering bribes are different from the elements of offense, criminal sanction, and reduction or ex-emption of sentence for a civil servant who receives bribes. The conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code is a distinct offense. The provisions set forth in Article 31, Paragraph 1, of the Criminal Code are therefore not applicable to the conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code (See J.Y. Interpretation No. 2729). The aiding and abetting of the conduct of offering bribes shall be respectively governed by the provisions set forth in Articles 29 and 30 of the Criminal Code. The provisions set forth in Article 31, Paragraph 1, of the Criminal Code are therefore not applicable to the aiding and abetting of the conduct of offering bribes. Any person who offers bribes without requir-

其犯罪主體既不須具特定身分，而其犯罪構成要件處罰及刑之減免均與公務員受賄行為不同，乃係獨立犯罪，並不適用刑法第三十一條第一項之規定（參照本院院字第二七二九號解釋），幫助或教唆行賄應分別適用刑法第二十九條、第三十條之規定，更無適用刑法第三十一條第一項規定之餘地，行賄人之行求交付賄賂不問對方之承諾或收受與否，均獨立構成犯罪，而對於賄賂要求之期約非必構成犯罪，故行賄行為與受賄行為二者性質不同，其間並無必要共犯之關係，亦不適用一般關於共犯之規定，依上開說明，應不屬於瀆職罪之內，刑法第一百二十二條將行賄行為與受賄行為並列者，乃為立法上之便利，其情形正與第一百三十二條第三項並列非公務員洩漏國防以外之秘密罪相同。

ing the offeree to give/do something in return or to accept bribes is considered to have committed an offense of bribery. On the other hand, any person who demands bribes within a specific time, has not necessarily committed an offense of bribery. Since the conduct of offering bribes and the conduct of receiving bribes are different in nature, the person who offers bribes and the person who receives bribes are not necessarily accomplices of bribery. The provisions governing accomplices are therefore not applicable to the person who offers bribes and the person who receives bribes. For the aforementioned reasons, the conduct of offering bribes prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance. The conduct of offering bribes and the conduct of receiving bribes are listed together in Article 122 of the Criminal Code for legislative convenience only. The same ruling is applicable to the disclosure of classified national security information by a civilian listed in Article 132, Paragraph 3, of the Criminal Code together with the disclosure of classified national security information by a civil servant.

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Pou-Yeh Hu, Justice Fan-Kang Tseng and Justice Shi-Ding Chin joined.

本號解釋徐大法官步垣、胡大法官伯岳、曾大法官繁康與金大法官世鼎共同提出不同意見書。

J. Y. Interpretation No.97（September 7, 1962）*

ISSUE: What are the requirements for the notice of an administrative disciplinary action to take effect?

RELEVANT LAWS:

Article 1; Article 2, Paragraph 1, Subparagraph 5; Article 3; Article 4; and Article 6 of the Act Governing the Forms of Official Documents（公文程式條例第一條、第二條第一項第五款、第三條、第四條及第六條）.

KEYWORDS:

administration sanction（行政官署）.**

HOLDING: An administrative sanction, which is authorized by an administrative authority, is a notification whose contents include a disciplinary action. This notification is one kind of official document according to the Act Governing the Forms of Official Documents. Unless expressly stipulated by other regulations, the notification should conform to the applications and restrictions stated in the said Act. If an official document con-

解釋文：行政官署對於人民所為之行政處分製作以處分為內容之通知。此項通知原為公文程式條例所稱處理公務文書之一種。除法律別有規定者外，自應受同條例關於公文程式規定之適用及限制，必須其文書本身具備法定程式始得謂為合法之通知。

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forms to the requirement of legal form, it is considered to be a legal notification.

REASONING: An administrative sanction, which is authorized by an administrative authority, is a notification whose contents include a disciplinary action. This notification is made because of an official matter and is equivalent to an official document according to the Act Governing the Forms of Official Documents. Unless expressly stipulated by other regulations, it should conform to the applications and restrictions stated in the said Act. When a law does not stipulate the form of a document, the document should conform to legal form. These are our interpretations of Article 1; Article 2, Paragraph 1, Subparagraph 5; Article 3; Article 4 and Article 6 of the Act Governing the Forms of Official Documents.

解釋理由書：行政官署對於人民所為之行政處分製作以處分為內容之通知，此項通知係因處理公務所作成，核與公文程式條例所謂公文書之性質相當，除法律別有規定者外，其應受關於公文程式規定之適用及限制至為明顯，在法律別無規定時必須其文書本身具備法定程式始為合法，此為公文程式條例第一條、第二條第一項第五款、第三條、第四條及第六條各規定所生之當然解釋。

J. Y. Interpretation No.98（October 17, 1962）*

ISSUE: Is the provision of the Criminal Code governing "combined punishment for multiple offenses" applicable to an offense committed after conviction of those prior offenses?

RELEVANT LAWS:

Articles 50 and 53 of the Criminal Code（刑法第五十條及第五十三條）; Article 481 of the Code of Criminal Procedure（刑事訴訟法第四百八十一條）.

KEYWORDS:

Combination of sentences for multiple offenses（數罪併罰）, revocation of the probation （撤銷緩刑）.**

HOLDING: The regulations governing "combination of sentences for multiple offenses" are not applicable to a defendant who committed another offense after he was convicted of those prior offenses. For those defendants who were sentenced to imprisonment for an offense committed while on probation, such term of imprisonment and any period of reimprisonment that the defendants were

解釋文：裁判確定後另犯他罪，不在數罪併罰規定之列，雖緩刑期內更犯者，其所科之刑亦應於緩刑撤銷後合併執行。

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* Translated by Li-Chih Lin, Esq., J.D.

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required to serve upon the revocation of their probation shall be executed concurrently.

REASONING: According to Article 50 of the Criminal Code, combined punishments are imposed on a defendant who is convicted of multiple offenses. The regulations governing "combination of sentences for multiple offenses" are not applicable to a defendant who committed another offense after he was convicted of those prior offenses. The subsequent sentence and the former sentence shall be executed concurrently. For those defendants who had intentionally committed an offense while on probation and were sentenced to a definite term of imprisonment, such term of imprisonment and any period of reimprisonment that the defendants were required to serve upon the revocation of their probation shall be executed concurrently. The judge does not need to decide the term of imprisonment pursuant to Article 53 of the Criminal Code and Article 481 of the Code of Criminal Procedure.

解釋理由書：查數罪併罰依刑法第五十條之規定，應以裁判確定前犯數罪者為限，倘為裁判確定後所犯，則與數罪併罰規定無涉，其所科之刑僅得與前科合併執行，其於緩刑期內更故意犯罪受有期徒刑以上刑之諭知者，應於撤銷前罪緩刑之宣告後合併執行其刑，無庸依刑法第五十三條刑事訴訟法第四百八十一條定其應執行之刑。

J. Y. Interpretation No.99（December 19, 1962）*

ISSUE: How should the forgery or alteration of New Taiwan Dollar be punished?

RELEVANT LAWS:

Article 3 of the Act Governing the Punishment for Damaging National Currency（妨害國幣懲治條例第三條）; J.Y. Interpretation No.63（司法院釋字第六十三號解釋）.

KEYWORDS:

Counterfeit（偽造）, forgeries（偽造）, New Taiwan Dollar（新臺幣）, period of martial（動員戡亂時期）.**

HOLDING: After the date on which the Central Bank of China entrusted the issuance of New Taiwan Dollars to the Bank of Taiwan, a person who counterfeits or forges New Taiwan Dollars should be punished for violating the Act Governing the Punishment for Damaging National Currency.

解釋文：臺灣銀行發行之新臺幣，自中央銀行委託代理發行之日起，如有偽造變造等行為者，亦應依妨害國幣懲治條例論科。

REASONING: New Taiwan Dollars, which are now issued by the

解釋理由書：臺灣銀行發行之新臺幣原係地方性之貨幣，惟自中央銀

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Bank of Taiwan, originally were local currency. However, after the date on which the Central Bank of China authorized the Bank of Taiwan as the agency to issue New Taiwan Dollars, the Central Bank of China is responsible for the casting and preservation of New Taiwan Dollars. The cost of issuing New Taiwan Dollars should thus be borne by the Central Bank of China. Assets accumulated from, and debts incurred for, the issuance of New Taiwan Dollars belong to the Central Bank of China based on the calculation of public and private accountants. Thus, after the date on which the Bank of Taiwan became the agency to issue New Taiwan Dollars on behalf of the Central Bank of China, the New Taiwan Dollars issued by the Bank of Taiwan became the national currency according to the Act Governing the Punishment for Damaging National Currency. In order to maintain the significant benefit of Taiwan's national finances and economy during the period of martial law, any person who counterfeits or forges New Taiwan Dollars should be punished for violating the said Act. Furthermore, this explanation [J. Y. Interpretation

行委託臺灣銀行代理發行後，其印鑄存儲由中央銀行辦理，發行費用由中央銀行負擔，發行之資產及負債均屬中央銀行，公私會計之處理復以新臺幣計算，是新臺幣自中央銀行委託臺灣銀行代理發行之日起允宜認為具有妨害國幣懲治條例所稱國幣之功能，如有偽造、變造等行為者，亦應依該條例論科，以維護動員戡亂時期國家財政經濟上之重大利益，本院釋字第六十三號解釋，合予補充釋明。

No.99] should be considered as supplementary to J.Y. Interpretation No.63.

Justice Cheng-Ming Huang filed dissenting opinion.

本號解釋黃大法官正銘提出不同意見書。

J. Y. Interpretation No.100（February 27, 1963）*

ISSUE: Is it legal for the rules of a company's Article of Incorporation to stipulate a higher threshold for the number of stockholders represented in a shareholders' meeting or for the number of votes required?

RELEVANT LAWS:

Articles 246 (277) and 264 (316) of the Company Act（公司法第二百七十七條及第三百十六條）.

KEYWORDS:

a meeting of shareholders（股東大會）, the number of stockholders present（出席股東人數）, the number of votes required（表決權數）, a majority of shareholders（過半數股東）, the resolution to amend its Article of Incorporation（變更公司章程之決議）, the resolutions of dissolution or merger of the company（公司解散或合併之決議）.**

HOLDING: The number of stockholders present and the number of votes required stipulated in Article 246, Paragraph 2 (as amended Article 277, Paragraph 2, of the current Company Act) and Article 264 of the Company Act (as

解釋文：公司法第二百四十六條第二項（現行法第二百七十七條第二項）及第二百六十四條（現行法第三百十六條）所定股東會之出席股東人數與及表決權數，均係指所需之最低額而言。如公司訂立章程，規定股東出席人

* Translated by John C. Chen, Attorney at Law.

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amended Article 316 of the Act) refer to a minimum number required. As a result, it is not illegal to have the number of stockholders present and the number of votes required under a company's Articles of Incorporation higher than the legal minimum requirement.

數及表決權數較法定所需之最低額為高時，自非法所不許。

REASONING: Pursuant to Article 246, Paragraph 2, of the Company Act, the resolution of the meeting of shareholders to amend its Articles of Incorporation should be adopted by a majority of shareholders at a meeting attended by shareholders representing over two-thirds of the total number of issued shares. In addition, pursuant to Article 264 of the Company Act, a resolution for the dissolution or merger of the company shall be adopted by a majority vote at a meeting of shareholders attended by shareholders representing over three-fourths of the total number of issued shares. These indicate the minimum number of stockholders present and the number of votes required. These two Articles also do not stipulate any restriction on raising a minimum number. As a result, where stricter criteria

解釋理由書：查公司法第二百四十六條第二項規定股東會之決議應有代表股份總數三分之二以上之股東出席及出席股東過半數之同意，第二百六十四條規定股東會之決議應有代表股份總數四分之三以上之股東出席及出席股東表決權過半數之同意，均係對股東出席人數及表決權數僅限定其最低額，而於最低額之提高並無限制，故公司如訂立章程規定股東會股東出席人數及表決權數較法定所需最低額為高時，自非法所不許。

for the total number of shares represented by shareholders presented at a shareholders' meeting and the number of votes required to pass a resolution as referred to in the aforementioned two Articles are specified in the Articles of Incorporation, such stricter criteria are not illegal.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王大法官之倧提出不同意見書。

J. Y. Interpretation No.101（May 22, 1963）*

ISSUE: Is the Public Functionary Service Act applicable to a paid board director or supervisor representing civilian shareholders in a state-owned enterprise?

RELEVANT LAWS:

Article 24 of the Public Functionary Service Act（公務員服務法第二十四條）; J.Y. Interpretation No. 92（司法院釋字第九十二號）.

KEYWORDS:

directors（董事）, supervisors（監察人）, state-owned organization（公營事業機關）, salary/award （薪俸）.**

HOLDING: J.Y. Interpretation No. 92 provides that the Public Functionary Service Act applies to members of the directors and supervisors of a state-owned organization, who are chosen as directors or supervisors on behalf of a private legal entity. The foregoing applies only to those who receive a salary or award from the state-owned organization.

解釋文：本院釋字第九十二號解釋，所稱公營事業機關代表民股之董事、監察人，應有公務員服務法之適用者，係指有俸給之人而言。

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* Translated by Wei-Feng Huang.

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REASONING: The abovementioned persons are considered public functionaries. They are thus subject to the Public Functionary Service Act under Article 24 of that Act. However, the application of Article 24 is limited to those who receive a salary or award from the state-owned organization. So if the board member or supervisor of a state-owned organization, who is chosen as a director or supervisor on behalf of the individual shareholders of a private legal entity, does not receive a salary or award from the state-owned organization, Article 24 is inapplicable. The foregoing supplements J.Y. Interpretation No.92.

解釋理由書：查公營事業機關代表民股之董事監察人，既係公營事業機關之服務人員，依公務員服務法第二十四條之規定，自應有公務員服務法之適用。惟該條係以公營事業機關受有俸給之服務人員為限，如代表民股之董事監察人，未受有俸給者，自無該法之適用。本院釋字第九十二號解釋，應予補充說明。

J. Y. Interpretation No.102（August 14, 1963）*

ISSUE: Under what circumstances should the president or general manager of a ship company be held criminally liable for professional negligence?

RELEVANT LAWS:

Article 40 of the Maritime Commercial Act（海商法第四十條）; Article 28 of the Seamen Service Regulation（海員服務規則第二十八條）.

KEYWORDS:

shipwreck（船舶失事）, maritime accident（海上事故）, criminal liability（刑事責任）, departure notice or authorization（開航通知書）. **

HOLDING: When a shipwreck or other maritime accident occurs, the criminal liability does not per se rest on the chairman of the directors or the president of the relevant company for issuing a departure notice or authorization for the ship. However, he or she will be held criminally liable for wrongfully precipitating or hastening the ship's departure which results in a shipwreck or maritime

解釋文：船舶發生海難，輪船公司董事長、總經理，並不因須發開航通知書，而當然負刑法上業務過失責任。但因其過失催促開航，致釀成災害者，不在此限。

* Translated by Wei-Feng Huang.

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accident.

REASONING: Article 40 of the Maritime Commercial Act states: "The captain is responsible for the ship's operation at sea." The captain is to subject him/herself to the employer company's instruction and surveillance, provided that they fall within his/her scope of duty. Accordingly, Article 28 of the Seamen Service Regulation provides: "Departure or movement of the ship is only permissible with a departure or movement authorization notice." This departure authorization notice authorizes the departure of the ship. Should the ship then be involved in a maritime accident or shipwreck, the chairman of the directors or the president is not to be held per se negligent under the Criminal Code for issuing the authorization notice. However, the foregoing does not apply to the situation where the accident occurred as a result of the chairman's or the president's wrongful precipitating or hastening of the ship's departure.

解釋理由書：海商法第四十條規定：「船舶之指揮，僅由船長負其責任。」惟因船長受僱於輪船公司，在業務範圍內，自應受其指揮監督，故海員服務規則第二十八條規定：「船舶開航或移泊，必須取得所屬公司或代理處開航通知書或移泊通知書始可開航或移泊。」此項開航通知書係通知可以開航，輪船開航後，雖發生海難，輪船公司之董事長、總經理，並不因執行業務須發開航通知書，而當然負刑法上業務過失責任。但因其過失催促開航，致釀成災害者，不在此限。

J. Y. Interpretation No.103（October 23, 1963）*

ISSUE: Is Article 2 of the Criminal Code applicable to the smuggling committed prior to the Executive Yuan's alteration to the content of an official notice regulating the items and quantities of the controlled goods?

RELEVANT LAWS:

Article 2 of the Criminal Code（刑法第二條）; Article 2 of the Smuggling Punishment Act（懲治走私條例第二條）.

KEYWORDS:

smuggling（走私）, penalty provision（處罰規定）, alteration（變更）, official notice（公告）.**

HOLDING: Alteration of the content of the Executive Yuan's official notice prescribing controlled items and their quantity in accordance with Article 2, Paragraph 2, of the Smuggling Punishment Act has no effect on the punishment of smuggling committed prior to the aforesaid alteration. It follows that Article 2 of the Criminal Code is inapplicable in this situation.

解釋文：行政院依懲治走私條例第二條第二項專案指定管制物品及其數額之公告，其內容之變更，對於變更前走私行為之處罰，不能認為有刑法第二條之適用。

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* Translated by Wei-Feng Huang.

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REASONING: Reference to "legislative amendment" in Article 2 of the Criminal Code concerns amendment to the penalty provisions. Alteration of the contents of the Executive Yuan's official notice, prescribing controlled items and their quantity in accordance with Article 2, Paragraph 2, of the Smuggling Punishment Act, is not an amendment to the penalty provisions in the Act. Therefore such alteration does not fall within the scope of "amendment" under Article 2 of the Criminal Code.

解釋理由書：刑法第二條所謂法律有變更，係指處罰之法律規定有所變更而言。行政院依懲治走私條例第二條第二項專案指定管制物品及其數額之公告，其內容之變更，並非懲治走私條例處罰規定之變更，與刑法第二條所謂法律有變更不符，自無該條之適用。

Justice Ji-Dong Lin filed dissenting opinion.

本號解釋林大法官紀東提出不同意見書。

J. Y. Interpretation No.104（March 11, 1964）*

ISSUE: What is the meaning of the term "well-known" as used in the Trademark Act?

RELEVANT LAWS:

Article 2, Subparagraph 8 and Article 3 of the Trademark Act（商標法第二條第八款、第三條）; Interpretation Yuan-tze No.1008, part II（司法院院字第一〇〇八號解釋之二）.

KEYWORDS:

registered trademark（註冊商標）, within the territory of the Republic of China（中華民國境內）, well-known（世所共知）.**

HOLDING: "Well-known" in Article 2, Subparagraph 8, of the Trademark Act means "commonly known to the general public within the territory of the Republic of China".

解釋文：商標法第二條第八款所稱世所共知，係指中華民國境內，一般所共知者而言。

REASONING: The Trademark Act was promulgated by the Legislative Yuan, and is applicable to the entire nation. A properly registered trademark is

解釋理由書：商標法為中央立法，以全國為適用範圍，商標註冊之效力亦及於全國，此觀於同法第三條各項均有中華民國境內之規定可以概見，故

* Translated by Li-Chih Lin, Esq., J.D.

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valid within the territory of the entire nation. This interpretation is evident by the fact that "within the territory of the Republic of China" provision is included in all paragraphs of Article 3 of the Trademark Act. Therefore, "well-known" in Article 2, Subparagraph 8, of the Trademark Act means "commonly known to the general public within the territory of the Republic of China". The second part of J. Y. Interpretation Yuan-tze No. 1008 was decided prior to the amendment to Article 2, Subparagraph 6, of the Trademark Act, and should therefore be revised and clarified accordingly.

商標法第二條第八款所謂世所共知應指中華民國境內，一般所共知者而言，本院院字第一〇〇八號解釋之二，係對修正前商標法第二條第六款所為之解釋應予補明。

Justice Pu-Yuan Hsu filed dissenting opinion, in which Justice Shi-Ding Chin joined.

Justice Shang-Kuan Shih filed dissenting opinion.

本號解釋徐大法官步垣與金大法官世鼎共同提出不同意見書；史大法官尚寬提出不同意見書。

J. Y. Interpretation No.105（October 7, 1964）*

ISSUE: Do the administrative acts of injunction against publication and revocation of a publishing company's registration fall within the scope of "necessary" restriction stipulated in the Constitution?

RELEVANT LAWS:

Articles 40 and 41 of the Publication Act（出版法第四十條及第四十一條）; Article 23 of the Constitution（憲法第二十三條）.

KEYWORDS:

administrative act（行政處分）, freedom of publication（出版自由）.**

HOLDING: Administrative acts of interlocutory injunction against publication and deregistration under the Publication Act, Articles 40 and 41, fall within the scope of "necessary" restriction stipulated in Article 23 of the Constitution. Restriction on freedom of publication dealt with by administrative agencies for purposes of effective restriction can hardly

解釋文：出版法第四十條第四十一條所定定期停止發行或撤銷登記之處分，係為憲法第二十三條所定必要情形，而對於出版自由所設之限制，由行政機關逕行處理，以貫徹其限制之目的，尚難認為違憲。

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* Translated by Wei-Feng Huang.

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be regarded as infringing upon the Constitution.

REASONING: Administrative acts of interlocutory injunction against publication and deregistration under the Publication Act, Articles 40 and 41, fall within the scope of "necessary" restriction stipulated in Article 23 of the Constitution. Regarding the restriction on freedom of publication, this Yuan holds the same opinion as that contained in the Application to this Interpretation. The Constitution places no limitation on the means of penalization for illegal publication. Hence, the means of administrative penalty is adopted to achieve efficient restriction and can hardly be regarded as infringing upon the Constitution. Prescribed conditions for administrative acts under the aforesaid Articles are restrictive. Administrative agencies must act according to the itemized process prescribed therein. Persons so affected may still make an administrative appeal and administrative litigation to the Administrative Court seeking remedy and protection.

解釋理由書：出版法第四十條及第四十一條所定對於違法出版品定期停止發行或撤銷登記之處分，係依憲法第二十三條規定之必要情形，對於出版自由所設之限制，此點聲請解釋來文亦有相同之見解。而憲法對於違法出版品之處分方式並無限制，出版法為貫徹其限制之目的，採用行政處分方式，尚難謂為違憲。且上開各條所規定之處分要件，甚為嚴格，行政機關僅能根據各該條所列舉之要件，予以處分，受處分人尚得提起訴願及向行政法院提起行政訴訟，請求救濟，亦足以資保障。

J. Y. Interpretation No.106（February 12, 1965）*

ISSUE: To what extent shall the restrictions imposed by Articles 16 and 18 of the National General Mobilization Act apply?

RELEVANT LAWS:

Article 16 and 18 of the National General Mobilization Act（國家總動員法第十六條、第十八條）; the Relief Order for Important Businesses（重要事業救濟令）.

KEYWORDS:

to exercise the right of claims（行使債權）, to perform obligations （履行債務）, specific area（特定地區）, specific kind of businesses under certain circumstances（特定情形之某種事業）. **

HOLDING: The restrictions of people's freedom authorized by Articles 16 and 18 of the National General Mobilization Act means that, whenever necessary, the government not only can impose restrictions on all persons, banks, corporations, and manufacturers to exercise the right of claims or to perform obligations, but also can impose the same restrictions

解釋文：國家總動員法第十六條、第十八條所得加以限制之規定，並非僅指政府於必要時，祇能對全體人民或全體銀行、公司、工廠之行使債權履行債務加以限制，亦得對特定地區或特種情形之某種事業為之。行政院依上開法條規定頒發重要事業救濟令，明定凡合於該令所定情形，及所定種類事業之股份有限公司，均得適用，尚難認為於

* Translated by Robert Huai-Ching Tsai.

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on a specific area, or on specific kinds of businesses under certain circumstances. In accordance with the above-mentioned provisions, the Executive Yuan has issued a Relief Order for Important Businesses. The order provides relief for certain limited-shares corporations when the prescribed conditions are met. It cannot be said that this has exceeded the authority conferred by law. As to the range of restrictions for exercising the right of claims or performing obligations, although from a practical point it is hard to set a concrete standard, nevertheless it should still be confined within the limits necessary to carry out said Act.

法有違。至對於債權行使及債務履行，所加限制之範圍，雖應按實際情形處理，難有具體標準，然應以達成該法所定任務之必要者為其限度。

REASONING: Articles 16 and 18 of the National General Mobilization Act do not confine the government's ability to restrict people's freedom to exercise the right of claims or to perform obligations only to all persons or all banks, corporations and manufacturers. It may also do this to some banks, corporations and manufacturers in a limited area, or under certain circumstances. The Outlines for the Implementation of the National Gen-

解釋理由書：國家總動員法第十六條及第十八條並非限定政府於必要時，祇能對全體人民或全體銀行、公司、工廠之行使債權履行債務加以限制，亦得對特定地區或具有某種情形之銀行、公司、工廠為之，國家總動員法實施綱要對此亦有闡明。行政院依據上開法條，所頒重要事業救濟令，規定股份有限公司組織之重要生產、公用、或交通事業，其產品或服務為國內所需要，或確有外銷市場者，倘因事故，有

eral Mobilization Act have expressly provided this, too. In accordance with the above-mentioned provisions, the Executive Yuan has issued a Relief Order for Important Businesses. The executive order provides that a limited-shares corporation whose business is in important production, public utilities, or transportation, whose products or services are indispensable to domestic life, which has a proven export market, and which is liable to be shut down during catastrophes, yet is worth rebuilding, may apply to the agency supervising its business for relief. The executive order also provides that when relief is granted, the government may incidentally restrict the applicant's right of claims and obligations. Any limited-shares corporation that meets the conditions and kinds specified is qualified to apply. It cannot be said that this has exceeded the authority conferred by law. As to the range of restriction placed by the government on exercising the right of claims or performing obligations, although from a practical point it is hard to set a concrete standard, nevertheless it should still be confined within the limits necessary to carry out said Act.

停工之虞，但有重建可能及價值者，得向事業主管機關請求救濟，以及政府於救濟時，得附帶限制其債權債務。凡合於該令所定情形及所定種類事業之股份有限公司，均可有其適用，尚難認為於法有違。至政府對於行使債權履行債務所得加以限制之範圍，雖按實際需要情形而異，殊難有具體標準，然應以達成國家總動員法所定任務之必要者為其限度。

Justice Fan-Kang Tseng filed dissenting opinion.

本號解釋曾大法官繁康提出不同意見書。

J. Y. Interpretation No.107（June 16, 1965）*

ISSUE: Is the period of prescription as stipulated in Article 125 of the Civil Code applicable to the real property duly registered with the Land Registration Office?

RELEVANT LAWS:

Articles 125, 758, 769, and 770 of the Civil Code（民法第一百二十五條、第七百五十八條、第七百六十九條及第七百七十條）; Article 43 of the Land Act（土地法第四十三條）; Interpretation Yuan-tzu No. 1833（司法院院字第一八三三號解釋）.

KEYWORDS:

registered estate（已登記不動產）, unregistered estate（未登記不動產）, right to repossession（回復請求權）, adverse possession （以取得標的不動產所有權為目的之占有）.**

HOLDING: The reference to a statute of limitation stipulated in Article 125 of the Civil Code, within which an estate owner may claim the right to repossession, is inapplicable to registered estate owners.

解釋文：已登記不動產所有人之回復請求權，無民法第一百二十五條消滅時效規定之適用。

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* Translated by Wei-Feng Huang.

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REASONING: Articles 769 and 770 of the Civil Code are solely concerned with an adverse possessor's application for title to an unregistered estate and have no application to registered estates. It follows that the statute of limitation, after which an adverse possessor may claim title by possession, does not apply to registered estates. In accordance with the foregoing, there is no scope for the application of a statute of limitation in Article 125 of the Civil Code on the registered estate owner's right to repossession. Article 758 of the Civil Code prescribes: "title to real property which has been acquired, encumbered, lost, or altered through the operation of law is ineffective unless it is registered." According to Article 43 of the Land Act, "registration under this Act gives rise to a good title against the world." The allowance to the registered owner of a right of repossession would lead to termination of the right due to lapse of the statute of limitation, making the registration system redundant. It would also lead to the unfair result of the registered owner having to bear all the tax and other burdens in relation to the land,

解釋理由書：查民法第七百六十九條、第七百七十條，僅對於占有他人未登記之不動產者許其得請求登記為所有人，而關於已登記之不動產，則無相同之規定，足見已登記之不動產，不適用關於取得時效之規定，為適應此項規定，其回復請求權，應無民法第一百二十五條消滅時效之適用。復查民法第七百五十八條規定：「不動產物權，依法律行為而取得、設定、喪失、及變更者，非經登記不生效力」，土地法第四十三條規定：「依本法所為之登記，有絕對效力」。若許已登記之不動產所有人回復請求權，得罹於時效而消滅，將使登記制度，失其效用。況已登記之不動產所有權人，既列名於登記簿上，必須依法負擔稅捐，而其占有人又不能依取得時效取得所有權，倘所有權人復得因消滅時效喪失回復請求權，將仍永久負擔義務，顯失情法之平。本院院字第一八三三號解釋，係對未登記不動產所有人之回復請求權而發。至已登記不動產所有人回復請求權，無民法第一百二十五條消滅時效規定之適用，應予補充解釋。

despite losing the right to repossession due to lapse of the statute of limitation. This is because the owner, being on the land registry, must bear all the tax and other land-related burdens under the law, and the possessor cannot claim title by adverse possession upon the expiration of the statute of limitation. This Yuan's Interpretation Yuan-tze No.1833 seeks to clarify the right to repossession of unregistered estate owners. It should be added that, as to a registered estate owner's right to repossession, there is no scope for the application of the Civil Code Article 125 statute of limitation.

Justice Shang-Kuan Shih filed dissenting opinion.

Justice Lu Chu Ger filed dissenting opinion, in which Justice Ji-Jong Wang, Justice Jou-Kang Jing and Justice Ji-Dong Lin joined.

本號解釋史大法官尚寬提出不同意見書；諸葛大法官魯、王大法官之倧、景大法官佐綱與林大法官紀東共同提出不同意見書。

J. Y. Interpretation No.108（July 28, 1965）*

ISSUE: How should the period of statute of limitations be calculated for successive or continuous acts that are indictable only upon complaint?

RELEVANT LAWS:

J. Y. Explanation Yuan-tze No. 1232（司法院院字第一二三二號解釋）.

KEYWORDS:

period of statute of limitations（告訴期間）, plaintiff（原告）, continuation（繼續、連續）. **

HOLDING: In cases where the plaintiff is limited to the person aggrieved and there are repeated or continuing offences, the period of statute of limitations within which the plaintiff can bring an action shall commence upon the plaintiff's knowledge of the most recent offending act or upon cessation of the offending act. This Yuan's Interpretation Yuan-tze No. 1232 shall be amended accordingly.

解釋文：告訴乃論之罪，其犯罪行為有連續或繼續之狀態者，其六個月之告訴期間，應自得為告訴之人，知悉犯人最後一次行為或行為終了之時起算。本院院字第一二三二號解釋應予變更。

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* Translated by Wei-Feng Huang.

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

REASONING: In cases where the plaintiff is limited to the person aggrieved and there are repeated or continuing offences, it is unreasonable to have the period of statute of limitations commence upon the plaintiff's initial identification of the offender, the reason being that it is inevitable that the period of statute of limitations will expire while the offence is repeated or continues. Therefore, the period of statute of limitations should commence upon the plaintiff's knowledge of the offender's most recent offending act or when the offence has ceased.

解釋理由書：告訴乃論之罪，其犯罪行為有連續或繼續之狀態者，其六個月之告訴期間，若自得為告訴之人最初知悉犯人之時起算，則難免發生犯罪行為尚在連續或繼續狀態中，而告訴期間業已屆滿，不得告訴之情事，亦非情理之平。故其告訴期間，應自知悉犯人最後一次之行為或行為終了之時起算。

Unless otherwise the relevant statutes are amended and thus ceased to be effective, the interpretations made by this Yuan shall still have their effects and shall not be violated.

本院解釋，除因法令內容變更而失效者外，在未經變更前，仍有其效力，不得牴觸，合併指明。

J. Y. Interpretation No.109（November 3, 1965）*

ISSUE: Is a person who, with the intent to commit a crime in conjunction with others, participated in an act outside of the scope of the requisite elements for the crime, or one who, with the intent to commit a crime in conjunction with others, conspired prior to commission of a crime but did not participate in the carrying out of the crime considered as a principal co-offender?

RELEVANT LAWS:

J.Y. Interpretation Yuan-tze No. 1905, No. 2030-1, and the first part of No. 2202（司法院院字第一九〇五號、第二〇三〇號之一、第二二〇二號解釋前段）.

KEYWORDS:

intent to commit a crime jointly（以自己共同犯罪之意思）, element of the crime（犯罪構成要件）, conspires with others before the fact（事前同謀）, specific identity（特定身分）.**

HOLDING: A person who, with the intent to commit a crime jointly, commits an act which is not an element of the crime or conspires with others before

解釋文：以自己共同犯罪之意思，參與實施犯罪構成要件以外之行為，或以自己共同犯罪之意思，事先同謀，而由其中一部分人實施犯罪之行為

* Translated by Li-Chih Lin, Esq., J.D.

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the fact without personally committing the crime is also considered to be a joint of fender in the commission of the crime. The purposes and intents of J.Y. Interpretation Yuan-tze No. 1905, No. 2030-1, and the first part of No. 2202 are consistent with this opinion.

者，均為共同正犯。本院院字第一九〇五號、第二〇三〇號之一、第二二〇二號前段等解釋，其旨趣尚屬一致。

REASONING: Joint offenders of a crime are persons who jointly commit the crime. With the intent to commit a crime jointly, each joint offender commits his or her part of the crime to accomplish the crime. It is not necessary that all joint offenders commit the same act which is an element of the crime. While a person who commits an act which is an element of the crime is considered a joint offender of the crime, a person who, with the intent to commit the crime jointly, commits an act which is not an element of the crime or conspires with others before the fact without personally committing the crime, is also considered to be a joint offender in the commission of the crime and shall be liable for the consequences of the crime. A person who conspired with others before the fact and obtained illegal gains

解釋理由書：共同正犯，係共同實施犯罪行為之人，在共同意思範圍內，各自分擔犯罪行為之一部，相互利用他人之行為，以達其犯罪之目的，其成立不以全體均行參與實施犯罪構成要件之行為為要件；參與犯罪構成要件之行為者，固為共同正犯；以自己共同犯罪之意思，參與犯罪構成要件以外之行為，或以自己共同犯罪之意思，事前同謀，而由其中一部分人實行犯罪之行為者，亦均應認為共同正犯，使之對於全部行為所發生之結果，負其責任。本院院字第一九〇五號解釋，係指事前同謀，事後得贓，推由他人實施，院字第二〇三〇號解釋之一，係謂事前同謀，而自任把風，皆不失為共同正犯。院字第二二〇二號解釋前段所謂警察巡長與竊盜串通，窩藏贓物，並代為兜銷，應成立竊盜共犯，如係以自己犯罪之意思，並參與其實施，則屬竊盜共同正

after the fact without personally committing the crime is held to be a joint offender in the commission of the crime in J.Y. Interpretation Yuan-tze No. 1905. A person who conspired with others before the fact and was posted as a lookout, is held to be a joint offender of the crime in J.Y. Interpretation Yuan-tze No. 2030-1. The first part of J.Y. Interpretation Yuan-tze No. 2202 holds that a chief of police who conspired with a thief to conceal and sell the stolen goods for the thief, is considered to be an accomplice in the theft. However, the chief of police who conspired with a thief to conceal and sell the stolen goods for the thief with an intent to commit the crime jointly is considered to be a joint offender in the commission of the theft. While the wordings in the three aforementioned J.Y. Interpretations are different due to different motions filed by different defendants, the purposes and intents of these judicial opinions are still consistent with the present opinion.

犯。上述三號解釋，雖因聲請內容不同，而釋示之語句有異，但其旨趣，則無二致。應併指明。

Justice Fan-Kang Tseng filed dissenting opinion, in which Justice Shi-Ding Chin and Justice Jou-Kang Jing joined.

本號解釋曾大法官繁康、金大法官世鼎與景大法官佐綱共同提出不同意見書。

J. Y. Interpretation No.110（December 29, 1965）*

ISSUE: (1) In the eminent domain proceedings, may a reassessment of the land be initiated by the land administration office if neither the condemnor nor the landowner object to the amount of compensation originally assessed?

(2) What is the effect of delay in payment of compensation?

(3) When must the payment of compensation be made if there is a delay caused by reassessment of the land?

RELEVANT LAWS:

Article 233 and 247 of the Land Act（土地法第二百三十三條、第二百四十七條）.

KEYWORDS:

eminent domain proceedings（徵收）, compensation（補償）, condemnor（需用土地人）, landowner（土地所有人）, land administration office（主管地政機關）, the Standard Land Value Determination Committee （標準地價評議委員會）.**

HOLDING: (1) When neither the condemnor nor the landowner in an eminent domain proceeding object to the amount of compensation assessed, the land administration office may not invoke

解釋文：一、需用土地人及土地所有人對於被征收土地之應補償費額，均未表示異議者，主管地政機關不得援用土地法第二百四十七條逕自廢棄原公告之估定地價，而提交標準地價評

* Translated by Robert Huai-Ching Tsai.

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Article 247 of the Land Act to annul the government published land value and refer the case to the Standard Land Value Determination Committee for reassessment.

議委員會評定之。

(2) If the condemnor does not pay the land value and other compensatory expenses to the land administration office within fifteen days of publication of the proceeding, the condemnation shall lose effect in accordance with Interpretation Yuan-tze No. 2704. However, exceptions shall be made when the delay is caused by a dispute over the amount of compensation and the case was lawfully referred to the Standard Land Value Determination Committee for reassessment, or when the landowner consents to the deferral of payment.

二、需用土地人不於公告完畢後十五日內將應補償地價及其他補償費額繳交主管地政機關發給完竣者，依照本院院字第二七〇四號解釋，其征收土地核准案固應從此失其效力。但於上開期間內，因對補償之估定有異議，而由該管市縣地政機關依法提交標準地價評議委員會評定，或經土地所有人同意延期繳交有案者，不在此限。

(3) When the amount of compensation has been determined by the Standard Land Value Determination Committee, the land administration office shall promptly notify the condemnor of the decision of the Committee and order payment be made to the landowner within a specified

三、征收土地補償費額經標準地價評議委員會評定後，應由主管地政機關即行通知需用土地人，並限期繳交轉發土地所有人，其限期酌量實際情形定之，但不得超過土地法第二百三十三條所規定十五日之期限。

period. The period set for payment may vary from case to case but in no event shall exceed fifteen days as prescribed by Article 233 of the Land Act.

REASONING:(1) The amount of compensation in an eminent domain proceeding shall be the land value determined by law, if the law has prescribed the land value by an assessment process. If there was a government published land value but ownership of the land had since been transferred, the amount of compensation shall be the cost of the last transaction. If there has never been an assessment or a transaction record, the amount of compensation shall be determined by the land administration office. If there was a dispute over the land value so decided, the land administration office should refer the case to the Standard Land Value Determination Committee for reassessment, according to Articles 239, 247 of the Land Act. Accordingly, if neither the condemnor nor the landowner object to the amount of compensation, the land administration office has no authority to annul the government published land value and

解釋理由書：一、查被征收土地補償費額，其地價已依法規定者，應依其法定地價補償之。但雖有法定地價，而其所有權經過移轉者，依其最後移轉時之地價。其未經依法規定地價者，其補償費額，由該管地政機關估定之。如對於估定地價有異議時，該管地政機關應提交標準地價評議委員會評定之，此為土地法第二百三十九條及第二百四十七條所明定。依此規定，如需用土地人及土地所有人對於估定價額均未表示異議，則主管地政機關自無權逕行廢棄原公告地價，而提交標準地價評議委員會另行評定之。

refers the case to the Standard Land Value Determination Committee for reassessment.

(2) According to Interpretation Yuan-tze No. 2704 of this Court, if the condemnor does not pay compensation to the land administration office within fifteen days of publication of the proceeding, the condemnation shall lose effect. However, if within the above-prescribed period there is a dispute over the amount of compensation, and the case was referred to the Standard Land Value Determination Committee by the land administration office, the amount of compensation is still pending. Or, if the landowner agreed with the condemnor to delay the payment, the landowner's interest is not jeopardized. Therefore, the condemnation does not lose effect in these situations.

二、依照本院院字第二七〇四號解釋，需用土地人不於公告完畢後十五日內繳交補償費者，其征收土地核准案，固應失其效力，但在上開法定期間內，因對於補償之估定有異議，而由該管市縣地政機關依法提交標準地價評議委員會評定，則補償價額尚待評定，或於上開法定期間內，需用土地人經土地所有人同意延期繳交有案者，亦無害於土地所有人之利益，其征收土地核准案自不因之失其效力。

(3) The purpose of Article 233 of the Land Act prescribing the payment period is to protect private rights by preventing delay of payment in the eminent domain proceedings, and to minimize the damage of landowners. If the case were referred to

三、征收土地補償費之發給期限，土地法第二百三十三條特加規定者，其目的在防止征收土地核准案久懸不決，及減少土地所有人之損害，而保障其私權。至因公告之估定地價發生異議，由主管地政機關提交標準地價評議

the Standard Land Value Determination Committee for reassessment by the land administration office due to a dispute over the government published land value, although the Act does not specify a payment period after reassessment, nonetheless, for the reasons indicated above, the land administration office should promptly notify the condemnor of the decision of the Committee and order that payment be made to the landowner within a specified period. The period set for payment should not exceed fifteen days as prescribed by Article 233 of the Land Act.

委員會另行評定時，同法對於其所評定之地價繳交發給期限，雖無規定，惟基於上開理由，主管征收機關於該委員會評定後，應即通知需用土地人並限期繳交轉發土地所有人，其期間亦不得超過土地法第二百三十三條所定之十五日。

Justice Cheng-Ming Huang filed dissenting opinion.

本號解釋黃大法官正銘提出不同意見書。

J. Y. Interpretation No.111（January 5, 1966）*

ISSUE: To what extent may the Interpretation Y. J. T. No. 3827 restricting the application of the Public Functionary Retirement Act to voluntary and/or involuntary retirement apply?

RELEVANT LAWS:

Articles 4 and 5 of the Public Functionary Retirement Act（公務員退休法第四條及第五條）; Interpretation Yuan-je Tzu No. 3827（司法院院解字第三八二七號解釋）.

KEYWORDS:

Voluntary retirement（自願退休）, involuntary retirement（命令退休）, public functionary（公務員）.**

HOLDING: This Yuan's Interpretation Yuan-je Tze No. 3827 only applies to the voluntary and/or involuntary retirement of a public functionary that occurred during the operative period of the Public Functionary Retirement Act promulgated in 1943.

解釋文：本院院解字第三八二七號解釋所稱認為聲請退休或命令退休，僅就其事件在中華民國三十二年公布之公務員退休法施行中發生者有其適用。

REASONING: This Yuan's Interpretation Yuan-je Tze No. 3827 seeks

解釋理由書：本院院解字第三八二七號解釋，係對民國三十二年公布

* Translated by Wei-Feng Huang.

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to interpret the meaning of "retirement" in Article 11 of the Public Functionary Retirement Act promulgated in 1943. Though there may be further amendment to the Act, the interpretation only applies to the voluntary and/or involuntary retirement of a public functionary that occurred during the operative period of the Act. A person who has retired, whether voluntarily or involuntarily, during the operative period of the Act is entitled to claim pension. However, those who resigned or were dismissed or retrenched cannot make a claim after five years from the next calendar month following the act of resignation, dismissal or retrenchment.

施行之公務員退休法第十一條，所謂退職之涵義所為之解釋，厥後法律內容迭有變更，此項解釋僅適用於該法有效期間內所發生，應認為聲請退休或命令退休之事件，在該法施行中合於認為聲請退休或認為命令退休者，自得據此聲請退休金，但自辭職獲准免職或裁遣之次月起已經過五年者不在此限。

Justice Chang-Hua Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官昌華、金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.112（April 27, 1966）*

ISSUE: In the case of repeated imposition of fines against a person who violated the obligations to take or refrain from taking specific actions, may a compulsory measure be enforced thereupon?

RELEVANT LAWS:

Articles 4 and 11 of the Administrative Execution Act（行政執行法第四條及第十一條）.

KEYWORDS:

direct compulsory measure（直接強制處分）, indirect measure（間接處分）.**

HOLDING: If an administrative agency, in accordance with the Administrative Execution Act, repeatedly imposes administrative fines against someone who violated the obligations to take or refrain from taking specific actions under Article 4 of the Act, but that person still refuses to perform his obligations, this still does not constitute the situation of not being able to enforce an indirect compulsory measure

解釋文：行政官署對於違反行政執行法第四條所定行為或不行為義務者，經依該法規定，反覆科處罰鍰，而仍不履行其義務時，尚非該法第十一條所稱不能行間接強制處分。自難據以逕行直接強制處分。

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* Translated by David W. Su, Lee and Li , Attorneys-at-Law.

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described in Article 11 of the Act, and therefore does not justify a direct compulsory measure.

REASONING: In this case, the letter described a situation where administrative fines were repeatedly imposed. This therefore does not constitute a situation of not being able to enforce an indirect measure as described in Article 11 of the Administrative Execution Act. If the person who has the obligations still refuses to perform his obligations, the administrative agency shall explain to this person and admonish him that administrative fines will be continuously imposed, so as to encourage him to perform. It is not permissible to apply the direct compulsory measures immediately.

解釋理由書：本案據來文所述情形，既經依法反覆科處罰鍰，即非行政執行法第十一條所稱之不能行間接處分。如義務人仍不履行其行為或不行為之義務時，應由行政官署曉諭、告誡繼續科罰，以促其履行義務，不能遽行施以直接強制處分。

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋金大法官世鼎提出不同意見書。

J. Y. Interpretation No.113（May 11, 1966）*

ISSUE: Shall the Public Functionary Service Act be applicable to government-contracted employees *mutatis mutandis*?

RELEVANT LAWS:

Articles 13 and 24 of the Public Functionary Service Act（公務員服務法第十三條及第二十四條）; Article 21 of the Public Functionaries Appointment Act（公務人員任用法第二十一條）; Article 13 of the Regulation Governing Contracted Employees of the Government（雇員管理規則第十三條）; Interpretation Yuan-je Tzu No. 2903（司法院院解字第二九〇三號解釋）.

KEYWORDS:

government contracted employees（雇員）, regulation（規則）, public functionary（公務員）.**

HOLDING: The regulation of contracted employees of the government, except as otherwise provided by law, shall be governed by the Public Functionary Service Act. The section in this Yuan's Interpretation Yuan-je Tze No. 2903 which excludes contracted employees of

解釋文：雇員之管理，除法令別有規定外，準用公務員服務法之規定。本院院解字第二九零三號所為雇員不受公務員服務法第十三條第一項限制之解釋，不再有其適用。

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* Translated by Wei-Feng Huang.

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

the government outside the operation of Paragraph 1, Article 13 of the Public Functionary Service Act is no longer applicable.

REASONING: Although contracted employees of the government are not those who are referred to in Article 24 of the Public Functionary Service Act, as public functionaries receiving a salary from the government, they are people who provide public services under the law. Article 21, Paragraph 2, of the Public Functionaries Appointment Act states that "rules for the regulation of contracted employees of the government shall be mandated by the Examination Yuan." Pursuant to the foregoing, the Examination Yuan promulgated, in the second sentence of Article 13 of the Regulation Governing Contracted Employees of the Government, stating that "all the provisions in the Public Functionary Service Act are applicable to contracted employees of the government," the regulation of which, unless otherwise provided in law, shall be governed by the Public Functionary Service Act.

解釋理由書：雇員雖非公務員服務法第二十四條所稱受有俸給之文武職公務員，但究同屬依法令從事於公務之人員。公務人員任用法第二十一條第二項既明定：「雇員管理規則由考試院定之」。而考試院所據以頒行之雇員管理規則第十三條後段又規定：「公務員服務法各規定，於雇員適用之」。則其管理，除法令別有規定外，自應準用公務員服務法之規定。

This Yuan's Interpretation Yuan-je Tze No. 2903 seeks to clarify the relevant laws operative as of June, 1945. With the amendment to the relevant laws, the section in said Interpretation that excludes contracted employees of the government outside the operation of Paragraph 1, Article 13 of the Public Functionary Service Act is no longer applicable.

本院院解字第二九零三號解釋，係於民國三十四年六月就當時有效之關係法令所為之解釋，現在法令既有變更，其中關於雇員不受公務員服務法第十三條第一項之規定限制，應不再有其適用。

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋金大法官世鼎提出不同意見書。

J. Y. Interpretation No.114（July 6, 1966）*

ISSUE: Shall the reinstatement of a civil servant's former office upon expiration of the disciplinary suspension period be excluded from application to the one whose duty has been suspended before the passing of a resolution of discipline?

RELEVANT LAWS:

Article 4, Paragraph 2 of the Public Functionaries Discipline Act（公務員懲戒法第四條第二項）.

KEYWORDS:

reinstatement（復職）, suspension of duty（停止職務）, passing of a resolution to discipline（懲戒處分議決）.**

HOLDING: The reinstatement of a disciplined public servant when his or her suspension period has expired, as prescribed by Article 4, Paragraph 2 of the Public Functionaries Discipline Act, does not exclude cases where the person's duty has been suspended before the passing of a resolution to discipline.

解釋文：公務員懲戒法第四條第二項所定休職期滿之復職，不因其在懲戒處分議決前，曾被停止職務，而排除其適用。

REASONING: The reinstate-

解釋理由書：公務員懲戒法第

* Translated by Robert Huai-Ching Tsai.

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ment provided in Article 16, Paragraph 3, of the Public Functionaries Discipline Act is meant to restore the position that was summarily suspended before the passing of a resolution to discipline; while the reinstatement provided in Article 4, Paragraph 2, of the same Act is meant to restore the position upon execution of a suspension order, the nature of the two are somewhat different. Since Article 4, Paragraph 2, of the Public Functionaries Discipline Act expressly provides for reinstatement upon expiration of the suspension, any person who was suspended should not be excluded from the law's application merely because he or she has been suspended before the passing of a resolution to discipline.

十六條第三項之復職，係復懲戒處分議決前被停之職，第四條第二項之復職，係於休職處分執行後回復被休之職，二者性質不同。休職期滿，許其復職，既為公務員懲戒法第四條第二項所明定。則凡受休職處分者，自不因其在懲戒處分議決前，曾被停止職務，而排除其適用。

Justice Lu Chu Ger filed dissenting opinion.

本號解釋諸葛大法官魯提出不同意見書。

J. Y. Interpretation No.115（September 16, 1966）*

ISSUE: Should the disputes arising from the implementation of the Land-to-the-Tiller Act be settled through administrative procedures?

RELEVANT LAWS:

Article 17 and 21 of the Land-to-the-Tiller Act（實施耕者有其田條例第十 七條、第二十一條）; the Administrative Proceedings Act（行政訴訟法）; the Administrative Appeal Act（訴願法）.

KEYWORDS:

Land-to-the-Tiller Act（實施耕者有其田條例）, administrative procedures（行政救濟程序）, civil litigation（民事訴訟）, ordinary court（普通法院）. * *

HOLDING: A person who suffered adverse interest as a result of ownership transfer by the Land-to-the-Tiller Act should seek relief through administrative procedures. He or she may not, on a torts ground, file a civil litigation to demand a return of land. The judgment made by an ordinary court contrary to the judgment of an administrative court in this matter is

解釋文：政府依實施耕者有其田條例所為之耕地徵收與放領，人民僅得依行政救濟程序請求救濟，不得以其權利受有損害為理由，提起民事訴訟，請求返還土地。普通法院對此事件所為之相反判決，不得執行。

* Translated by Robert Huai-Ching Tsai.

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not enforceable.

REASONING: The condemnation or release of farmland by the government based on the Land-to-the-Tiller Act is an exercise of public authority. If the landowner, tiller, or other interested parties objected to the proceeding, they should apply for a review and correction in accordance with Article 17, Paragraph 1, Subparagraph 2, and Article 21, Subparagraph 3,of the same Act, regardless of the forms and reasons of contention. If, after the government review, the person is still not satisfied, he or she should institute an administrative appeal, re-appeal, and administrative action based on Article 1 of the Administrative Appeal Act, and Article 1 of the Administrative Proceedings Act. He or she may not, on a torts ground, file a civil litigation to demand a return of land. The judgment made by an ordinary court contrary to the judgment of an administrative court in this matter is not enforceable.

解釋理由書：政府依實施耕者有其田條例所為之耕地徵收或放領，均係基於公權力之行為。耕地所有權人或承領人及各利害關係人認為有錯誤時，不問其錯誤之形態與原因，俱應分別依同條例第十七條第一項第二款、第二十一條第三款申請更正。對政府就更正申請所為之核定，如仍有不服，應依訴願法第一條、行政訴訟法第一條，循行政訟爭程序以提起訴願再訴願及行政訴訟，藉圖救濟。自不得更以其權利受有損害為理由，向普通法院提起民事訴訟，請求返還土地。普通法院對此事件所為之相反判決不得執行。

Justice Ji-Jong Wang filed dissenting opinion, in which Justice Jou-Kang Jing joined.

本號解釋王大法官之倧與景大法官佐綱共同提出不同意見書。

J. Y. Interpretation No.116（September 30, 1966）*

ISSUE: Shall the interests included in the installment payments made to foreign business or manufacturers be subject to income tax withholding?

RELEVANT LAWS:

Article 88 of the Income Tax Act（所得稅法第八十八條）.

KEYWORDS:

Installment plan（分期付款）, interest（利息）, person charged with withholding duty（扣繳義務人）. * *

HOLDING: If an installment plan to pay a foreign business or manufacturer contains interest, the interest payment is subject to tax withholding by the domestic person charged with withholding duty when making payments.

解釋文：支付國外廠商分期付款，訂有利息者，其利息所得，仍應由扣繳義務人於給付時扣繳應納稅款。

REASONING: Article 86, Paragraph 3, of the Income Tax Act, operative January 1, 1956, provided that a person receiving interest income shall be the taxpayer liable for that income. This tax li-

解釋理由書：中華民國四十五年一月一日施行之所得稅法第八十六條第三款明定所得稅款之納稅義務人，為取得利息人，並不限於自然人，營利事業取得利息，亦不例外。依同法第八十

* Translated by Robert Huai-Ching Tsai.

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ability is not limited to an individual. A business entity receiving interest income is taxable, too. As Article 85, Paragraph 1, of the same Act prescribed, a person charged with withholding duty is not exempted solely because the interest-receiving party is not an individual. Therefore, if an installment plan to pay a foreign business or manufacturer contains interest, the interest payment is subject to tax withholding by the domestic person charged with withholding duty when making payments.

五條第一項之規定，扣繳義務人仍應扣繳稅款，不因取得利息人非自然人，而免除其扣繳之義務，因而支付國外廠商分期付款，訂有利息者，其利息所得，仍應由扣繳義務人於給付時扣繳之。

Justice Chang-Hua Wang filed dissenting opinion.

本號解釋王大法官昌華提出不同意見書。

J. Y. Interpretation No.117（November 9, 1966）*

ISSUE: During national turmoil, is it contradictory to the Constitution to declare and replace vacant seats in the National Assembly without going through the election and recall process?

RELEVANT LAWS:

Article 3, Subparagraph 1 and Article 4 of the Act Governing Replacement of Any Vacant Seat of the First Term National Assembly（第一屆國民大會代表出席遞補補充條例第三條第一款及第四條）.

KEYWORDS:

replacement of vacant seat（遞補）, National Assembly（國民大會）.**

HOLDING: The provisions of Article 3, Subparagraph 1, and Article 4 of the Act Governing Replacement of Any Vacant Seat of the First Term National Assembly are not inconsistent with the Constitution.

解釋文：第一屆國民大會代表出缺遞補補充條例第三條第一款及第四條之規定，與憲法尚無牴觸。

REASONING: Article 34 of the Constitution stated that the election and

解釋理由書：憲法第三十四條明定國民大會代表之選舉罷免，以法律

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recall of the National Assembly delegates should be provided by law. The Act Governing Replacement of Any Vacant Seat of the First Term National Assembly (hereinafter the ”Act”) is a supplementary provision to the Act Governing the Election and Recall of the National Assembly Delegates and its Enforcement Act. Article 3, Subparagraph 1, of the Act provided that if a delegate has not reported to office for three years, and has not made timely appearance after a notice of appearance was published, his or her seat shall be deemed vacant for cause. Article 4 of the Act provided that if this happened with a replacement delegate, he or she should also be disqualified. These provisions were adopted to meet the needs of the nation after the central government moved to Taiwan. They are not inconsistent with pertinent provisions of the Constitution.

定之。第一屆國民大會代表出缺遞補補充條例係國民大會代表選舉罷免法及同法施行條例之補充規定。其第三條第一款所定行蹤不明三年以上，並於政府公告期限內未向指定機關親行聲報者視同因故出缺，第四條所定候補人有此情形者喪失其候補資格，乃因中央政府遷臺後，為適應國家之需要而設，與憲法有關條文尚無牴觸。

J. Y. Interpretation No.118（December 7, 1966）*

ISSUE: For a ruling to correct the technical errors found in a final judgment, is it necessary to have the judge who rendered the said judgment to be present?

RELEVANT LAWS:

J.Y. Interpretation No. 43（司法院釋字第四十三號解釋）.

KEYWORDS:

correction of technical errors（更正訴訟程序性之錯誤）. **

HOLDING: The reference to "corrections of a ruling" in J.Y. Interpretation No. 43 does not require the judge who rendered a final judgment to participate in the judgment of the corrections.

解釋文：本院釋字第四十三號解釋之更正裁定，不以原判決推事之參與為必要。

REASONING: The part in J.Y. Interpretation No. 43 concerning the corrections of a ruling refers to apparent clerical errors only, the corrections of which do not affect the reasoning and judgment of the case. Such errors can be made by a ruling and the judge who ren-

解釋理由書：本院釋字第四十三號解釋所稱得以裁定更正之刑事判決，係以該判決中之文字顯屬誤寫者而言。此項更正，既不影響於全案情節與判決之本旨，其裁定自不以原判決推事之參與為必要。

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* Translated by Wei-Feng Huang.

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dered the original judgment is not required to participate in the judgment of the ruling.

J. Y. Interpretation No.119（February 1, 1967）*

ISSUE: Where the owner first has his immovable property mortgaged, and then creates a dien thereon, shall the mortgagee or dien-holder have priority of claim to the proceeds from sale of said immovable property?

RELEVANT LAWS:

Article 866 of the Civil Code（民法第八百六十六條）.

KEYWORDS:

mortgage（抵押權）, *dien*（典權）, mortgagee（抵押權人）, *dien-holder*（典權人）, default（屆期未受清償）, discharge（清償）, title transfer documents（權利移轉證書）, erase the recordation（塗銷登記）.* *

HOLDING: When an owner mortgages his land first, then places a dien[1] on the land later, the mortgage interest is not affected by the subsequently

解釋文：所有人於其不動產上設定抵押權後，復就同一不動產上與第三人設定典權，抵押權自不因此而受影響。抵押權人屆期未受清償，實行抵押

* Translated by Robert Huai-Ching Tsai.

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[1] Dien is a unique form of transferring the immovable's title as security in traditional Chinese legal system and has been accepted as a part of civil law governing the rights over things, under which the dien-maker (owner) in consideration of a price usually at 50% of the actual value of the immovable, transfers title and possession of the object to the dien-holder and reserves for himself a naked right of redemption upon paying back the price so received with no interest within the period as agreed thereto by the parties, but under no circumstances, the period may exceed 30 years. For the detail, refer to Chinese Civil Code, Book of Rights over Things, Article 911-927.

recorded dien. Should the mortgagee be in default and an auction be held, however, due to the existence of the dien, no bidder of a price sufficient to discharge the mortgage can be found, the court may order that the dien be removed and a second sale be held. If, after satisfying the mortgage, any surplus remains from the proceeds from auction, the dien-holder shall have priority right for claim to the surplus over any subsequently recorded interests. The court conducting the auction, when issuing title transfer documents, shall notify the land administration office to erase the recordation of dien of the land.

權拍賣抵押物時，因有典權之存在，無人應買，或出價不足清償抵押債權，執行法院得除去典權負擔，重行估價拍賣。拍賣之結果，清償抵押債權有餘時，典權人之典價，對於登記在後之權利人，享有優先受償權。執行法院於發給權利移轉證書時，依職權通知地政機關塗銷其典權之登記。

REASONING: Article 866 of the Civil Code permitted an owner to mortgage his land first, then place a dien on the land later. But a proviso of the same Article also stated that the mortgage interest would not be affected. The latter created a dien on the land, but if it jeopardized the mortgage interest in any way, it should not have any force on the mortgagee at all. To reconcile the interests of the mortgagee and dien-holder, should a mortgagee be in default and an auction be

解釋理由書：所有人於其不動產上設定抵押權後，復就同一不動產上與第三人設定典權，固為民法第八百六十六條所認許。但抵押權不因此而受影響，亦為同條但書所明定。此項設定在後之典權，倘有影響於抵押權，對於抵押權人不生效力。為兼顧抵押權人及典權人之利益，抵押權人屆期未受清償，實行抵押權拍賣抵押物時，因有典權之後之權利人，享有優先受償權。執行法院於發給權利移轉證書時，依職權通知地政機關塗銷

held, however, due to the existence of the dien, no bidder of a price sufficient to discharge the mortgage can be found, the court may order that the dien be removed and a second sale be held. If, after satisfying the mortgage, any surplus remains from the proceeds from the auction, the dien-holder shall have priority right for claim to the surplus over any subsequently recorded interests. The court conducting the auction, when issuing title transfer documents, shall notify the land administration office to erase the recordation of dien of the land. We hereby elaborate on the J.Y. Interpretation Yuan-tse No.1446.

其典權之登記。本院院字第一四四六號解釋，應予補充釋明。

J. Y. Interpretation No.120（March 1, 1967）*

ISSUE: Can a member of the Control Yuan serve concurrently as a publisher of a newspaper or magazine?

RELEVANT LAWS:

Article 103 of the Constitution（憲法第一百零三條）.

KEYWORDS:

the publisher of a newspaper or magazine（新聞雜誌發行人）, a member of the Control Yuan（監察委員）, censor（監督）.**

HOLDING: The business activities carried out by the publisher of a newspaper or magazine fall within the scope of business as referred to in Article 103 of the Constitution. Thus, a member of the Control Yuan is prohibited from serving concurrently as a member of the Control Yuan and the publisher of a newspaper or magazine.

解釋文：新聞紙雜誌發行人執行之業務，應屬於憲法第一百零三條所稱業務範圍之內。

REASONING: Since the primary function of members of the Control

解釋理由書：監察委員，職司風憲，居於超然地位，故憲法第一百零

* Translated by Li-Chih Lin, Esq., J.D.

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Yuan is to supervise the actions of the government, all members of the Control Yuan should maintain an impartial (unprejudiced) position and are therefore prohibited from conducting business as referred to in Article 103 of the Constitution. A publisher of a newspaper or magazine cannot publish his or her newspaper or magazine without obtaining prior approval from the competent executive authority. Thus the competent executive authority will censor the business activities carried out by the publisher of a newspaper or magazine. If a member of the Control Yuan serves concurrently as a member of the Control Yuan and the publisher of a newspaper or magazine, he will be censored by the competent executive authority. This is obviously inconsistent with the function of members of the Control Yuan in supervising the actions of the government. Thus, the business activities carried out by the publisher of a newspaper or magazine fall within the scope of business prohibited in Article 103 of the Constitution. A member of the Control Yuan is therefore prohibited from serving concurrently as a member of the Control

三條有不得執行業務之規定。新聞紙雜誌之發行，須經行政官署核准，新聞紙雜誌發行人，所執行之業務，須受行政官署監督，與監察職權，顯不相容。自屬於憲法第一百零三條所稱業務範圍之內。

Yuan and the publisher of a newspaper or magazine.

Justice Fan-Kang Tseng filed dissenting opinion.

本號解釋曾大法官繁康提出不同意見書。

J. Y. Interpretation No.121（May 10, 1967）*

ISSUE: What is the conversion rate for the commutation from punishment of imprisonment to fines or penalties of labor?

RELEVANT LAWS:

Article 41 and Article 42, Paragraph 2 of Criminal Code（刑法第四十一條及第四十二條第二項）.

KEYWORDS:

commutation of imprisonment to penalties（易科罰金）, commutation to labors（易服勞役）, daily conversion rate（折算一日金額）.**

HOLDING: Article 41 of the Criminal Code provides for the commutation of imprisonment to penalties, and Article 42, Paragraph 2, of the same Code provides for the commutation to labor. Their daily conversion rate, if increased twofold by the Act Governing Increasing Penalties, Fines, Judgment Fees, Execution Fees, and Notary Fees during the Period for the Suppression of the Communist Rebellion, shall be three, six, or nine

解釋文：刑法第四十一條之易科罰金，第四十二條第二項之易服勞役，其折算一日之原定金額，如依戡亂時期罰金罰鍰裁判費執行費公證費提高標準條例提高二倍，應為以三元、六元或九元折算一日。

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dollars in exchange for one day of the sentence or labor.

REASONING: Article 41 of the Criminal Code provides for commutation of imprisonment to penalties, and Article 42, Paragraph 2, of the Code provides for commutation to labor. The provisions of the daily conversion rate prescribing one dollar minimum and three dollars maximum means paying one, two, or three dollars in exchange for one day of the sentence. This can be deduced from Article 33, Subparagraph 5, of the Code where the penalty is set at one dollar or above, and Article 72, where as a result of the augmentation or mitigation of punishment, a penalty figure below one dollar will be rounded off and not counted. In accordance with Article 2 and Article 4 of the Act Governing Increasing Penalties, Fines, Judgment Fees, Execution Fees, and Notary Fees during the Period for the Suppression of the Communist Rebellion, the sentencing court may raise the penalty twofold, viz., increase the penalty to three, six, or nine dollars. When doing so, the court must choose one from the above-

解釋理由書：刑法第四十一條之易科罰金，第四十二條第二項之易服勞役，其折算一日之原定金額，所稱一元以上三元以下，係謂以一元、二元或三元折算一日。此證諸同法第三十三條第五款罰金為一元以上，第七十二條因刑之加重、減輕，而有不滿一元之額數者不算，等規定自明。主管院經依戡亂時期罰金罰鍰裁判費執行費公證費提高標準條例第二條與第四條規定核定將其提高二倍後，即應為三元、六元或九元，審判上須就上項數額擇一折算，不得就三元以上，九元以下範圍內，諭知非原定金額提高二倍之數額。至刑法第四十二條第三項比例折算之規定，係就例外情形而設，未容混淆，併予指明。

mentioned penalty figures. It may not pick a figure from within the range of three to nine dollars that is not an exact twofold increment of the original penalty amount. As for the pro rata conversion rate prescribed in Article 42, Paragraph 3, of the Criminal Code, it is created for certain exceptional circumstances and should not be confused with the regular rule. We hereby point it out as well.

J. Y. Interpretation No.122（July 5, 1967）*

ISSUE: Does the Constitution provide legislative immunity for a speech or debate given by legislators of the local governments during their attendance at a legislative session?

RELEVANT LAWS:

Interpretation Yuan-je Tze No. 3735（司法院院解字第三七三五號解釋）.

KEYWORDS:

legislators（議員）, unlawful speech（不法言論）, the legislative session（議會會議）, legislative affairs（議會事項）, legislative immunities（議員言論免責權）.**

HOLDING: The Constitution does not explicitly provide legislative immunity for a speech or debate given by legislators of the local governments during their attendance at a legislative session. Thus, the Interpretation Yuan-je Tze No.3735, which states that county legislators will be held liable for an unlawful speech they give during their attendance at a legislative session even if such a

解釋文：地方議會議員在會議時所為之言論，應如何保障，憲法未設有規定。本院院解字第三七三五號解釋，尚不發生違憲問題。

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* Translated by Li-Chih Lin, Esq., J.D.

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speech was irrelevant to the legislative affairs, remains constitutional and valid.

REASONING: The Constitution does not explicitly provide legislative immunity for a speech or debate given by legislators of the local governments during their attendance at a legislative session. The Interpretation Yuan-je Tsu No.3735, which states that county legislators will be held liable for an unlawful speech they give during their attendance at a legislative session even if such a speech was irrelevant to the legislative affairs, refers to those legislators who intentionally abuse their legislative immunity during their attendance at a legislative session. Thus, the Interpretation Yuan-je Tsu No.3735 remains constitutional and valid. If members of the provincial council, county councils and city councils do not intentionally abuse their legislative immunity, a speech or debate they give during their attendance at the legislative session will be protected.

解釋理由書：憲法對於地方議會議員在會議時所為之言論，應如何保障，並未設有規定。本院院解字第三七三五號解釋，係對縣參議員在會議時濫用言論免責權者而發。尚不發生違憲問題。省縣市議會議員如無濫用情事，其言論之保障，自不受影響。

J. Y. Interpretation No.123（July 10, 1968）*

ISSUE: Should the statute of limitations set for the prosecution of a crime on a suspect or the execution of punishment on a criminal, who is now under an order for arrest by law, be suspended?

RELEVANT LAWS:

Articles 84, 281, 469 and 480 of the Code of Criminal Procedure（刑事訴訟法第八十四條、第二百八十一條、第四百六十九條及第四百八十條）; Articles 84 and 85 of the Criminal Code（刑法第八十四條及第八十五條）; Interpretation Yuan-tze No. 1963（司法院院字第一九六三號解釋）.

KEYWORDS:

power to execute punishment（行刑權）.**

HOLDING: The statute of limitations to prosecute a defendant on trial who is under an order for arrest by law should be suspended. The J. Y. Interpretation Yuan-tsu No. 1963 has not been changed. The statute of limitations to execute punishment of a criminal, who is under an order for arrest by law, should also

解釋文：審判中之被告經依法通緝者，其追訴權之時效，固應停止進行，本院院字第一九六三號解釋並未有所變更。至於執行中之受刑人經依法通緝，不能開始或繼續執行時，其行刑權之時效亦應停止進行，但仍須注意刑法第八十五條第三項之規定。

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* Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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be suspended when the order cannot start or continue. At the same time, Article 85, Paragraph 3, of the Criminal Code should be taken into consideration.

REASONING: Except for special provisions, no trial should be completed when a defendant does not appear in court. An order for arrest can be made when a defendant goes into exile or hiding, according to Articles 281 (formerly Article 260) and 84 of the Code of Criminal Procedure. The trial procedure on a defendant, who must make a court appearance, cannot start or continue when the defendant, who is under an order for arrest by law, goes into exile or hiding. Under such circumstances, the statute of limitations to prosecute should be suspended, and Article 85, Paragraph 3, of the Criminal Code should be taken into consideration. J. Y. Interpretation Yuan-tze No. 1963 in regard to this part has not been changed. It is obviously clear that, according to Article 469 (formerly Article 473), Article 480 (formerly Article 484) and other provisions concerning the execution of a penalty of the Code of Crimi-

解釋理由書：按審判期日，除有特別規定外，被告不到庭者，不得審判。被告逃亡或藏匿者，得通緝之。此為刑事訴訟法第二百八十一條（舊法第二百六十條）及第八十四條所明定。審判中之被告因有到庭受審判之必要而逃亡或藏匿，經依法通緝者，審判之程序因而不能開始或繼續，則其追訴權之時效，自應停止進行，但須注意刑法第八十三條第三項之規定。本院院字第一九六三號第一項就此部分所為之解釋，迄今並未有所變更。又按刑之執行，為強制受刑人到場，得依法通緝之。此徵諸刑事訴訟法第四百六十九條（舊法第四百七十三條）及第四百八十條（舊法第四百八十四條）以及其他有關執行各條之規定，至為明顯。受刑人因有到場受執行之必要而逃亡或藏匿，經依法通緝，不能開始或繼續執行司法院大法官解釋彙編時，依刑法第八十五條第一項之規定，行刑權之時效，自亦應停止其進行。惟關於停止原因繼續存在之期間，仍須注意有同條第三項之適用。如

nal Procedure, in order to compel a criminal to appear in court and to implement a penalty, an order for arrest by law can be made. The implementation procedure on a defendant, who must make a court appearance, cannot start or continue when the defendant, who is under an order for arrest by law, goes into exile or hiding. According to Article 85, Paragraph 1, of the Criminal Code, the statute of limitations to execute punishment on a criminal should therefore be suspended. Nevertheless, regarding the period of suspension, the application of Article 85, Paragraph 3, of the Criminal Code should be taken into consideration. If it reaches one-fourth of the period listed in Article 84, Paragraph 1, of the Criminal Code, the reason for suspension will be deemed to have ended. When there is no further implementation and no other reason for suspension, the statute of limitations of power to execute punishment shall be restored.

達於第八十四條第一項各款所定期間四分之一者，其停止原因視為消滅。此時如仍未行使而另無停止之原因，即應恢復時效之進行。

Justice Shi-Ding Chin filed dissenting opinion, in which Justice Jin-Lan Chang, and Justice Fan-Kang Tseng joined.

本號解釋金大法官世鼎、張大法官金蘭與曾大法官繁康共同提出不同意見書。

J. Y. Interpretation No.124（August 23, 1968）*

ISSUE: May the tenant farmer under the Act Governing the Reduction of Farm Rent to 37.5 Percent waive his right of first refusal in advance?

RELEVANT LAWS:

Article 15 of the Act Governing Reduction of Farm Rent to 37.5 Percent（耕地三七五減租條例第十五條）.

KEYWORDS:

sale and *dien*（出賣及出典）, tenant farmer（農地承租人）.**

HOLDING: According to Article 15, Paragraph 1, of the Act Governing Reduction of Farm Rent to 37.5 Percent, when cultivated land is going to be sold or diened[1], the tenant has the right of first refusal, which he may decide to exercise or not, only if the landowner has informed the tenant the purchase terms in written form. Such provision shall not be set aside even though the tenant has expressed in

解釋文：依耕地三七五減租條例第十五條第一項之規定，承租人於耕地出賣或出典時，有優先承受之權。必須出租人將賣典條件以書面通知承租人後，始有表示承受或放棄承受之可言。此項規定，自不因承租人事先有拋棄優先承受權之意思表示而排除其適用。

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* Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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

[1] See Articles 911 thru 927 of the Civil Code.

advance the intention of giving up the right.

REASONING: Article 15, Paragraph 1, of the Act Governing Reduction of Farm Rent to 37.5 Percent reads: "When cultivated land is going to be sold or diened, the tenant has the right of first refusal. The landowner should inform the tenant in written form of the purchase or pawn terms. If the tenant does not reply in writing within 15 days, he or she will be deemed to have relinquished the right." The purpose of this provision is founded on a basic national policy that supports self-tilling tenants by granting them the purchase right under the same terms when the land is subject to sale or pawn. The tenant's right is further protected by way of requiring the landowner to inform him of the terms in written form. Such right of first refusal does not prevail until the land is subject to sale or pawn, nor can the tenant expresses the intention to buy or not until the landowner informs him of the terms in writing. Such provision shall not be set aside even though the tenant has expressed in advance the intention of giv-

解釋理由書：查耕地三七五減租條例第十五條第一項規定：「耕地出賣或出典時，承租人有優先承受之權。出租人應將賣典條件以書面通知承租人。承租人在十五日內未以書面表示承受者，視為放棄。」其立法意旨乃本於憲法所定扶植自耕農之基本國策，使承租人於耕地出賣或出典時，依當時之賣典條件，有優先承受之權；並就賣典條件通知承租人，限定以書面為之，以確保承租人之權益。其優先承受之權，係於耕地出賣或出典時始行發生，且必須出租人將賣典條件以書面通知承租人後，始得表示承受或放棄承受，此項規定，自不因承租人事先拋棄優先承受權之意思表示而排除其適用。無論其意思表示係向出租人或向其他承租人為之，其時既無賣典之情事與條件，則法定之優先承受權尚未發生，自無所謂消滅或喪失之問題。嗣後如遇耕地出賣或出典時，出租人仍應依上開條項之規定，將賣典條件以書面通知承租人。承租人未於十五日內以書面表示承受者，始發生視為放棄之效果。

ing up the right. Whether such intention was expressed to the landowner or other tenants, in fact no sale or pawn occurred at that time. Since the right of first refusal did not prevail, nothing concerning the issue of termination or forfeit occurred. Thereafter, when the cultivated land is subject to sale or pawn, the landowner, according to the above provision, still has to inform the tenant of the terms in written form. If the tenant does not express the intention of purchasing in writing within 15 days, he will be deemed as having given up the right.

J. Y. Interpretation No.125（October 30, 1968）*

ISSUE: Are Article 114 of the Land Act and Article 438 of the Civil Code governing the termination of a lease contract applicable to the termination of a farmland lease contract entered into under the Act Governing Reduction of Farm Rent to 37.5 Percent?

RELEVANT LAWS:

Article 17 of the Act Governing Reduction of Farm Rent to 37.5 Percent（耕地三七五減租條例第十七條）; Article 114 of the Land Act（土地法第一百十四條）; Article 438 of the Civil Code（民法第四百三十八條）.

KEYWORDS:

ending a cultivated land lease contract（耕地租賃契約之終止）, rehabilitation and compensation（回復原狀及損害賠償）.**

HOLDING: The conditions for ending a cultivated land lease contract before its term has expired are regulated by Article 17 of the Act Governing Reduction of Farm Rent to 37.5 Percent. Provisions on ending a lease contract in

解釋文：依耕地三七五減租條例訂立之租約，在租佃期限未屆滿前，得終止之情形，同條例第十七條已有規定，無土地法第一百十四條及民法第四百三十八條有關終止租約規定之適用。

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* Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of Law, Academia Sinica.

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Article 114 of the Land Act and Article 438 of the Civil Code should not be applied.

REASONING: Although there are respective provisions on ending a cultivated land lease contract in the Land Act and Civil Code, Article 17 of the Act Governing Reduction of Farm Rent to 37.5 Percent explicitly stipulates that before its term has expired no cultivated land lease contract may be ended without satisfaction of one of the listed requirements. By its wording, it is therefore obvious that a landowner may end a contract only when one of the conditions occurs. According to Article 1 of the Act, provisions on ending a lease contract in Article 114 of the Land Act and Article 438 of the Civil Code should not be applied. It should be pointed out that when a tenant violates the above provisions in the Land Act and Civil Code, a landowner has the right to apply for rehabilitation and compensation, or to claim the contract to be null and void according to Article 16, Paragraph 2, of the Act Governing Reduction of Farm Rent to 37.5 Percent.

解釋理由書：關於耕地租賃契約之終止，土地法及民法雖均設有規定，唯耕地三七五減租條例第十七條明文規定，耕地租佃期限未屆滿前，非有左列情形之一，不得終止。是出租人終止租約，僅限於有該條各款所定情形之一者始得為之，文義至為明顯。依同條例第一條前段，應無適用土地法第一百十四條及民法第四百三十八條規定以終止租約之餘地。至承租人違反上開民法及土地法之規定，出租人得依法請求回復原狀或損害賠償，或本於耕地三七五減租條例第十六條第二項主張租約無效，均屬別一問題，併此指明。

J. Y. Interpretation No.126（February 21, 1969）*

ISSUE: For the commodity with no applicable wholesale market value and the freight cost, shall such freight cost be deducted from the duty-paying value of such commodity to be levied?

RELEVANT LAWS:

Articles 3 and 8 of he Commodity Tax Act（貨物稅條例第三條、第八條）.

KEYWORDS:

commodity tax（貨物稅）, duty-paying value（完稅價格）, market wholesale value（市場批發價格）, ex works value（出廠價格）.**

HOLDING: According to the Commodity Tax Act, for the commodity having market wholesale value to which new tax is to be applied, the duty-paying value of such commodity shall be the ex works value, not including tax and freight. In the case where there is no applicable wholesale market value and the freight cost thereof paid by the producer has been included in the ex works value, the duty-

解釋文：依照貨物稅條例，新稅貨物有市場批發價格者，其完稅價格，為未經含有稅款及運費之出廠價格。其無市場批發價格，而由產製廠商所支出之運費已包含於出廠價格之內者，其完稅價格，自不得扣除是項運費計算課征。

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* Translated by Assistant Professor Y.K.Huang.

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paying value of such commodity to be levied shall not be deducted from such freight cost.

REASONING: Article 8 of the Commodity Tax Act provides that for the commodity having market wholesale value not including tax, the ex works value may be considered as its duty-paying value; Article 3, Subparagraph 1, Item 4, of the same Act also applies to the situation where the commodity's ex works value does not include tax and freight. But for the commodity having wholesale market value to which new tax is applied and the freight cost thereof paid by the producer which has been included in the ex-works value, which is obviously different from the wholesale market value which includes the freight cost thereof paid by the wholesaler, its duty-paying value shall therefore not be deducted from that freight.

解釋理由書：按新稅貨物市場批發價格內尚未含有稅款者，得暫以出廠價格為完稅價格，貨物稅條例第八條定有明文，而出廠價格原未含有稅款及運費，亦為同條例第三條第一款之蔇所明定。但新稅貨物無市場批發價格，而由產製廠商自行支出之運費，已包含於出廠價格之內者，與市場批發價格內由批發商支出之運費，顯有不同，其完稅價格，自不得將此項運費予以扣除。

Justice Shueh-Teng Lee filed dissenting opinion.

本號解釋李大法官學燈提出不同意見書。

J. Y. Interpretation No.127（September 5, 1969）*

ISSUE: Is a public functionary subject to automatic removal from his or her office upon commission of an offense of corruption?

RELEVANT LAWS:

Article 15, Paragraph 1, Subparagraph 3 and Article 15, Paragraph 2, of the Public Functionaries Appointment Act（公務人員任用法第十五條第一項第三款及第十五條第二項）; Article 17, Subparagraph 3, of the Public Functionaries Disciplinary Act（公務員懲戒法第十七條第三款）.

KEYWORDS:

corruptive act（貪污行為）, civil servant（公務人員）, discharge（免職）, suspension of punishment（緩刑）, offense of rebellion（內亂罪）, offense of treason（外患罪）, serving sentences in jail（刑期開始執行）.**

HOLDING: A civil servant shall be discharged immediately from his official duties if one of the following circumstances occurs: (1) he has committed a corruptive act and been convicted; (2) the period of suspension granted has ended but the suspension has not been revoked;

解釋文：公務人員犯貪污罪，緩刑期滿，緩刑之宣告未經撤銷，或犯他罪，刑期執行完畢始被發覺者，均仍應予免職。

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* Translated by Li-Chih Lin, Esq., J.D.

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(3) he is convicted of other offenses and is currently serving his sentence in prison; or (4) his corruptive act is discovered after he has finished serving his sentence in prison.

REASONING: Article 15, Paragraph 2, of the Public Functionaries Appointment Act provides that a public official who has committed a corruptive act shall be disqualified as a civil servant once he is convicted. If the conviction is affirmed and valid, the person shall be discharged immediately from his official duties even when a suspension of punishment is granted. A civil servant shall also be discharged immediately from his official duties even when the period of suspension has ended but the suspension has not been revoked. Article 15, Paragraph 1, Subparagraph 3, of the Public Functionaries Appointment Act and Article 17, Subparagraph 3, of the Public Functionaries Disciplinary Act also respectively provide that: (1) a public official who commits an offense of rebellion or an offense of treason shall be disqualified as a civil servant once he is convicted; and (2) a civil ser-

解釋理由書：曾服公務有貪污行為者，一經判決確定即不得為公務人員，此為公務人員任用法第十五條第二款所明定，雖同時諭知緩刑但確定判決之效力並未喪失，當時即應免除其職務，縱於緩刑期滿，緩刑之宣告未經撤銷始被發覺，亦不得不予以免職。公務人員犯貪污罪外之內亂罪、外患罪經判決確定者，不得為公務人員。犯其他罪受拘役以上刑之宣告在執行中者，其職務當然停止，停職原因未消滅者，不得為公務人員。公務人員任用法第十五條第一款第三款後段，公務員懲戒法第十七條第三款亦有明文。在判決確定或刑開始執行之時，既已不得為公務人員，其原有之職務即應予以免除。不應因刑期執行完畢始被發覺而排斥各該條款之適用。

vant shall be discharged immediately from his official duties once he is convicted of other offenses and begins to serve his sentence in prison; and he shall be disqualified as a civil servant if the reason for discharging his official duties is not revoked. Since a public official is disqualified as a civil servant once he is convicted or he begins to serve a sentence in prison, he shall be discharged immediately from his official duties and subject to the aforementioned provisions even when his corruptive act is discovered after he has finished serving his sentence in prison.

J. Y. Interpretation No.128（April 17, 1970）*

ISSUE: What remedy should be sought where a party is dissatisfied with the decision and mediation rendered by an administrative agency as to whether a farmland may be retrieved for purpose of self-cultivation?

RELEVANT LAWS:

Articles 6 and 19 of the Act Governing the Reduction of Farm Rent to 37.5 Percent（耕地三七五減租條例第六條、第十九條）; Article 1 of the Administrative Appeal Act（訴願法第一條）; Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）.

KEYWORDS:

administrative decision（行政處分）, self-cultivation（自耕）, lease contract（租賃契約）, Suburban Community (Town, Precinct) Administration Office's Committee of Farmland Lease（鄉鎮（區）公所耕地租佃委員會）, Regulation for the Registration of Lease of Farm Land（耕地租約登記辦法）.**

HOLDING: If the lessor or the lessee is not satisfied with the decision or settlement made by the administrative au-

解釋文：行政機關就耕地三七五減租條例第十九條所為耕地准否收回自耕之核定與調處，出租人承租人如有

* Translated by David Yang and Matt Chou of Baker & McKenzie Law Offices, Taipei.

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thority as to whether the lessor can retrieve his or her farmland for self-cultivation pursuant to Article 19 of the Act Governing the Reduction of Farm Rent to 37.5 Percent, he or she shall follow the administrative procedure for remedy.

不服，應循行政訟爭程序請求救濟。

REASONING: Article 19, Paragraph 1, of the Act Governing the Reduction of Farm Rent to 37.5 Percent provides that "when the term of a farmland lease contract expires, the lessor shall not retrieve his or her farmland for self-cultivation if any one of the following conditions applies". Three conditions are specified where the lessor shall not take back his or her farmland. Whether the farmland can be retrieved by the lessor shall be reviewed by the Administration Office of the Suburban Community (Town, Precinct) according to Article 6, Paragraph 1, of the said Act and the respective Regulations for the Registration of Lease of Farm Land of the Taiwan Province and Taipei City made with authorization of Paragraph 2 of the same Article. Registration will be made after

解釋理由書：查耕地三七五減租條例第十九條第一項規定：「耕地租約期滿時，如有左列情形之一者，出租人不得收回自耕」，並列舉不得收回自耕之三款情形，其耕地准否收回自耕，乃應依同條例第六條第一項及由同條第二項授權訂定之臺灣省及臺北市有關耕地租約登記辦法之規定，由該管鄉鎮（區）（市）公所審查，報經縣市政府核備後，辦理登記，該管行政機關所為之審查核定，係屬行政處分；又依該條例第十九條第二項之規定，出租人如確不能維持其一家生活，而同時因出租人收回耕地，致承租人失其家庭生活依據者，鄉鎮（區）公所耕地租佃委員會所為之調處，既係對於耕地租約已滿期時准否收回自耕事件所為發生法律效果之單方行為，自亦係行政處分。且此項調處之對外行文，依同條例第三條授權所制定之臺灣省各縣（市）（局）鄉

approval of the county (city) government. The review and approval of the relevant administrative authority is an administrative decision. According to Article 19, Subparagraph 2, of the said Act, if the lessor actually can not make a living for his or her family, or if the lessor's retrieval of the farmland will result in the lessee's loss of economic support for his or her family, the conciliation shall be made by the Farmland Lease Committee of the Suburban Community (Town, Precinct). The decision made by the Committee is an administrative decision which is a unilateral administrative act with legal effects as to whether the lessor can retrieve his or her farmland when the term of the lease contract expires. In addition, according to Article 13 of the Organic Regulation of the Farmland Lease Committee of the Administration Office of County (City), (Bureau), Suburban Community (Town), (Precinct) of Taiwan and Article 13 of the Organic Regulation of the Farmland Lease Committee of the Precinct Administration Office of Taipei, which are stipulated with the authorization of Article 3 of the said Act, the external official correspondence regarding the

（鎮）（區）公所耕地租佃委員會組織規程第十三條，臺北市各區公所耕地租佃委員會組織規程第十三條之規定以鄉（鎮）或區公所之名義行之，足見此項調處應由鄉鎮區公所以行政機關之地位為之，其為行政處分，更為明顯。復查該條例第十九條第二項并無如同條例第二十六條第一項移由司法機關理之規定，故出租人或承租人對耕地准否收回自耕之核定與調處，如有不服，自應依訴願法第一條，行政訴訟法第一條循行政訟爭程序以提起訴願再訴願行政訴訟之程序請求救濟。

conciliation shall be made in the name of the Administration Office of the Suburban Community (Town) or Precinct. It is obvious that the conciliation is made by the Administration Office of the Suburban Community, Town or Precinct in the capacity as an administrative authority and therefore is a kind of administrative decision. Unlike Article 26, Paragraph 1, of the said Act, Article 19, Paragraph 2, of the said Act has no provision for transferring the case to the judiciary. Therefore, if the lessor or the lessee is not satisfied with the decision or conciliation as to whether the lessor can retrieve his or her farmland for self-cultivation, he or she shall follow the administrative remedy procedures by bringing administrative appeal, re-appeal, and administrative lawsuit pursuant to Article 1 of the Administrative Appeal Act and Article 1 of the Administrative Proceedings Act.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王大法官之倧提出不同意見書。

J. Y, Interpretation No.129（October 30, 1970）*

ISSUE: Is Interpretation No. 68 applicable to a minor under the age of 14 who participated in a rebellion organization and has not voluntarily submitted himself to the authorities or has no evidence to prove his withdrawal from said organization upon reaching 14 years of age?

RELEVANT LAWS:

Articles 2 and 18 of the Criminal Code（刑法第二條、第十八條）.

KEYWORDS:

rebellion（叛亂）.**

HOLDING: A person who participated in a rebellion organization when he was under 14 years old is criminally liable when he becomes 14 years old or older provided that he has not voluntarily submitted himself to the authorities, or that there is no evidence to prove that he did withdraw from the organization. This Yuan's Interpretation No.68 shall apply in this circumstance.

解釋文：未滿十四歲人參加叛亂組織，於滿十四歲時，尚未經自首，亦無其他事實證明其確已脫離者，自應負刑事責任。本院釋字第六十八號解釋並應有其適用。

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* Translated by Jaw-Pern Wang.

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

REASONING: An act committed by a person under 14 years old is not punishable by law, which is explicitly provided in Article 18, Paragraph 1, of the Criminal Code. However, the act of participating in a rebellion organization has the nature of continuousness. A person who participated in a rebellion organization when he was under 14 years old is criminally liable when he becomes 14 years old or older provided that he has not voluntarily submitted himself to the authorities, or that there is no evidence to prove that he did withdraw from the organization, on the ground that his act is in the state of continuousness. This Yuan's Interpretation No.68 shall apply in this circumstance. As to the issue of commutation or remission, it is a matter of the facts and shall be decided by the relevant authorities, and does not fall into the scope of this Interpretation.

解釋理由書：未滿十四歲人之行為不罰，刑法第十八條第一項固有明文規定。但參加叛亂組織之行為具有繼續性，未滿十四歲人參加叛亂組織，於滿十四歲時，尚未經自首，亦無其他事實證明其確已脫離者，其行為既在繼續狀態中，自應負刑事責任。本院釋字第六十八號解釋並應有其適用。至於有無免減原因，係事實問題，應由有權機關認定之。不屬解釋範圍。

Justice Ji-Dong Lin filed dissenting opinion.

本號解釋林大法官紀東提出不同意見書。

J. Y. Interpretation No.130（May 21, 1971）*

ISSUE: Shall the 24-hour time limit for turning over a suspect, as required in Article 8, Paragraph 2, of the Constitution, exclude therefrom delays due to traffic jams and force majeure, as well as time spent on traveling, if any?

RELEVANT LAWS:

Article 8, Paragraph 2 of the Constitution（憲法第八條第二項）; Article 162 of the Code of Civil Procedure（民事訴訟法第一百六十二條）; Article 66 of the Code of Criminal Procedure（刑事訴訟法第六十六條）.

KEYWORDS:

physical freedom（人身自由）, arrest or detain（逮捕拘禁）, the suspect（嫌疑犯）, force majeure（不可抗力）.**

HOLDING: "The 24-hour time limit for turning over [the suspect]" provided in Article 8, Paragraph 2, of the Constitution shall exclude delays due to traffic jams and force majeure, and the time spent on the handover. No unnecessary delay, however, shall be allowed, nor are the procedural laws regarding the de-

解釋文：憲法第八條第二項所定「至遲於二十四小時內移送」之時限，不包括因交通障礙，或其他不可抗力之事由所生不得已之遲滯，以及在途解送等時間在內。惟其間不得有不必要之遲延，亦不適用訴訟法上關於扣除在途期間之規定。

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* Translated by Ming-Yi Kuo and Chao-Yu Wang of Lee and Li, Attorneys-at-Law.

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duction of time for journey to the court.

REASONING: Article 8, Paragraph 2, of the Constitution provides: "When a person is arrested or detained on suspicion of having committed a crime, the organ making the arrest or detention shall inform said person in writing, and his designated relative or friend, of the grounds for his arrest or detention, and shall, within 24 hours, turn him over to a competent court for trial." In order to protect physical freedom, the time limit must be fairly strict. However, unforeseeable delays may occur due to the time necessary for travel, traffic jams, and other force majeure events that are not imputable to a party. Including the time delays due to the above events in the 24-hour time limit is not only impractical but also contrary to the Constitution. Therefore, the delays mentioned above shall be excluded from the 24-hour time limit. As the intent of the Constitution is to protect physical freedom, any unnecessary delay, however, shall be included in the time limit, and the handover shall be processed as soon as possible. Article 162 of the

解釋理由書：憲法第八條第二項規定：「人民因犯罪嫌疑被逮捕拘禁時，其逮捕拘禁機關應將逮捕拘禁原因，以書面告知本人及其本人指定之親友，並至遲於二十四小時內移送法院審問。」旨在保障人民身體之自由，時限至為嚴格。惟事實上有因必要之途程需有在途時間，或因交通障礙及其他不可抗力之事由，致發生不得已之遲滯者。如不問任何情形，必須將此等時間一併計入二十四小時之範圍，既為事實所不能，當非制憲之本旨。自應解為均不包括於該項時限之內。但其間不得有不必要之遲延，應儘可能妥速到達，庶符憲法切實保障人身自由之用意。至於民事訴訟法第一百六十二條或刑事訴訟法第六十六條關於扣除在途期間之規定，係為便利於法定期間內為訴訟行為之人，其住居所或事務所不在法院所在地者而設，由司法行政最高機關定之。向以各法院管轄區域內最遠地區域內最遠地區為全境概括計算之標準，按其距離法院之里程及交通狀況而從寬酌定其日期。核與上開憲法規定之性質與主旨有別，自無適用之餘地。

Code of Civil Procedure and Article 66 of the Code of Criminal Procedure provide that the time for journey to the court shall be deducted from the 24-hour time limit. Such Provision is to provide more time to those whose domicile, residence, or office is not within the jurisdiction of the court. The highest judicial administrative office shall set the time. All levels of courts shall, taking the most distant district within their jurisdiction as the standard for calculation of distance and time spent on travel, set the time limit subject to the distance to the court and the traffic conditions. The above purpose is different from that of the Constitution. Therefore, time spent on travel as provided for in relevant procedural laws cannot be applied to the 24-hour time limit provided in Article 8 of Constitution.

Justice Ji-Jong Wang filed dissenting opinion.

Justice Fan-Kang Tseng filed dissenting opinion.

本號解釋王大法官之倧、曾大法官繁康分別提出不同意見書。

J. Y. Interpretation No.131（September 24, 1971）*

ISSUE: May a civil servant under the Public Functionary Service Act serve concurrently as the president or director of a private school?

RELEVANT LAWS:

Interpretation Yuan-tze No. 2320（司法院院字第二三二〇號解釋）; Article 14 of the Public Functionary Service Act（公務員服務法第十四條）; Article 27, Paragraph 2 of the Civil Code（民法第二十七條第二項）; Articles 19 and 26 of the Regulation Governing Private Schools（私立學校規程第十九條及第二十六條）.

KEYWORDS:

civil servant （公務員）, president（董事長）, director（董事）, private school（私立學校）, exemption（解除）.**

HOLDING: The Public Functionary Service Act provides that a civil servant should not serve concurrently as a civil servant and the president or director of a private school, except as otherwise permitted in other laws or orders. This Interpretation is to supplement and clarify

解釋文：公務員服務法上之公務員，不得兼任私立學校之董事長或董事，但法律或命令規定得兼任者，不在此限。本院院字第二三二〇號解釋應予補充釋明。

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* Translated by Li-Chih Lin, Esq., J.D.

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Interpretation Yuan-tze No. 2320.

REASONING: The directors who carry out all businesses in a corporation are deemed by law to be the representatives of the corporation. Article 27, Paragraph 2, of the Civil Code explicitly provides that a private school is an educational business responsible for educating students. The function of a private school is different from the function of a business enterprise such as a clubhouse or a charity organization. Articles 19 and 26 of the Regulation Governing Private Schools provide that the president and the directors should decide all the primary business of a private school. Thus, duties carried out by the president or the directors of a private school fall within the scope of business under Article 14 of the Public Functionary Service Act. Except as otherwise permitted in other laws or orders under special circumstances, the president or director of a private school cannot be a civil servant, whether such school has been incorporated and registered as a business enterprise or not. This restriction is to comply with the legislative intent of

解釋理由書：查「董事就法人一切事務，對外代表法人」，為民法第二十七條第二項所明定。私立學校，係教育事業，負作育人才之責任，其任務，與會館、慈善事業等財團法人有別；學校之主要事項，均須董事長及董事決定（參看私立學校規程第十九條及第二十六條）。其所擔任之職務，自難謂為非公務員服務法第十四條所稱之業務，除法律或命令基於事實需要規定得由公務員兼任者外，無論私立學校，已未為財團法人之設立登記，其董事長或董事均非公務員服務法上之公務員所得兼任，以符合公務員服務法限制公務員不得兼任他項職務之立法本旨，本院院字第二三二〇號解釋，應予補充釋明。至私立學校規程有關公務員為私立學校之創辦人，得充任為董事，自係合於同法第十四條除外之規定；如有其他事實需要，亦自得以法令規定公務員得以兼任，併予說明。

the Public Functionary Service Act. This Interpretation is to supplement and clarify Interpretation Yuan-tze No. 2320. As for the Regulation Governing Private Schools allowing a civil servant who is the founder of a private school to also serve as a director of such private school is an exemption provided in Article 14 of the same Act. If a civil servant who is the founder of a private school is also required under a special circumstance to serve as the director of such private school, it will be permitted under the law. This Interpretation is to clarify the above-mentioned exemption as well.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王大法官之倧提出不同意見書。

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.

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[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.

提存物時，自仍有民法第一百二十五條規定之適用。

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 debt. 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

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.

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。

J. Y. Interpretation No.133（June 9, 1972）*

ISSUE: What does the term "exemption of punishment" enunciated in this Yuan's Interpretation Y.J.T. No. 3534 really connote?

RELEVANT LAWS:

Articles 47 of the Criminal Code（刑法第四十七條）; Interpretation Yuan-je Tzu No. 3534（司法院院解字第三五三四號解釋）.

KEYWORDS:

Exemption of punishment（免除其刑）, pardon（赦免）.**

HOLDING: The term "exemption of punishment," as indicated in this Yuan's Interpretation Yuan-je Tze No. 3534, means the reduction or waiving of a given sentence as a result of the exercise of pardon right, which does not include other types of sentencing waivers.

解釋文：本院院解字第三五三四號解釋所稱「免除其刑」係指因赦免權作用之減刑而免除其刑者而言，不包括其他之免除其刑在內。

REASONING: Article 47 of the Criminal Code expressly provides that a recidivist is the commission of a new offense within five years after the comple-

解釋理由書：刑法第四十七條明定受有期徒刑之執行完畢，或受無期徒刑或有期徒刑一部之執行，而赦免後，五年以內再犯有期徒刑以上之罪者

* Translated by Professor Andy Y. Sun.

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tion of an imprisonment or a waiver of sentence after partial consummation of imprisonment if that offense is punishable by a limited term of imprisonment or above. In accordance with this Yuan's Interpretation Yuan-je Tze No. 3534, "pardon" means special pardon and exemption from carrying out a sentence, which does not include general pardon. The term "exemption of punishment" means the reduction or waiving of a given sentence as a result of the exercise of pardon right. Other types of sentence waivers are not included, since they are not based upon the effect of pardons, such as those indicated in Article 23, Article 24, Paragraph 1, and Articles 26 and 27 of the Criminal Code, as their operations require a judgment for exemption of punishment, which carries no execution of any sentence and is irrelevant to the definition of any recidivist. This is to further illustrate and supplement the above-indicated Interpretation.

為累犯，所謂赦免，經本院院解字第三五三四號解釋係指特赦及免除其刑者而言，不包括大赦在內。其所稱免除其刑，係指基於赦免權作用之減刑而免除其刑而言。其他如刑法第二十三條但書、第二十四條第一項但書、第二十六條但書、第二十七條等所規定之免除其刑，既非基於赦免權之作用而係應依刑事訴訟法諭知免刑之判決，並無徒刑之執行，與累犯之構成要件無關，自不包括在內。本院上開解釋應予補充釋明。

Justice Ji-Jong Wang filed dissenting opinion.

Justice Jing-Yu Ouyang filed dissenting opinion.

本號解釋王大法官之倧、歐陽大法官經宇分別提出不同意見書。

J. Y. Interpretation No.134（December 1, 1972）*

ISSUE: Where the court failed to serve a copy of the private prosecution upon the accused, who nevertheless appeared in court and participated in oral argument, could the accused still claim that the judgment is illegal due to failure of service of process?

RELEVANT LAWS:

Article 320, Paragraph 3, and Article 328 of the Code of Criminal Procedure（刑事訴訟法第三百二十條第三項、第三百二十八條）.

KEYWORDS:

private prosecution（自訴）, oral arguments（言詞辯論）.**

HOLDING: A plaintiff who brings a private prosecution against numerous defendants shall provide the court with copies of the complaint for all the defendants. If a plaintiff fails to provide the required number of copies of the complaint to the court, the court shall order the plaintiff to provide the missing copies within a specific time period if the circumstances permit. The aforementioned

解釋文：自訴狀應按被告人數提出繕本，其未提出而情形可以補正者，法院應以裁定限期補正，此係以書狀提起自訴之法定程序，如故延不遵，應諭知不受理之判決。惟法院未將其繕本送達於被告，而被告已受法院告知自訴內容，經為合法之言詞辯論時，即不得以自訴狀繕本之未送達而認為判決違法。本院院字第一三二〇號解釋之㈡應予補充釋明。

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* Translated by Li-Chih Lin, Esq., J.D.

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rule is a part of the statutory procedure for bringing a private prosecution with a written complaint. If the plaintiff fails to comply with the court order, the court shall dismiss the plaintiff's complaint. However, if the court fails to serve a copy of the complaint to the defendant but the defendant has already been informed of the contents of the complaint, and the judgment of the case has been rendered after oral arguments, the defendant may not argue that the judgment is illegal for the reason that the court has failed to serve him or her a copy of the complaint. Interpretation Yuan-Je-Tze No. 1320 shall therefore be supplemented and clarified accordingly.

REASONING: A plaintiff who brings a private prosecution against numerous defendants shall provide the court with copies of the complaint for all the defendants. Article 320, Paragraph 3, of the Code of Criminal Procedure specifies that if a plaintiff fails to provide the required number of copies of the complaint to the court, the court shall order the plaintiff to provide the missing copies

解釋理由書：按自訴狀應按被告人數提出繕本，刑事訴訟法第三百二十條第三項（舊條文第三百十二條第三項）定有明文。其未提出而情形可以補正者，法院應以裁定限期命其補正，此為以書狀提起自訴之法定程序，如故延不遵，自應諭知不受理之判決（參照同法第三百四十三條準用第二百七十三條）亦為本院院字第一三二〇號解釋之㈡所明示。至自訴狀繕本之送達，屬

within a specific time period if the circumstances permit. The aforementioned rule is a part of the statutory procedure for bringing a private prosecution with a written complaint. If the plaintiff fails to comply with the court order, Interpretation Yuan-Je-Tze No. 1320 holds that the court shall dismiss the plaintiff's complaint (See Article 343 of the Code of Criminal Procedure, applicable *mutatis mutandis* to Article 273 of the Code of Criminal Procedure). It is the court's obligation to serve a copy of the complaint to each defendant. Thus, Article 328 of the Code of Criminal Procedure provides that, except when the court has summoned or detained the defendant, the court shall promptly serve a copy of the complaint to each defendant. In addition, if the defendant has already been informed of the content of the complaint, and the judgment of the case has been rendered after oral arguments, the defendant may not argue that the judgment is illegal for the reason that the court has failed to serve him or her a copy of the complaint. Interpretation Yuan-Je-Tze No. 1320 shall therefore be supplemented and clarified accordingly.

於法院之職責，法院固應速將繕本送達於被告，惟如有先行傳喚或拘提之必要者，同法第三百二十八條但書有例外之明文。且如被告已受告知被訴之內容，案經合法之言詞辯論而為判決時，自亦難以繕本之未送達而認判決為違法。從而本院院字第一三二〇號解釋之㈡應予補充釋明。

Justice Ji-Jong Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官之倧、金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.135（June 22, 1973）*

ISSUE: In a civil or criminal action where the judgment of a lower court is erroneously reversed, vacated, or remanded by a court of appeal, may the party file an appeal, motion for a new trial, or petition for extraordinary appeal, or seek other legal remedies?

RELEVANT LAWS:

Article 444 of the Code of Civil Procedure（民事訴訟法第四百四十四條）; Articles 367 and 395 of the Code of Criminal Procedure（刑事訴訟法第三百六十七條、第三百九十五條）.

KEYWORDS:

Reverse（廢棄）, vacate（撤銷）, remanded for further proceeding（發回更審）.**

HOLDING: In a civil or criminal action where the judgment of a lower court is erroneously reversed, vacated, or remanded for further proceeding by a court of appeal despite the fact that no objection to such lower court judgment has been raised or, even though an

解釋文：民刑事訴訟案件下級法院之判決，當事人不得聲明不服而提出不服之聲明，或未提出不服之聲明而上級法院誤予廢棄或撤銷發回更審者，該項上級法院之判決及發回更審後之判決，均屬重大違背法令，固不生效力，惟既具有判決之形式，得分別依上訴、

* Translated by Raymond T. Chu.

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objection has been raised, the judgment is not legally objectionable, the decision entered by the court of appeal or the decision rendered upon such further proceeding constitutes a material violation of the law and shall be null and void. Such decision being a judgment pro forma, however, the matter may be dealt with pursuant to such legal proceedings as appeal, new trial, and extraordinary appeal, and other legal remedies.

再審、非常上訴及其他法定程序辦理。

REASONING: In a civil or criminal action where a party raises an objection to the judgment of the lower court in spite of the law that no objection is permissible to such judgment, and the appellate court, which is bound to dismiss the appeal under Article 444 of the Code of Civil Procedure or, as the case may require, Articles 367 and 395 of the Code of Criminal Procedure, has erred in reversing or remanding such lower court judgment, or has so erred in the absence of any objection made to the lower court judgment, the decision entered by the court of appeal or the decision rendered upon further proceeding

解釋理由書：當事人對於民刑事案件下級法院之判決，不得聲明不服而提出不服之聲明。上級法院依民事訴訟法第四百四十四條或刑事訴訟法第三百六十七條、第三百九十五條之規定，原應予以駁回而竟誤將下級法院之判決予以廢棄或撤銷發回更審；又當事人對於下級法院之判決並未提出不服之聲明而上級法院誤予廢棄或撤銷發回更審者，該項上級法院判決及發回更審後之判決均屬重大違背法令，固不生效力，惟既具有判決之形式，未確定者得依上訴程序辦理，已確定者得分別依再審、非常上訴及其他法定程序辦理之。

constitutes a material violation of the law and shall be null and void. Such decision being a judgment pro forma, however, the matter may be dealt with pursuant to appeal procedure if the judgment has not become irrevocable or following such procedures as a new trial, extraordinary appeal, and other legal remedies if the judgment has become irrevocable.

Justice Shi-Ding Chin filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shueh-Teng Lee filed dissenting opinion.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋金大法官世鼎、陳大法官世榮、李大法官學燈與王大法官之倧分別提出不同意見書。

J. Y. Interpretation No.136（August 3, 1973）*

ISSUE: May a court order the party in a civil action to pay execution fees for provisional attachment and preliminary injunction proceedings?

RELEVANT LAWS:

Article 23 of the Act Governing Costs of Civil Actions（民事訴訟費用法第二十三條）; Interpretation Yuan-je Tzu No. 3991（司法院院解字第三九九一號解釋）.

KEYWORDS:

preliminary injunction（假處分）, execution fees（執行費）, preventive proceeding（保全程序）.**

HOLDING: Execution fees may be collected for the enforcement of provisional attachment and preliminary injunction under Article 23 of the Act Governing Costs of Civil Actions and set off thereafter against the execution fees to be charged for enforcement of a judgment that has become irrevocable. Our Interpretation Yuan-je Tze No. 3991 is hereby amended and modified.

解釋文：假扣押假處分之執行，得依民事訴訟費用法第二十三條之規定，征收執行費，於本案確定執行征收執行費時，予以扣除。本院院解字第三九九一號解釋應予變更。

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* Translated by Raymond T. Chu.

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

REASONING: The enforcement of either provisional attachment or preliminary injunction is a compulsory execution under the civil law, to which the provision of Article 23 of the Act Governing Costs of Civil Actions with respect to the collection of execution fees is applicable. Our Interpretation Yuan-je Tze No. 3991 holding that there is no need to collect execution fees for the enforcement of provisional attachment or preliminary injunction is based on the reasoning that, because execution fees will ultimately be collected for enforcement of an irrevocable final judgment on the merits of a settlement agreement concluded in the future, it is not necessary to collect execution fees at the stage of preventive proceeding. If, however, the applicant for enforcement of provisional attachment or preliminary injunction chooses eventually not to file an application for enforcement of the judgment on the merits or his appeal is dismissed, there will be no further opportunity for the collection of execution fees in compliance with the foregoing provision. It is therefore appropriate that the party be ordered to pay the execution

解釋理由書：按假扣押、假處分之執行，均為民事強制執行之一種，民事訴訟費用法第二十三條關於征收執行費之規定，自亦有其適用。本院院解字第三九九一號解釋認為假扣押、假處分之執行，無須征收執行費者，當以本案將來判決確定或和解成立執行時，既須征收執行費，則在此等保全程序之執行，自無須先行征收為理由。然若聲請人以後不依據本案判決聲請執行，或其本訴被駁回時，則此項執行費即再無征收之機會，與上開法條不合。自以在保全程序執行中，得命繳納，於本案確定執行征收執行費時，予以扣除，較為平允。上開解釋與此見解有異部分，應予變更。

fees incurred during the preventive proceeding and that the sum paid shall be set off against the amount of execution fees payable for enforcement of the irrevocable final judgment rendered on the merits. The part of the aforesaid interpretation inconsistent with this view must be modified accordingly.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋陳大法官世榮、金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.137（December 14, 1973）*

ISSUE: Should a judge be bound by an administrative order issued for purpose of interpreting a law or regulation while hearing a case?

RELEVANT LAWS:

Articles 80 and 172 of the Constitution（憲法第八十條及第一百七十二條）.

KEYWORDS:

administrative orders of statutory interpretation（有關法規釋示之行政命令）, lawful and accurate judicial interpretation（合法適當之見解）.**

HOLDING: With regard to the administrative orders of statutory interpretation handed down by the government agencies in accordance with their respective authorities, the court may not refuse to apply them if they are applicable to the case. However, a judge shall, based on his or her fair and honest belief in the accurate interpretation of the law, give a lawful and legitimate legal opinion on a contro-

解釋文：法官於審判案件時，對於各機關就其職掌所作有關法規釋示之行政命令，固未可逕行排斥而不用，但仍得依據法律表示其合法適當之見解。

* Translated by Li-Chih Lin, Esq., J.D.

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

versy which requires an accurate judicial interpretation.

REASONING: With regard to the administrative orders of statutory interpretation or the basis for determining the facts or ruling of the case handed down by the government agencies in accordance with their respective authorities, the court may not refuse to apply them if they are applicable to the case. However, there are millions of different administrative orders of statutory interpretation and some of them may be inconsistent with the law, or may violate Article 172 of the Constitution. Thus, the court shall adjudicate the case pursuant to the administrative orders of statutory interpretation only when the court reasonably believes that the statutory interpretation in the administrative orders is fairly accurate. Article 80 of the Constitution provides that a judge is obligated to adjudicate a case neutrally and independently pursuant to the law. Therefore, with regard to the facts-finding or application of the law, a judge shall, based on his or her fair and honest belief in the accurate interpretation of the law,

解釋理由書：法官於審判案件時，對於各機關就其職掌所作有關法規釋示之行政命令，或為認定事實之依據，或須資為裁判之基礎，固未可逕行排斥而不用。惟各種有關法規釋示之行政命令，範圍廣泛，為數甚多。其中是否與法意偶有出入，或不無憲法第一百七十二條之情形，未可一概而論。法官依據法律，獨立審判，依憲法第八十條之規定，為其應有之職責。在其職責範圍內，關於認事用法，如就系爭之點，有為正確闡釋之必要時，自得本於公正誠實之篤信，表示合法適當之見解。

give a lawful and legitimate legal opinion on a controversy which requires an accurate judicial interpretation.

Justice Ji-Jong Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官之倧、金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.138（May 10, 1974）*

ISSUE: Is the power to prosecute in criminal law subject to the statute of limitations despite the fact that the case is on trial upon the institution of public or private prosecution?

RELEVANT LAWS:

Article 80, Paragraph 1 and Article 83 of the Criminal Code（刑法第八十條第一項，第八十三條）; Interpretation Yuan-tze No. 1963, first paragraph（司法院院字第一九六三號第一項解釋）; J. Y. Interpretation No. 123（司法院釋字第一二三號解釋）.

KEYWORDS:

power to prosecute（追訴權）, statute of limitations（時效）.**

HOLDING: Where a public or private prosecution has already been instituted and the case is on trial, the power to prosecute is thus duly exercised, and the situation gives rise to no issue of running out of the statute of limitations.

解釋文：案經提起公訴或自訴，且在審判進行中，此時追訴權既無不行使之情形，自不發生時效進行之問題。

REASONING: The Criminal

解釋理由書：按刑法時效章內

* Translated by Raymond T. Chu.

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Code provides in Chapter XI, "Statute of Limitations", of Article 80, Paragraph 1, that the power to prosecute is barred by the statute of limitations if not exercised within the periods therein specified. Thus, it is clear that the statutory element for the statute of limitations of the power to prosecute to run is that it is not exercised, and that insofar as the right is exercised the statute of limitations does not run out. Either the institution of public or private prosecution or an action of accusation by a public or private prosecutor during the process of trial in pursuance of the Code of Criminal Procedure constitutes a lawful exercise of the power to prosecute. In the document presented to this Court, the statement that a public or private prosecution has already been instituted and that the case is actually on trial shows that the power to prosecute is never barred by limitation and is currently being exercised. The fact that there exists no "failure to exercise" as stated above gives rise to no issue of running out of the statute of limitations.

關於追訴權時效之規定，首於第八十條第一項明定：追訴權，因左列期間內不行使而消滅。可見追訴權時效之進行，係以不行使為法定之原因，行使則無時效進行之可言，至為明顯。刑事訴訟程序中之提起公訴或自訴，以及於審判進行中之實行公訴或由自訴人所為追訴之行為，無不屬於追訴權之行使。詳核來文，所謂已提起公訴或自訴，且事實上在進行審判中者，亦即意指追訴權原未消滅，而現尚在依法行使中者而言。依照前開說明，此時既無不行使之情形，自不發生時效進行之問題。

As a rule, the statute of limitations shall run as long as the power to prosecute is not exercised. However, if such right cannot be exercised because of reasons prescribed by law, the provision of Article 83 of the Criminal Code with respect to interruption of the statute of limitations applies. The provision of said article was interpreted by our Interpretation Yuan-tze No. 1963 and restated in the first paragraph of our Interpretation No. 123, both of which have so far undergone no change or modification, although the issue of whether the period of statute of limitations shall run out during the exercise of the power to prosecute was considered beyond the scope of interpretation given therein.

至於追訴權於不行使時，本應有時效之進行。惟如遇有法律上之原因而係不能行使時，刑法則於第八十三條另設停止進行之規定。本院院字第一九六三號第一項即係本於該條之規定而為解釋，釋字第一二三號解釋前段則重申前開解釋，並未有所變更。其於追訴權行使時，有無時效進行之問題，並不屬於各該號解釋之範圍，合併說明。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋陳大法官世榮、金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.139（October 4, 1974）*

ISSUE: May an owner of immovable property create a mortgage on the property on which he has already created a right of dien to another person?

RELEVANT LAWS:

Civil Code, Part of Rights in Rem（民法物權編）; Interpretation Yuan -tze No. 192（司法院院字第一九二號解釋）.

KEYWORDS:

right of *dien*（典權）, mortgage（抵押權）.**

HOLDING: The owner of an immovable property may, after the creation of a right of dien on his property, create a mortgage to another person on the same property to the extent that the dien is not affected. Our Interpretation Yuan-tze No. 192 is reaffirmed without the necessity of change.

解釋文：不動產所有人於同一不動產設定典權後，在不妨害典權之範圍內，仍得為他人設定抵押權，本院院字第一九二號解釋毋庸變更。

REASONING: The right of *dien* is a right to use the immovable property of another person and to collect profits there-

解釋理由書：按典權乃支付典價，占有他人之不動產，而為使用收益之權，與抵押權之係不移轉占有，為擔

* Translated by Raymond T. Chu.

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from by paying a price and taking possession of the property. It differs from, but does not preclude, the creation of mortgage, which is a right over a thing created to secure the performance of a debt without having to transfer the possession of the property. The owner of an immovable property does not lose his title to the property by creating a right of dien thereon. Therefore, the Civil Code, Part III, "Rights in Rem", does not prohibit a property owner from creating a mortgage to another person on the same property insofar as the right of dien is not affected. Our Interpretation Yuan-tze No. 192 is reaffirmed without the necessity of change.

保債務之履行而設之擔保物權，其性質並非不能相容。不動產所有人於同一不動產設定典權後，其所有權尚未喪失，在不妨害典權之範圍內，再與他人設定抵押權，民法物權編既無禁止規定，自難認為不應准許。本院院字第一九二號解釋毋庸變更。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋陳大法官世榮、金大法官世鼎分別提出不同意見書。

Translator's Note:
Dien is a traditional Chinese system whereby a creditor took possession of the real property of the debtor as a security for payment of the debt. The system was also commonly used for the purpose of acquiring the right to the use of residential or commercial buildings for an agreed term not to exceed thirty years by paying the owner a lump-sum price instead of annual or monthly rent. Upon or prior to the expiration of the term, the property may be redeemd by the *dien*-maker (debtor). While the right of dien is assignable by the *dien*-holder, the title to the property remains in the owner and is thus transferable to a third party so long as it does not affect the right of the *dien*-holder. See the Civil Code, Articles 911 through 927.

J. Y. Interpretation No.140（November 15, 1974）*

ISSUE: What remedy should be sought where a public prosecutor unlawfully issued a non-prosecution ruling as to a case already prosecuted?

RELEVANT LAWS:

Article 258 of the Code of Criminal Procedure（刑事訴訟法第二百五十八條）.

KEYWORDS:

ruling nolle prosequi（不起訴處分）, reconsideration（再議）.**

HOLDING: When a case is pending in the criminal court, if the prosecutor illegally makes a ruling nolle prosequi on the basis of substantial evidence, if the complainant duly applies for reconsideration of the ruling, the chief prosecutor or prosecutor general of a higher court shall set aside the ruling.

解釋文：案經起訴繫屬法院後，復由檢察官違法從實體上予以不起訴處分，經告訴人合法聲請再議，上級法院首席檢察官或檢察長，應將原不起訴處分撤銷。

REASONING: When a case is pending in the criminal court, it shall be

解釋理由書：案經起訴繫屬法院後，即應依法審判，若檢察官復從實

* Translated by Lee & Li, Attorneys-At-Law.

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tried by law. If the prosecutor makes a ruling nolle prosequi on the basis of substantial evidence, the ruling will obviously be illegal and therefore invalid. If the complainant duly applies for reconsideration of the invalid ruling, the chief prosecutor or prosecutor general of a higher court shall correct the error by setting aside the ruling, which may have come into effect nominally.

體上予以不起訴處分，該項處分，顯係重大違背法令，應屬無效。告訴人對於該無效處分合法聲請再議時，上級法院首席檢察官或檢察長，應將該項已具有形式上效力之處分，予以撤銷，俾資糾正。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shueh-Teng Lee filed dissenting opinion, in which Justice Yueh-Sheng Weng joined.

本號解釋陳大法官世榮提出不同意見書；李大法官學燈與翁大法官岳生共同提出不同意見書。

J. Y. Interpretation No.141（December 13, 1974）*

ISSUE: In case a real property is held by the co-owners, does a co-owner have the right to mortgage his share of title to the property without the consent of the other co-owner?

RELEVANT LAWS:

Article 819, Paragraphs 1 and 2 of the Civil Code （民法第八百十九條第一項、第二項）; Interpretation Yuan-tze No. 1516（司法院院字第一五一六號解釋）.

KEYWORDS:

Co-ownership（共有）, co-owner（共有人）, common property（共有物）, joint relationship（公同關係）.**

HOLDING: Each co-owner of a building or land may create a mortgage on his share of the property if such co-ownership is not based on a joint relationship among the co-owners.

解釋文：共有之房地，如非基於公同關係而共有，則各共有人自得就其應有部分設定抵押權。

REASONING: Article 819, Paragraph 1 of the Civil Code provides that "each co-owner may freely dispose of his own share." Where the common prop-

解釋理由書：按「各共有人得自由處分其應有部分」，為民法第八百十九條第一項所明定。除基於公同關係而共有者另有規定外，如共有物為不動

* Translated by Raymond C. Chu.

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erty is a real property, with the exception of co-ownership based on a joint relationship which is otherwise governed by law, each co-owner is free to dispose of his share of the property under the foregoing provision and is consequently free to create a mortgage on such portion of the property if he deems it necessary to do so to provide security without transferring the possession of the property. In contrast, the second paragraph of the same article reads: "Any disposal of and alteration to, and the creation of any encumbrance on, a common property can only be made with the consent of all co-owners." This provision is meant to apply to the situation where the [entire] property is made the object to be disposed of or altered or charged with an encumbrance by any of the co-owners, rather than referring to the portion of the property shared by any individual co-owner. A comparison between the texts of the two paragraphs will clearly show the true meaning of the law. Our view expressed in Interpretation Yuan-tze No. 1516 is hereby further supplemented.

產，各共有人本於前開規定，既得自由處分其應有部分，則遇有不移轉占有而供擔保之必要時，自得就其應有部分設定抵押權。至於同條第二項所謂「共有物之處分、變更、及設定負擔，應得全體共有人之同意」，係指共有人以共有物為處分、變更、或設定負擔之標的，並非就各共有人之應有部分而言。此比照第一項得自由處分之規定，法意至為明顯。本院院字第一五一六號解釋，應予補充釋明。

J. Y. Interpretation No.142（February 7, 1975）*

ISSUE: Where a matter of tax evasion occurred prior to the amendment and implementation of the Business Tax Act on December 30, 1965, may the tax be levied according to the new law?

RELEVANT LAWS:

Article 41of Business Tax Act（營業稅法第四十一條）.

KEYWORDS:

Business Tax（營業稅）, tax evasion（逃漏稅）, pursuit of tax obligations pursuing（追徵）.**

HOLDING: If a business entity concealed business amount and evaded tax before December 30, 1965, the date on which the amendment of the whole Business Tax Act came into force, the tax evaded may not be pursued five years after the coming into force of the amendment if the evasion is not discovered within that period.

解釋文：營利事業匿報營業額逃漏營業稅之事實發生在民國五十四年十二月三十日修正營業稅法全文公布施行生效之日以前者，自該日起五年以內未經發現，以後即不得再行課徵。

REASONING: Article 41 of Business Tax Act provides that if a busi-

解釋理由書：查營業稅法第四十一條：「營利事業匿報營業額逃漏營

* Translated by David Yang and Jane Lai of Baker&Mckenzie Law Office, Taipei.

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

ness entity evades business tax but such evasion is not discovered within five years, the tax evaded shall not be pursued thereafter. This provision was added to the Business Tax Act when the whole Act was amended on December 30, 1965. Therefore, if the act of evasion took place before the new provision came into force, no matter how much time has elapsed, the tax evaded shall be pursued because under the old Act there was no limitation period for the pursuit of tax obligations. On the other hand, if the evasion took place after the new law came into force, but was not found within five years, no tax evaded may be pursued thereafter. The result would be unfair and is against the rationale of the enactment of Article 41. Consequently, taking fairness into consideration, if a business entity evaded tax before December 30, 1965, the date on which the amendment of the whole Business Tax Act came into force, but such evasion was not discovered five years from that date, the tax evaded shall be waived.

業稅，於事實發生之日起五年內未經發現者，以後不得再行課徵」之規定，係民國五十四年十二月三十日修正舊營業稅法全文時所增訂，從而逃稅事實發生在該法條增訂以前者，因行為當時施行之營業稅法無課徵期間之限制，故無論經過時間之久暫均得課徵，而逃稅事實發生在該法條增訂以後者，則依該法條規定於事實發生之日起五年內未經發現者，以後即不得再行課徵，是在該法修正公布施行之日以前雖逃漏多年未經發現之營業額仍須課徵，而在該法修正公布施行之日以後，雖逃漏僅五年未經發現之營業額反不得課徵，既屬有失公平，與增訂該第四十一條之立法精神亦有未符，因此營利事業匿報營業額逃漏營業稅之事實發生在民國五十四年十二月三十日修正全文公布施行之營業稅法生效日以前者，乃宜自該日起算，五年以內未經發現者，以後即不得再行課徵，以期平允。

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋金大法官世鼎提出不同意見書。

J. Y. Interpretation No.143（June 20, 1975）*

ISSUE: Is a person who resells a train ticket for profits subject to the offense of fraud?

RELEVANT LAWS:

J.Y. Interpretations Yuan-je-tze Nos. 2920 and 3808（司法院院解字第二九二〇號解釋及第三八〇八號解釋）; Article 339, Paragraphs 1 and 2, of the Criminal Code（刑法第三三九條第一項及第二項）.

KEYWORDS:

offense of fraud（詐欺罪）, defrauding others by misrepresentation（以詐術使人陷於錯誤）, monetary loss（詐財損失）, fraudulent act（詐術）, undue profit（不法之利益）.**

HOLDING: Whether a person who purchases train tickets and resells them to other passengers for profit is considered to have committed an offense of fraud will be determined based upon whether the person has done acts which have elements of fraud by defrauding others by misrepresentation. Whether the

解釋文：關於購買火車票轉售圖利，是否構成詐欺罪，要應視其實際有無以詐術使人陷於錯誤，具備詐欺罪之各種構成要件而定。如自己並不乘車，而混入旅客群中，買受車票，並以之高價出售者，仍須視其實際是否即係使用詐術，使售票處因而陷于錯誤，合於詐欺罪之各種構成要件以為斷。本院

* Translated by Li-Chih Lin, Esq., J.D.

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action of a person who does not intend to ride the train but purchases train tickets along with other passengers and subsequently resells them to other passengers for a higher price constitutes an offense of fraud will be determined based upon whether he or she has done acts which have elements of fraud by defrauding others by misrepresentation resulting in economic loss for the ticket office. J.Y. Interpretations Yuan-je-tze Nos. 2920 and 3808 both hold that a fraudulent purchase of train tickets refers to the purchase of train tickets with an intent to engage in misrepresentation. However, the latter J.Y. Interpretation emphasizes the fraudulence committed against the passengers resulting in their monetary loss. The former J.Y. Interpretation emphasizes the fraudulence committed against the ticket office resulting in economic loss for the ticket office and undue profit obtained by the offender. Thus, these two different defrauding acts shall be respectively governed by Article 339, Paragraphs 1 and 2, of the Criminal Code.

院解字第二九二〇號暨第三八〇八號解釋據來文所稱之套購，應係意指使用詐術之購買而言。惟後一解釋，重在對於旅客之詐財；前一解釋，重在對於售票處之詐欺得利；故應分別適用刑法第三百三十九條第一項及第二項之規定。

REASONING: Whether a per-

解釋理由書：關於購買火車票

son who purchases train tickets and resells them to other passengers for profit has committed an offense of fraud will be determined based upon the facts of an individual case depending upon whether the person has done acts which have elements of fraud. There are various kinds of train tickets with different types of restrictions. Whether the action of a person who does not intend to ride the train but purchases train tickets along with other passengers and subsequently resells them to other passengers for a higher price constitutes an offense of fraud will be determined based upon whether he or she has done acts which have elements of fraud by defrauding others by misrepresentation resulting in economic loss for the ticket office. If the person has not done acts which have the elements of fraud, he or she can hardly be convicted of the offense of fraud under the Criminal Code even when his or her actions are restricted or prohibited under other laws. J.Y. Interpretations Yuan-je-tze Nos. 2920 and 3808 both hold that a fraudulent purchase of train tickets refers to the purchase of train tickets with an intent to engage in misrepresentation.

轉售圖利，是否構成詐欺罪，應視具體事實，有無司法院大法官解釋彙編具備詐欺罪之各種構成要件，分別情形以定之。如來文所附原函之設問，有謂「自己並不乘車，而混入一般旅客群中買受車票，並以之高價出售」之情形，因車票之種類不同，限制購買之寬嚴亦不一致，故仍須視其實際是否即係使用詐術，使售票處因而陷於錯誤，合於詐欺罪之各種構成要件以為斷。如於要件有所未備，縱依其他法令有予限制或禁止之必要，尚難遽執刑法上之詐欺罪以相繩。本院院解字第二九二〇號暨三八〇八號解釋，所據當時來文有用套購之一詞，其涵義即係指使用詐術之購買而言。此徵之前一解釋引為合於詐術之要件，殊甚明顯，惟後一解釋係重在對於旅客以詐術使其為財物之交付；前一解釋，則重在對於售票處以詐術取得財產上不法之利益；故應分別適用刑法第三百三十九條第一項及第二項之規定。

The former J.Y. Interpretation explicitly requires the commission of a fraudulent act to constitute an offense of fraud. However, the latter J.Y. Interpretation emphasizes the fraudulence committed against the passengers resulting in their monetary loss. The former judicial interpretation emphasizes the fraudulence committed against the ticket office resulting in economic loss for the ticket office and the undue profit obtained by the offender. Thus, these two different defrauding acts shall be respectively governed by Article 339, Paragraphs 1 and 2, of the Criminal Code.

Justice Ou Kuan filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋管大法官歐、陳大法官世榮與金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.144（December 5, 1975）*

ISSUE: How should a court deal with the situation where a crime whose penalty is convertible into fines becomes inconvertible due to merger with another crime whose penalty is not convertible into fines for purpose of determining the punishment?

RELEVANT LAWS:

Articles 41 and 51 of the Criminal Code（刑法第四十一條、第五十一條）; Article 309 of the Criminal Procedure Code（刑事訴訟法第三百零九條）.

KEYWORDS:

several offences（數罪）, combination of sentences for multiple offences（數罪併罰）, be commuted to/into a fine（易科罰金）, executed punishment（執行刑）, not guilty（無罪）, offence of punishment commutable to fine punishment（得易科罰金之罪）.**

HOLDING: In accordance with the Criminal Code, if a criminal punishment which may be commuted to a fine is combined with other criminal punishments which can not be commuted to fines and, as a result of the combination,

解釋文：數罪併罰中之一罪，依刑法規定得易科罰金，若因與不得易科之他罪併合處罰結果而不得易科罰金時，原可易科部分所處之刑，自亦無庸為易科折算標準之記載。

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* Translated by David Yang and Matt Chou of Baker & McKenzie Law Offices, Taipei.

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the originally commutable punishment becomes uncommutable, then the rate of commutation of the originally commutable punishment does not need to be stated in the judgment.

REASONING: According to Article 41 of the Criminal Code, criminal punishment of detention or imprisonment may be commuted to a fine only if the maximum basic punishment which may be imposed does not exceed an imprisonment of three years and the actual punishment imposed is an imprisonment for not more than six months. In the situation where sentences for multiple offences are combined, though one of them may be commuted to a fine, when such sentence is combined with other sentences which can not be commuted to fines, the court only have to combine the sentences of the several offences to fix the sentence to be executed. No commutation shall be made on the originally commutable punishment. Article 309, Subparagraph 2, of the Code of Criminal Procedure is not applicable to such situation. The interpretation of J. Y. Yuan-Tze No. 1702 which provides that

解釋理由書：按刑事判決關於有期徒刑或拘役易科罰金折算標準之記載，需以所犯最重本刑為三年以下有期徒刑以下之刑之罪，而受六月以下有期徒刑或拘役之宣告者，始得為之，刑法第四十一條定有明文。若所犯為數罪併罰，其中之一罪雖得易科罰金，但因與不得易科之他罪合併處罰之結果，於定執行刑時，祇須將各罪之刑合併裁量，不得易科罰金合併執行，應無刑事訴訟法第三百零九條第二款之適用，故本院院字第二七〇二號解釋明示無庸為易科罰金折算標準之記載，此非僅指定執行刑部分而言，即原可易科部分所處之刑，亦無庸為此記載。故有「法院竟於合併處罰判決確定後，又將其中之一部以裁定諭知易科罰金，其裁定應認為無效」之釋示。縱他罪因上訴改判無罪確定或經赦免者，所餘得易科罰金之罪，如因被告身體、教育、職業或家庭等關係執行顯有因難時，被告及檢察官均有聲請易科之權，本院院字第一三五六號

"the rate of commutation does not need to be stated in the judgment" applies not only to the punishment to be executed but also to the punishment which is originally commutable to fine. That is why the Interpretation also provides that "after the judgment becomes final, if the court further rules that part of the combined punishment shall be commuted to a fine, the ruling shall be deemed invalid". Even if the guilty judgments of the uncommutable offences are reversed upon appeal or the punishments are waived because of amnesty and only the originally commutable punishment remains punishable in a combined punishment judgment, the defendant or the prosecutor has the right to apply for commutation into a fine for the remaining commutable punishment if he or she thinks that practical difficulty may arise in the execution of that punishment because of the physical, educational, professional or family status of the defendant. This has been interpreted by J.Y. Yuan Tze No. 1356. Therefore, the court should make a proper ruling according to the law under such situation.

解釋有案，法院自可於此時依法為適當之諭知。

Justice Ji-Jong Wang filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官之倧、金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.145（April 30, 1976）*

ISSUE: Does the term "majority of people" elaborated in Interpretation Y.T. No. 2033 regarding Article 234 of the Criminal Code include "a specific majority of people"?

RELEVANT LAWS:

Article 234 of the Criminal Code（刑法第二百三十四條）.

KEYWORDS:

a majority of people（多數人）, a specific majority of people（特定之多數人）, publicly（公然）, an indecent act（猥褻罪）.**

HOLDING: The so-called "majority of people" elaborated in Interpretation Yuan-Tze No. 2033 regarding Article 234 of the Criminal Code includes "a specific majority of people". Yet it should be further elaborated as to the number of people that that constitutes "publicly" pursuant to purposes of legislation and actual circumstances.

解釋文：本院院字第二〇三三號解釋，所謂多數人，係包括特定之多數人在內，至其人數應視立法意旨及實際情形已否達於公然之程度而定。應予補充釋明。

REASONING: Inasmuch as In-

解釋理由書：本院院字第二〇

* Translated by WELLINGTON L. KOO, and Formosa Transnational Attorneys at Law.

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terpretation Yuan-Tze No. 2033 regarding Article 234 of the Criminal Code states that, "the 'publicly' criterion is satisfied as long as a non-specific number of people or a majority of people may all see or hear an indecent act", it is thus not necessary to require that a non-specific number of people or a majority of people did see or hear such an indecent act to satisfy the 'publicly' criterion in Article 234 of the Criminal Code, as long as the de facto circumstance of a non-specific number of people or a majority of people being able to see or hear satisfies the 'publicly' criterion. It is quite clear, after reviewing the said Interpretation and the petition for the interpretation, that the so-called "a majority of people" includes "a specific majority of people". As for the numerical calculation of "a specific majority of people" needed to satisfy the 'publicly' criterion, it varies with different crimes just as the nature of such crimes also varies. The number of people that constitutes the 'publicly' criterion should be determined pursuant to purposes of legislation and actual circumstances. Therefore, the foregoing Interpretation should be further elaborated.

三三號解釋，既謂「刑法分則中公然二字之意義，祇以不特定人或多數人得以共見共聞之狀況為已足」，則自不以實際上果已共見共聞為必要，但必在事實上有與不特定人或多數人得以共見或共聞之狀況方足認為達於公然之程度。所謂多數人係包括特定之多數人在內，此觀於該號解釋及當時聲請解釋之原呈甚明。至特定多數人之計算，以各罪成立之要件不同，罪質亦異，自應視其立法意旨及實際情形已否達於公然之程度而定。本院上開解釋，應予補充釋明。

Justice Fan-Kang Tseng filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋曾大法官繁康、陳大法官世榮與金大法官世鼎分別提出不同意見書。

J. Y. Interpretation No.146（July 23, 1976）*

ISSUE: What remedy should be sought where, after a criminal judgment becomes final and conclusive, the facts turned out to be inconsistent with the evidence presented?

RELEVANT LAWS:

J.Y. Interpretation No. 43（司法院釋字第四十三號解釋）; Article 445, Paragraph 2, of the Code of Criminal Procedure（刑事訴訟法第四百四十五條第二項）.

KEYWORDS:

extraordinary appeal（非常上訴）, motion for retrial（再審）.**

HOLDING: After the final ruling of a criminal case has been rendered in a trial court, if the facts of the case are found to be contrary to the evidence admitted in the court, the criminal trial at issue is considered to have violated the law and the defendant may file an extraordinary appeal. If the defendant can provide a sufficient reason for retrial, the defendant will be permitted to file a motion for retrial pursuant to the retrial procedures.

解釋文：刑事判決確定後，發見該案件認定犯罪事實與所採用證據顯屬不符，自屬審判違背法令，得提起非常上訴；如具有再審原因者，仍可依再審程序聲請再審。

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* Translated by Li-Chih Lin, Esq., J.D.

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

REASONING: Except for typos or clerical errors, which are not prejudicial to the facts or ruling of a case and are permitted to be corrected under J.Y Interpretation No. 43, after the final ruling of a criminal case has been rendered in a trial court, if the facts of the case are found to be contrary to the evidence admitted in the court, the criminal trial at issue is considered to have violated the law and the defendant may file an extraordinary appeal. The presiding judges in the extraordinary appeal may, pursuant to Article 445, Paragraph 2, of the Code of Criminal Procedure, correct the legal errors based on the facts determined by the trial court. However, if the defendant can provide a sufficient reason for retrial by proving that the facts of the case were wrongfully determined by the trial court in violation of the law, the defendant will be permitted to file a motion for retrial pursuant to the retrial procedures.

解釋理由書：刑事判決確定後，發見該案件認定犯罪事實與其所採用之證據顯屬不符，如係文字誤寫，而不影響於全案情節與判決之本旨者，得依本院釋字第四十三號解釋予以更正外，均屬審判違背法令，得提起非常上訴，由非常上訴審依刑事訴訟法第四百四十五條第二項準用第三百九十四條之規定，就原確定判決所確認之事實，以糾正其法律錯誤，如因審判違背法令，致影響於事實之確定，具有再審原因者，仍可依再審程序聲請再審。

Justice Ji-Jong Wang filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋王大法官之倧、陳大法官世榮與金大法官世鼎分別提出不同意見書。

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。本院院字第七七〇號解釋㈡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。

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

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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㈡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㈡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。

J. Y. Interpretation No.148（May 6, 1977）*

ISSUE: Does the competent authority's alteration of an urban plan constitute an administrative act not directed to any specific person, thus entitling him to institute administrative litigation?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）; Article 21 of the Urban Planning Act（都市計畫法第二十一條）.

KEYWORDS:

Ruling（裁定）, appeal（訴願）, administrative litigation（行政訴訟）, administrative act（行政處分）.**

HOLDING: The competent authority's alteration of an urban plan is not regarded as a person-specific administrative measure by the administrative court, thereby barring the people from initiating administrative litigations against it. Based on the foregoing, the court has dismissed the application with a ruling. Although the said ruling is inconsistent with the said court's precedents, it does not raise issues as to the constitutionality of the laws or

解釋文：主管機關變更都市計劃，行政法院認非屬於對特定人所為之行政處分，人民不得對之提起行政訴訟，以裁定駁回。該項裁定，縱與同院判例有所未合，尚不發生確定終局裁判適用法律或命令是否牴觸憲法問題。

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* Translated by THY Taiwan International Law Offices.

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orders adopted by the final court judge.

REASONING: The objectives of this application can be summarized as follows: the Ministry of the Interior gave approval to the Taipei City Government to alter the urban plan for a residential area, on the minor section of the Sichiko in Ching-Mei District, to an industrial zone to be used as a bitumen and cement-mixing site. The applicant claimed that the Ministry's decision, which had the consequence of disturbing the peace in the area and affecting the people's right to life, was an administrative act that infringed upon the Constitution. The administrative court refused to rule on its substance and dismissed the application by a ruling, Ruling No.103 (Ad.Ct., 1976), despite the applicant's institution of an administrative appeal, re-appeal and administrative litigation to question the constitutionality of the laws cited in the Ruling. The administrative court did not regard the competent authority's alteration of the urban plan as a person-specific administrative measure and thus barred the people from initiating administrative litigations against it by

解釋理由書：本件聲請解釋意旨略稱：內政部核准台北市政府將景美區溪子口小段都市主要計劃之住宅區變更為機關用地，並用以設置瀝青混凝土拌合場，破壞環境安寧，影響人民生存權利，係違背憲法之行政處分，經訴願、再訴願，並提起行政訴訟，行政法院不為實體之審理，而以裁定駁回（六十五年度裁字第一〇三號），認該項裁定適用法律有牴觸憲法之疑義等情。查主管機關變更都市計畫，行政法院認非屬於對特定人所為之行政處分，人民不得對之提起行政訴訟，不為實體之審理，而以程序不合裁定駁回，該項裁定，縱與同院五十九年判字第一九二號判例有所未合，亦僅係能否依法聲請再審以資救濟，尚不發生確定終局裁判適用法律或命令是否牴觸憲法問題。

dismissing the application on procedural grounds with a ruling, without reviewing and analyzing its substance. Although the said Ruling may be inconsistent with Judgment P.T. No.192 (Ad.Ct., 1970) rendered by the same court, it only raises the question of whether the law permits application for relief. It does not raise questions of the constitutionality of the laws or orders cited by the final court judge.

J. Y. Interpretation No.149（June 17, 1977）*

ISSUE: Who shall be ordered to make good the payment of the court costs derived from the decision made before the remanded trial?

RELEVANT LAWS:

Interpretation Yuan-je Tze No. 2936 of the Judicial Yuan（司法院院解字第二九三六號解釋）; Article 91 of the Code of Civil Procedure（民事訴訟法第九十一條）; Article 18 of Act Governing Fees of Civil Actions（民事訴訟費用法第十八條）.

KEYWORDS:

court costs（裁判費）, non-gratuitous principle（有償主義）.**

HOLDING: When there is a party appealing against the judgment of a remanded trial, and if there is any omission or unpaid portion of the court costs which shall be paid for the first appeal, the court shall precisely levy it on the first appellant. And if there is still an omission or unpaid portion of such payment even

解釋文：當事人對於更審判決，提起上訴時，其第一次上訴應繳之裁判費尚未繳納或未繳足額，法院應向第一次上訴人徵足。如於該事件之裁判有執行力後，仍未繳足，應依職權以裁定確定裁判費之數額，命負擔訴訟費用之一造補繳之。本院院解字第二九三六號解釋（二）有關裁判費部分，應予補

* Translated by Jer -Shenq Shieh.

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though the decision of the tried case has already been rendered, the court shall fix ex officio the amount of the court costs by a ruling and order the party who shall bear the costs of an action to make good the payment. Interpretation Yuan-je Tze No. 2936 (2) about the court costs shall thus be supplemented.

充。

REASONING: Court costs are among the fees which the country shall levy. The court shall count and levy the court costs after assessing the value and amount of the subject matter of an action; the court shall not causally allow the parties to omit or leave partially unpaid the payment of the court costs, then could be in conformance with the non-gratuitous principle embraced by the Code of Civil Procedure. Interpretation Yuan-je Tze No. 2936 (2) partially reveals that in regard to the appeal against the judgment of a remanded trial, even though the court has discovered that there is actually an unpaid portion of payment of the court costs which shall be paid for the first appeal, the court may not order the first appellant to make good the payment. What

解釋文：裁判費，為國家應徵收之一種規費。法院應切實核定訴訟標的之價額計徵之，不得任令當事人有漏繳或少繳情事，始符合民事訴訟法所採有償主義之原則。本院院解字第二九三六號解釋（二）部分揭示：關於更審判決之上訴，雖發見第一次上訴應繳之裁判費，確未足額，亦不得命第一次上訴人補繳。此項解釋，係指法院對於第一次上訴要件有無欠缺，不得再為調查，並非裁判費勿庸徵足。故當事人對於更審判決，提起上訴時，其第一次上訴應繳之裁判費尚未繳納或未繳足額，法院應向第一次上訴人徵足，如於該事件之裁判有執行力後，仍未繳足，應依職權以裁定確定裁判費之數額，命負擔訴訟費用之一造補繳之。本院院解字第二九三六號解釋（二）有關裁判費部分，應予補充。

this Interpretation does mean is that the court shall not, again, investigate whether there is any defect in the prerequisites of the first appeal; it does not mean that the court does not need to levy the court costs precisely. Therefore, when there is a party appealing against the judgment of a remanded trial, and if there is any omission or unpaid portion of payment of the court costs which shall be paid for the first appeal, the court shall precisely levy it on the first appellant. And if there is still an omission or unpaid portion of such payment even though the decision of the tried case has already been rendered, the court shall fix ex officio the amount of the court costs by a ruling and order the party who shall bear the costs of an action to make good the payment. The Interpretation Yuan-je Tze No. 2936 (2) about the court costs shall thus be supplemented.

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋姚大法官瑞光、陳大法官世榮分別提出不同意見書。

J. Y. Interpretation No.150（September 16, 1977）*

ISSUE: Is the Executive Yuan's decree suspending further filling of vacancies left by the term of the Legislative Yuan constitutional?

RELEVANT LAWS:

Paragraph 6 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion（動員戡亂時期臨時條款第六項）; Articles 29 and 45 of the Legislator Election and Recall Act（立法院立法委員選舉罷免法第二十九條及第四十五條）; J. Y. Interpretation No. 31（司法院釋字第三十一號解釋）.

KEYWORDS:

elected central representatives（中央民意代表）, Executive Yuan（行政院）, Legislative Yuan（立法院）.**

HOLDING: Paragraph 6 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion does not alter the term of elected central representatives under the Constitution. The Executive Yuan's decree not to fill

解釋文：動員戡亂時期臨時條款第六項，並無變更憲法所定中央民意代表任期之規定。行政院有關第一屆立法委員遇缺停止遞補之命令，與憲法尚無牴觸。

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* Translated and edited by Professor Andy Y. Sun.

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vacancies in the First Legislative Yuan does not contradict the Constitution.

REASONING: The petitioner in this case argued, among other things, that Article 65 of the Constitution states, "The term for members of the Legislative Yuan shall be three years," yet Paragraph 6, Subparagraph 2, of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, promulgated on March 23, 1972, provides that the terms of elected central representatives under the Constitution were to extend across the board until such time that "the recaptured areas in Mainland China conduct the election of central representatives, respectively," and that all laws and regulations which contradict this provision are declared invalid. Petitioners are stand-by candidates for the First Legislative Yuan. Their petitions to fill the vacancies in the Legislative Yuan were denied by the Executive Yuan, the Grievances Review Board and the Grievances Review Appeal Board based on a not-to-fill decree promulgated by the Executive Yuan. Petitioners

解釋理由書：本件聲請人聲請意旨略稱：憲法第六十五條雖規定：「立法委員之任期為三年」，但民國六十一年三月二十三日公布之動員戡亂時期臨時條款第六項第二款規定：則將憲法有關中央民意代表之任期一律延長至「大陸光復地區次第辦理中央民意代表之選舉」為止，與之牴觸之法令，均應失效。聲請人等為第一屆立法委員候補人，經依該條款聲請遞補，並提起訴願、再訴願及行政訴訟，均被援引行政院所為停止遞補之命令，予以駁回，侵害聲請人等憲法上所保障之權利，聲請予以解釋。

thus filed the present petition [for constitutional interpretation] on the ground that their rights protected under the Constitution have been infringed upon.

Article 65 of the Constitution specifically provides that the term of a member of the Legislative Yuan is three years. By reference to Articles 29 and 45 of the Legislator Election and Recall Act, it is clear that when vacancies are created, they are to be filled by stand-by candidates in due course and order to serve out the remainder of that term. As a result, once the term of the First Legislative Yuan expired on May 7, 1951, there were no vacancies to fill. Due to national emergencies, although in reality it was impossible to conduct elections after the terms of members of the First Legislative Yuan's term had expired, in accordance with this Yuan's Interpretation No. 31 and to uphold the five-branch constitutional framework, members were allowed to continue to carry out their duties until the Second Legislative Yuan was elected and convened. Based upon this Interpretation, only those who were already members at

按立法委員之任期為三年，憲法第六十五條著有明文。立法委員出缺時，由候補人依次遞補，其任期至原任任期屆滿之日為止，參照立法院立法委員選舉罷免法第二十九條及同法第四十五條之規定至為明顯。是第一屆立法委員於民國四十年五月七日任期屆滿之後，已無從遞補。第一屆立法委員於任期屆滿後，因國家發生重大變故，事實上不能依法改選，為維護憲法樹立五院制度之本旨，在第二屆立法委員未能依法選出集會以前，繼續行使其職權，經本院釋字第三十一號解釋有案。依此解釋，第一屆立法委員任期屆滿之際，已任立法委員者，始能繼續行使其職權。

the time the term of the First Legislative Yuan expired could remain in office.

Paragraph 6, Subparagraph 2, of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, as promulgated on March 23, 1972, provides that members of the First Legislative Yuan [should continue to] carry out their duties in accordance with the law. This is the same legal rule as the above-indicated Interpretation. With regard to the wording "elected central (national) representatives shall be elected by the general population of the whole nation," as provided in the same Section, as far as members of the Legislative Yuan are concerned, it refers to those elected in 1948, those who have already filled the vacancies in accordance with the law as of May 7, 1951, and those newly-elected members in accordance with Paragraph 5 of the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, as promulgated on March 22, 1966. The wording "the recaptured areas in

民國六十一年三月二十三日公布之動員戡亂時期臨時條款第六項第二款所稱：第一屆中央民意代表依法行使職權，與本院上開解釋法意相同。同款所稱：「第一屆中央民意代表，係經全國人民選舉所產生。」；在立法委員，乃指民國三十七年當選及民國四十年五月七日前已依法遞補暨依民國五十五年三月二十二日公布之動員戡亂時期臨時條款第五項規定增選之立法委員而言。至前引同項款：「大陸光復地區次第辦理中央民意代表之選舉」一語，與憲法第六十五條後段：「立法委員選舉於每屆任滿前三個月內完成之」相若，乃為選舉時期之規定，而據同項規定：「總統得訂頒辦法充實中央民意機構，不受憲法第二十六條、第六十四條及第九十一條之限制」。其非變更第一屆中央民意代表任期之規定，尤為顯然。

Mainland China are to conduct the election of central representatives, respectively," contained in the same Section and cited above, is similar to the last Paragraph of Article 65 of the Constitution, which states, "The election of Legislators shall be completed within three months prior to the expiration of each term." They are all provisions designed for the period of election. Yet in accordance with Paragraph 6, "notwithstanding Articles 26, 64 and 91 of the Constitution, the President shall promulgate rules to maintain the central representative body." It is abundantly clear that these provisions were not created to alter the term of the first central representatives.

Based on the above illustration, the Executive Yuan's Tai 40 (Nei) No. 2337 decree stipulating that the term of the First Legislative Yuan expired as of May 7, 1951, and that all vacancies created thereafter shall not be filled does not contradict the Constitution.

依上說明，行政院台四十（內）字第二三三七號令暨有關第一屆立法委員之任期於民國四十年五月七日屆滿，此後遇有缺額，應停止遞補之命令，與憲法尚無牴觸。

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。

J. Y. Interpretation No.151（December 23,1977）*

ISSUE: Is the tax authority permitted to levy tax for any lost inspection certificate in accordance with Article 128 of the Regulation Governing the Levy of Taxes on Commodity?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 125 and 128 of the Regulation Governing the Levy of Taxes on Commodity（貨物稅稽徵規則第一百二十五條及第一百二十八條）.

KEYWORDS:

blank tax-payment certificate（空白完稅照）, inspection certificate（查驗證）.**

HOLDING: The blank tax-paying certificate stamped with the remark "Substitute for Account Inspection and Tax Levy" received by the motorcycle manufacturer subject to account inspection and tax levy may be temporarily used as a substitute for the factory release certificate. If the blank tax-payment certificate is lost, unless evasion of tax is in-

解釋文：查帳徵稅之產製機車廠商所領蓋有「查帳徵稅代用」戳記之空白完稅照，既係暫代出廠證使用，如有遺失，除有漏稅情事者，仍應依法處理外，依租稅法律主義，稅務機關自不得比照貨物稅稽徵規則第一百二十八條關於遺失查驗證之規定補徵稅款。

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* Translated by Dr. C.Y. Huang of Tsar & Tsai Law Firm.

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volved, which shall be handled according to law, the tax authority shall not levy tax for the lost inspection certificate in accordance with Article 128 of the Regulation Governing the Levy of Taxes on Commodity (the "Regulation") under the principle of taxation by law.

REASONING: When an ordinary manufacturer/company subject to account inspection and tax levy loses a certificate of inspection, the "case should be concluded by imposing a tax equal to the amount payable for the goods onto which such certificate should be affixed" under Article 128 of the Regulation Governing the Levy of Taxes on Commodity. However, the blank tax-paying certificate stamped with the remark "Substitute for Account Inspection and Tax Levy" by the tax authority may be temporarily used as a substitute for the factory release certificate. If such a blank tax-paying certificate is lost, the Regulation do not expressly provide that the tax applicable to a lost inspection certificate should be levied. Article 125 of the Regulation separately provides for the procedure for the han-

解釋理由書：按查帳徵稅之一般廠商遺失查驗證時，貨物稅稽徵規則第一百二十八條固有「應按該項查驗證應貼貨件之稅價計補稅款結案」之規定，惟稅務機關加蓋「查帳徵稅代用」戳記之空白完稅照，係暫代出廠證使用，遺失時，同規則並無按遺失查驗證補稅之明文，其第一百二十五條復另有處理之規定；從而查帳徵稅之產製機車廠商所領蓋有「查帳徵稅代用」戳記之空白完稅照，如有遺失，除有漏稅情事者，仍應依法處理外，依租稅法律主義，稅務機關自不得比照貨物稅稽徵規則第一百二十八條關於遺失查驗證之規定補徵稅款。

dling of such a situation. It follows that if the blank tax-paying certificate stamped with the remark "Substitute for Account Inspection and Tax Levy" received by the motorcycle manufacturer subject to account inspection and tax levy is lost, unless evasion of tax is involved, which shall be handled according to law, the tax authority shall not levy tax for the lost inspection certificate in accordance with Article 128 of the Regulation under the principle of taxation by law.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.152（May 12, 1978）*

ISSUE: What is the meaning of "identical charge" as provided in the Criminal Code?

RELEVANT LAWS:

Article 56 of the Criminal Code（刑法第五十六條）; J.Y. Interpretation Yuan-tze No. 2185（司法院院字第二一八五號解釋）.

KEYWORDS:

successive acts（連續數行為）, same offenses（同一之罪名）, general criminal intent（概括之犯意）, offenses with the same criminal elements（構成犯罪要件相同之罪名）.**

HOLDING: The so-called "same offense" prescribed in Article 56 of the Criminal Code refers to the situation where a defendant with a general criminal intent commits several successive acts which have the same criminal elements. The determination criteria and examples of the "same offense" and a "offender" set forth in J.Y. Yuan-tze No. 2185 that are inconsistent with the aforementioned leg-

解釋文：刑法第五十六條所謂「同一之罪名」，係指基於概括之犯意，連續數行為，觸犯構成犯罪要件相同之罪名者而言。本院院字第二一八五號解釋，關於「同一之罪名」之認定標準及成立連續犯之各例，與上開意旨不合部分，應予變更。

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* Translated by Li-Chih Lin, Esq., J.D.

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islative intent and purpose shall thus be modified accordingly.

REASONING: Article 56 of the Criminal Code provides that when several successive acts of a defendant may establish the fact of commission of the same offenses, the defendant may be prosecuted for only one offense, but the punishment prescribed for such offense may be increased up to one half. Thus, to be prosecuted for only one offense, the defendant's several successive acts must meet the following three requirements: (1) the defendant must possess a general criminal intent when he commits the successive acts; (2) the defendant commits several successive acts; and (3) the several successive acts of the defendant constitute the same offenses. The so-called "same offense" prescribed in Article 56 of the Criminal Code refers to the situation where a defendant with a general criminal intent commits several successive acts which have the same criminal elements. A defendant is considered to be a serial offender if he possesses a general criminal intent when he commits several success-

解釋理由書：按刑法第五十六條規定：「連續數行為而犯同一之罪名者，以一罪論。但得加重其刑至二分之一。」故連續犯之成立，其要件有三：1.基於概括之犯意。2.連續數行為。3.犯同一之罪名。所謂「同一之罪名」，係指基於概括之犯意，連續數行為，觸犯構成犯罪要件相同之罪名者而言。蓋連續數行為所成立之數個犯罪，其構成要件相同，而非基於概括之犯意者，固不成立連續犯；其係基於概括之犯意者，仍分別處罰，則失之苛刻；如基於概括之犯意，連續數行為所侵之法益性質相同而其構成犯罪要件互異者，亦按連續犯論處，又失之寬縱，難以遏阻犯罪，維持社會安寧秩序及刑罰之公平。本院院字第二一八五號解釋，關於「同一之罪名」之認定標準及成立連續犯之各例，與上開意旨不合部分，應予變更。

sive acts constituting offenses with the same criminal elements. This is because to prosecute such defendant for more than one offense for his successive acts is too harsh. However, a defendant is not considered to be a serial offender if he possesses a specific criminal intent when he commits several successive acts constituting offenses with different criminal elements. This is because to prosecute such defendant for only one offense is too lenient. Such leniency is insufficient to deter crimes, maintain social order and to maintain the fairness of criminal punishment. The determination criteria and examples of the "same offense" and a "offender" set forth in J.Y. Yuan-tze No. 2185 that are inconsistent with the aforementioned legislative intent and purpose shall thus be modified accordingly.

J. Y. Interpretation No.153（July 7, 1978）*

ISSUE: Where there is an appeal against the ruling without the payment of court costs, and the presiding judge immediately dismisses the appeal by a ruling without fixing a period and ordering the defects to be amended within such period, is there any issue of whether the application of laws or regulations violates the Constitution if the said ruling becomes final?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Paragraph 1 of Article 121 of the Code of Civil Procedure（民事訴訟法第一百二十一條第一項）; Precedent T.K.T. No. 242 (Sup. Ct. 1961)（最高法院五十年台抗字第二四二號民事判例）.

KEYWORDS：

right of suit（訴訟權）, irrevocable final decision（確定終局裁判）, substantial certainty effect（實體上確定力）.**

HOLDING: If there is an appeal against the ruling without the payment of court costs, the presiding judge shall fix a period and order the defects to be amended within such period, and shall not immediately dismiss the appeal by a rul-

解釋文：提起抗告，未繳納裁判費者，審判長應定期命其補正，不得逕以裁定駁回，最高法院五十年台抗字第二四二號判例，雖與此意旨不符，惟法院就本案訴訟標的未為裁判，當事人依法既得更行起訴，則適用上開判例之

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ing. Although Precedent T.K.T. No. 242 (Sup. Ct. 1961) is not in accordance with the above-mentioned opinion, since courts of each grade did not adjudicate on the subject matter of an action in the present case, according to the laws the parties may still bring the same action for remedies again. Thus, this irrevocable ruling applying the above Precedent is not a matter of whether the laws or regulations applied by an irrevocable final decision violate the Constitution or not.

確定裁定，尚不發生確定終局裁判所適用之法律或命令是否牴觸憲法問題。

REASONING: The point of this petition may be briefly stated as follows. There was a case of a dispute over a pension payment between the petitioner and the Taiwan Power Company. The petitioner was not content with the ruling of dismissal of the case by the court of the first grade, and appealed against the ruling. Because the petitioner failed to pay the court costs, the court of first appeal immediately dismissed the appeal without an order to amend it. The ruling by the court of first appeal was appealed as well; the Supreme Court applied the Precedent T.K.T. No. 242 (Sup. Ct. 1961), and there-

解釋理由書：本件聲請意旨略稱：聲請人與台灣電力股份有限公司清償退休金事件，不服第一審法院駁回其訴之裁定，提起抗告，未繳納裁判費，第二審法院未命補正，逕以裁定駁回。經提起再抗告，最高法院援引五十年台抗字第二四二號判例，亦以同一理由裁定駁回，使其訴訟權遭受侵害且有違憲疑義等情，聲請解釋。

fore dismissed this appeal for the same reason. The petitioner asserted that the ruling by the Supreme Court had infringed upon his right of instituting legal proceedings and could be unconstitutional, so he petitioned for an interpretation.

According to Article 16 of the Constitution, "The people shall have the right of presenting petitions, administrative appeals, or instituting legal proceedings." As for the so-called right of instituting legal proceedings, it is a judicial beneficiary right for the people, and it means not only that people may file lawsuits when they believe their rights have been infringed upon, but also that the court shall particularly regard this right, facilitate people's complaints, and shall not cause any hindrance to it. And this is why Paragraph 1 of Article 121 of the Code of Civil Procedure provides: "If the petition or the written statement is not made in proper form or is defective in other respects, the presiding judge shall fix a period and order the defects to be amended within such period." If there is an appeal against the ruling without the payment of court costs,

查人民有請願、訴願及訴訟之權，為憲法第十六條所明定，所謂訴訟權，乃人民司法上之受益權，不僅指人民於其權利受侵害時，得提起訴訟而已，法院尤應多加尊重，便利其申訴之機會，不得予以妨礙，民事訴訟法第一百二十一條第一項規定「書狀不合程式或有其他欠缺者，審判長應定期間命其補正」即本此意。提起抗告，未繳納裁判費者，其情形尚非不可補正，審判長應定期命抗告人補正，不得逕以裁定駁回。最高法院五十年度台抗字第二四二號判例謂：「提起抗告之未繳納裁判費用者，可不定期命其補正」。雖與上開意旨不符，惟各級法院就本案訴訟標的既未予裁判，即於當事人之請求事項，不生實體上之確定力，依法自非不得更行起訴，以求救濟，則適用上開判例之確定裁定，尚不發生確定終局裁判所適用之法律或命令是否牴觸憲法問題。

since it still could be amended, the presiding judge shall fix a period and order the defects to be amended within such period, and shall not immediately dismiss the appeal by a ruling. Precedent T.K.T. No. 242 (Sup. Ct. 1961) reveals: "If there is an appeal against the ruling without the payment of court costs, the court may decide against fixing a period and ordering the defects to be amended within such period." Although this Precedent is not in accordance with the above-mentioned opinion, since courts in each grade did not adjudicate on the subject matter of an action in the present case, which means there will not be any substantial certainty effect on the matter, according to the laws the parties may still bring the same action for remedies again. Thus, this irrevocable ruling applying the above Precedent is not a matter of whether the laws or regulations applied by an irrevocable final decision violate the Constitution or not.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.154（September 29, 1978）*

ISSUE: The Administrative Court in its precedent held that a party in an administrative litigation may not petition for a retrial on the same facts and causes over which an initial motion for a retrial was denied. Does the said precedent violate the constitutional protection of the people's rights to litigate, thus being null and void?

RELEVANT LAWS:

Articles 16 and 23 of the Constitution（憲法第十六條、第二十三條）; Article 4, Paragraph 1, Subparagraph 2 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條第一項第二款）; Article 25 of the Court Organic Act（法院組織法第二十五條）.

KEYWORDS:

petition for rehearing（聲請再審）, abuse of litigation（濫訴）, clearly erroneous in the application of law（適用法律顯有錯誤）, Conference of the Alteration of Judicial Precedents（變更判例會議）.**

HOLDING: In accordance with the Precedent of (46) Tsai Tze No. 41 of the Administrative Court, "once the

解釋文：行政法院四十六年度裁字第四十一號判例所稱：「行政訴訟之當事人對於本院所為裁定，聲請再

* Translated and edited by Professor Andy Y. Sun.

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

petition for a retrial is denied, the petitioner in the administrative litigation may not petition for another retrial based on that same denial." The purpose is to prevent abuse of litigation, which does not interfere with the proper administration of the right to litigate and, therefore, does not violate the Constitution.

審，經駁回後，不得復以同一原因事實，又對駁回再審聲請之裁定，更行聲請再審。」旨在遏止當事人之濫訴，無礙訴訟權之正當行使，與憲法並無牴觸。

REASONING: The petitioner in this case argued, briefly, that he leased farmland from the lessor Ji-shen Yeh. In the process of completing the 375 leasing agreement,[1] the Yang-mei Township Administrative Office of Taiwan Province erroneously recorded the lessor of two parcels of land as Ji-rei Yeh, and failed to record the remaining three parcels of land. Because Ji-shen Yeh had already passed away and it was impossible to correct the errors jointly, the petitioner filed a unilat-

解釋理由書：本件聲稱意旨略稱：聲請人承租葉吉顯之耕地，臺灣省桃園縣楊梅鎮公所辦理訂立三七五租約時，將其中兩筆之出租人誤載為葉吉瑞，並漏列其餘三筆，因葉吉顯死亡，不能協同更正，乃依照規定單獨聲請辦理，該公所置之不理，經訴願，再訴願並提起行政訴訟，為行政法院六十六年度判字第十七號判決駁回。經以「適用法令顯有錯誤」為理由，訴請再審，為同院同年度裁字第九十九號裁定駁回；復以「不適用法令」為理由，對該裁定

[1] The Legislative Yuan in 1951 enacted a special legislation entitled "Statute for the Reduction of Farm Rent to 37.5%" by which no landlord of any farmland may collect more than 37.5% of the overall value of the harvest from a farmer/tenant in a given year as the total collectable lease payment. This measure was designed to protect farmers from unfair or unconscionable terms in the lease and use of farmland. Note that the Nationalist Party (or Kuomintang, KMT) lost to the Chinese Communist Party in the civil war and the control over Mainland China in 1949. KMT subsequently concluded that one of the main reasons in losing the civil war was its failure in farmland reform, hence the support of farmers.

eral petition to that Administrative Office but to no avail. The petitioner then filed an administrative appeal, re-appeal and the Administrative Court eventually dismissed the case in (66) Pan Tze No. 17 Judgment. The petitioner then filed a motion for a retrial on the ground that the judgment was "clearly erroneous in the application of law," but the same court dismissed the motion in (66) Tsai Tze No. 99 Judgment. The petitioner again moved for a retrial on the ground of "inapplicable law." Following the Precedent of (46) Tsai Tze No. 41 of the Administrative Court, the Administrative Court again dismissed the petitioner's motion in its (66) Tsai Tze No. 159 Judgment. The petitioner then requested an interpretation in accordance with Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act on the ground that [the judgments] interfered with the petitioner's right to litigate and contradicted Article 16 of the Constitution.

聲請再審，亦為同院同年度裁字第一五九號裁定適用同院四十六年度裁字第四十一號判例駁回，妨害聲請人之訴訟權，有牴觸憲法第十六條之疑義，爰依司法院大法官會議法第四條第一項第二款之規定聲請解釋。

The applicable "laws or regulations" concerning the finality of the judgment, in accordance with Article 4, Paragraph 1,

按司法院大法官會議法第四條第一項第二款關於確定終局裁判所適用之「法律或命令」，乃指確定終局裁判作

Subparagraph, of the Grand Justices Council Adjudication Act, means the laws or regulations or their equivalents based on which the finality of the judgment is rendered. Furthermore, Article 25 of the Court Organic Act provides, "[if] a chamber of the Supreme Court should render legal opinions that differ from existing legal precedents, the President shall submit [the case] to the President of the Judicial Yuan who in turn shall call forth the Conference of the Alteration of Judicial Precedents to determine [the outcome of the opinion]." Article 24 of the Directives for the Operational Procedure of Administrative Court [also] provides, "[if] a chamber renders different legal opinions from existing legal precedents, the President shall submit [the case] to the President of the Judicial Yuan who in turn shall call forth the Conference of the Alteration of Judicial Precedents to determine [the outcome of the opinion] " (Currently Article 38, Paragraph 1). Suffice it to say that barring the modification or alteration process, the legal precedents of the Supreme Court and Administrative Court shall have binding effect and can be the

為裁判依據之法律或命令或相當於法律或命令者而言。依法院組織法第二十五條規定：「最高法院各庭審理案件，關於法律上之見解，與本庭或他庭判決先例有異時，應由院長呈由司法院院長召集變更判例會議決定之。」及行政法院處務規程第二十四條規定：「各庭審理案件關於法律上之見解，與以前判例有異時，應由院長呈由司法院院長召集變更判例會議決定之。」（現行條次為第三十八條第一項）足見最高法院及行政法院判例，在未變更前，有其拘束力，可為各級法院裁判之依據，如有違憲情形，自應有司法院大法官會議法第四條第一項第二款之適用，始足以維護人民之權利，合先說明。

bases for courts at all levels in rendering their respective judgments. Article 4, Paragraph 1, Section 2, of the Grand Justices Council Adjudication Act is applicable if and when the issue of constitutionality is present so that the rights of the people can be maintained.

The right to litigate, as indicated in Article 16 of the Constitution, is a judicial entitlement of the people, which refers to the right of the people to file suits or complaints when their rights are infringed upon and the courts are obligated to review and render judgments in accordance with the law. However, such rights may be restricted in accordance with Article 23 of the Constitution if it is necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare. Once a judgment is finalized, all parties must abide by the ruling that may not be easily altered or modified. Consequently, the grounds for a retrial are limited to those expressly provided by statutes. The Precedent of (46) Tsai Tze No. 41 of the Administrative Court, "once

憲法第十六條所謂人民有訴訟之權，乃人民司法上之受益權，指人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務而言。惟此項權利，依憲法第二十三條規定，為防止妨害他人自由，避免緊急危難，維持社會秩序，或增進公共利益所必要者，得以法律限制之。裁判確定後，當事人即應遵守，不容輕易變動，故再審之事由，應以法律所明定者為限。行政法院四十六年度裁字第四十一號判例所稱：「行政訴訟之當事人對於本院所為裁定，聲請再審經駁回後，不得復以同一原因事實，又對駁回再審聲請之裁定，更行聲請再審。」係對於當事人以原裁定之再審事由，再對認該事由為不合法之裁定聲請再審，認為顯不合於行政訴訟法之規定者而言，旨在遏止當事人之濫訴，無礙訴訟權之正當行使，與憲

the petition for a retrial is denied, the petitioner in the administrative litigation may not petition for another retrial based on that same denial," is meant to deal with the situation in which a party petitions for a retrial over the initial retrial judgment because the latter was unlawful and in violation of the Administrative Proceedings Act. The purpose is to prevent abuse of litigation, which does not interfere with the proper administration of the right to litigate and, therefore, does not violate the Constitution.

法並無牴觸。

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋姚大法官瑞光、陳大法官世榮分別提出不同意見書。

J. Y. Interpretation No.155（December 22, 1978）*

ISSUE: Is it constitutionally permissible for the nation's highest examination body to enact rules and regulations on the methods of civil examinations and on-the-job training for those who wish to work as civil servants?

RELEVANT LAWS:

Articles 13, 83 and 85 of the Constitution（憲法第十三條、第八十三條及第八十五條）; Article 6 of the Enforcement Rules of the Examination Act（考試法施行細則第六條）; Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination（六十三年特種考試臺灣省基層公務人員考試規則第八條）; Article 4 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條）.

KEYWORDS:

examination organ（考試機關）, junior-grade public servants（基層公務人員）, apprenticeship（實習）, qualification certificate（及格證書）.**

HOLDING: The Examination Yuan, being the highest examination organ of the State, may formulate rules for

解釋文：考試院為國家最高考試機關，得依其法定職權訂定考試規則及決定考試方式：「六十三年特種考試

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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and methods of examination within its authority. The review and approval of provisions concerning apprenticeship in Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination, and the Qualification Measures of Apprenticeship for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination do not exceed the scope of the Examination Yuan's duty, nor do they abridge the people's right to take examinations or infringe upon the Constitution.

臺灣省基層公務人員考試規則」第八條關於實習之規定暨「六十三年特種考試臺灣省基層公務人員考試錄取人員實習辦法」之核定，均未逾越考試院職權之範圍，對人民應考試之權亦無侵害，與憲法並不牴觸。

REASONING:. The applicant in this case applied for a qualification certificate after passing the 1974 Taiwan Province Basic-Level Civil Servants Specific Examination without having completed an apprenticeship. The relevant authority refused to issue such a certificate based on Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants Specific Examination and its Qualification Measures of Apprenticeship. The applicant asserted that the said Regulation and Measures were administrative ordinances, and the chapter which imposed appren-

解釋理由書：本件聲請意旨略以聲請人參加六十三年特種考試臺灣省基層公務人員考試錄取後，未經實習，請求發給及格證書，主管機關以六十三年特種考試臺灣省基層公務人員考試規則第八條暨其錄取人員實習辦法為依據，不予發給，惟該規則及實習辦法，係屬行政規章，其中所列經實習後始為完成考試程序一節，與考試法及其施行細則牴觸，致侵害其於憲法上所保障之人民有應考試服公職之權，經依法定程序向行政法院提起訴訟。該院仍基於上開規則第八條及其實習辦法之規定，以六十七年度判字第二六五號判決駁回。

ticeship as a part of the examination process was contrary to the Examination Act and its Enforcement Rules, thus abridging the people's right to examinations and public offices guaranteed by the Constitution. The said Yuan had dismissed the applicant's assertion in its Judgment No. 265 of 1978 by applying the provision of Article 8 of the abovementioned Regulation and Measures. The applicant requested an interpretation of the Constitution by this Yuan under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act for the reason that the laws adopted in reaching the said final and binding judgment infringed upon the Constitution.

此項確定終局判決所適用之法令，顯有違憲之處等情，依司法院大法官會議法第四條第一項第二款之規定，聲請解釋憲法。

The Examination Yuan is the highest examination organ of the State, and is in charge of matters relating to examination under the authority granted by Article 83 of the Constitution. Pursuant to such authority, it may formulate examination rules and adopt suitable examination methods. Reference to "apprenticeship" in Article 8 of the Regulation for Taiwan Province Basic-Level 1974 Civil Servants

查考試院為國家最高考試機關，掌理考試等事項，為憲法第八十三條所賦與之職權，自得本此職權，訂定考試規則及酌採適當之考試方式。六十三年特種考試臺灣省基層公務人員考試規則第八條暨同考試錄取人員實習辦法所定之「實習」，乃實地學習之意，與考試法施行細則第六條所稱之「學習」同，係考察試驗應考人才能之一種適當方法，使其對於任職後之業務有所瞭解，俾能

Specific Examination and in its Measures means "on-the-job," and can be equated with "learning" as referred to in Article 6 of the Enforcement Rules of the Examination Act. Apprenticeship is a proper means of testing the examination candidates, providing them with an understanding of the duties involved and preparing them for the position. Therefore, the candidates must have successfully completed an apprenticeship before they are issued a qualification certificate. Apprenticeship is a component of the examination process, and should be distinguished from "probation." The imposition of apprenticeship, which applies to all qualified candidates, does not exceed the Examination Yuan's authority nor is it contradictory to the spirit of the examination system contained in Article 85 of the Constitution. Even if Article 8 of the aforementioned Regulation delegates matters concerning apprenticeship to the determination of the Taiwan provincial government, such delegation cannot be said to have abridged the people's right of examination nor will it infringe upon Article 18 of the Constitution. Furthermore, the applicant's assertion

勝任，故必須實習成績及格後，始發給考試及格證書，仍為考試程序之一部，與「試用」有別，此項實習，未逾越考試院職權之範圍，且對於該次考試所有錄取人員一律適用，與憲法第八十五條所定考試制度之精神，尚無違背。至依上述考試規則第八條於規定實習原則後，將實習之事項，委由臺灣省政府擬定辦法，核定實施，其委任行為，亦難謂為對人民應考試之權有所侵害，與憲法第十八條並不牴觸。再本件聲請人指摘上述考試規則第八條暨實習辦法有無牴觸考試法並違反典試法及監試法，其制定程序是否合法等，均非解釋憲法問題，依司法院大法官會議法第四條第一項第二款應不予解釋，合併敘明。

tion that Article 8 of the aforementioned Regulation and Apprenticeship Measures are inconsistent with the Examination Act and have infringed upon the Act Governing the Administration of Examination and Examination Supervision Act, or the question of whether their promulgation procedures were legal, are not questions concerning the interpretation of the Constitution. Therefore, under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act, they should not be considered by this court.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。

J. Y. Interpretation No.156（March 16, 1979）*

ISSUE: Does the competent authority's alteration of an urban plan constitute an administrative act, thus justifying the individuals whose rights and interests are so affected to institute appeals or administrative litigations as a form of relief?

RELEVANT LAWS:

Articles 15 and 172 of the Constitution（憲法第十五條及第一百七十二條）; Article 4 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條）; Article 26 of the Urban Planning Act（都市計畫法第二十六條）; Articles 1 and 2 of the Administrative Appeal Act（訴願法第一條及第二條）; Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）.

KEYWORDS:

urban planning（都市計畫）, administrative act（行政處分）, ruling（裁定）, precedent（判例）, appeal（訴願）, administrative litigation（行政訴訟）.**

HOLDING: Alteration of an urban plan by the competent authority is a unilateral administrative act which, if it directly abridges the rights and privileges

解釋文：主管機關變更都市計畫，係公法上之單方行政行為，如直接限制一定區域內人民之權利、利益或增加其負擔，即具有行政處分之性質，其

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of people within a certain region or intensifies their burdens, has the characteristics of an administrative act. In the event the said action leads to the improper or unlawful impediment of the rights of a certain individual or an identifiable group of individuals, the said individual(s) shall be permitted to institute an appeal or administrative litigation as a relief. The foregoing shall supplement the explanation in this Yuan's Interpretation No.148.

因而致特定人或可得確定之多數人之權益遭受不當或違法之損害者，自應許其提起訴願或行政訴訟以資救濟，本院釋字第一四八號解釋應予補充釋明。

REASONING:. The application at hand has been ruled by this Yuan's Interpretation No. 148 as follows: "The competent authority's alteration of an urban plan is not regarded as a person-specific administrative act by the administrative court, thereby barring the people from initiating administrative litigations against it. Based on the foregoing, the court has dismissed the application with a ruling. Although the said ruling is inconsistent with the said court's precedents, it does not raise the issues as to the constitutionality of the laws or orders adopted by the final court judge." The applicant applied to the administrative court for a re-

解釋理由書：本件前經本院大法官會議釋字第一四八號解釋：「主管機關變更都市計劃，行政法院認非屬於對特定人所為之行政處分，人民不得對之提起行政訴訟，以裁定駁回。該項裁定，縱與同院判例有所未合，尚不發生確定終局裁判適用法律或命令，是否牴觸憲法問題」。聲請人等據以向行政法院聲請再審。復經行政法院以原裁定與該院判例並無不合等理由，從程序上予以駁回。聲請人等乃再請本院解釋。

trial in reliance on the foregoing, and requested an interpretation from this Yuan after the administrative court dismissed the case on procedural matters, based on its finding that the original ruling was not inconsistent with the court's precedents.

The Resolution of the 607th Council of Grand Justices Cooucil states: "Applications by the people for interpretations supplementing this Yuan's interpretation on their initial applications, once determined to be based on reasonable cause, shall be handled and interpreted in accordance with Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act." The court should render a supplementary interpretation in answer to the application at hand pursuant to the abovementioned Resolution.

按本院大法官會議第六百零七次會議議決：「人民對於本院就其聲請解釋案件所為之解釋，聲請補充解釋，經核確有正當理由應予受理者，得依司法院大法官會議法第四條第一項第二款之規定，予以解釋。」本件聲請，依照上項決議，認為應予補充解釋。

Alteration of an urban plan by the competent authority is a unilateral administrative act which, if it directly abridges the rights and privileges of people within a certain region or intensifies their burdens, has the characteristics of an administrative act. In the event the said action

主管機關變更都市計畫，係公法上之單方行政行為，如直接限制一定區域內人民之權利、利益或增加其負擔，即具有行政處分之性質，其因而致使特定人或可得確定之多數人之權益遭受不當或違法之損害者，依照訴願法第一條、第二條第一項及行政訴

leads to the improper or unlawful impediment of the rights of a certain individual or an identifiable group of individuals, the said individual(s) shall be permitted to institute an appeal or administrative litigation as a relief in accordance with Article 1 and Article 2, Paragraph 1, of the Administrative Appeal Act and Article 1 of the Administrative Proceedings Act. The foregoing is consistent with the objectives of the people's right of appeal and of administrative litigation protected by the Constitution. Individual alterations to this urban plan are different from the draft and announcement of the urban plan and the necessary alterations, by the drafting authority pursuant to its regular full analysis over the five-year period stipulated by the regulations, which do not directly impair the rights or add burden to the people within the region. Judgment P.T. No.192 (Ad.Ct., 1970) states: "Unilateral administrative acts, whether they are targeted at a specific individual or a group of relevant individuals, by the government pursuant to its right to administration and in response to factual matters cannot be said to be non-administrative

訟法第一條之規定，自應許其提起訴願或行政訴訟，以資救濟。始符憲法保障人民訴願權或行政訴訟權之本旨。此項都市計畫之個別變更，與都市計畫之擬定、發布及擬定計畫機關依規定五年定期通盤檢討所作必要之變更（都市計畫法第二十六條參照），並非直接限制一定區域內人民之權益或增加其負擔者，有所不同。行政法院五十九年判字第一九二號判例，認為：「官署依其行政權之作用，就具體事件所為之單方行政行為，發生公法上具體效果者，不問其對象為特定之個人或某一部份有關係之人民，要不能謂非行政處分。人民如因該行政處分致權利或利益受有損害，自得提起訴願以求救濟；此與官署對於一般人民所為一般性之措施或雖係就具體事件，而係為抽象之規定，不發生公法上具體之效果，影響其權利或利益者不同。本件被告官署變更已公布之都市計畫，……原告以此項變更計畫，將使其所有土地降低其價值，損害其權益，對被告官署此項變更都市計畫之行為，提起訴願，自非法所不許」。其意旨，與此尚屬相符。而同院受理聲請人等因變更都市計畫所提起之行政訴訟事件有無理由，未為實體上之審究，即以主管機關變更都市計劃非屬於對特定人所為之

acts if the said actions produce tangible results in the context of public law. People whose rights or interests have been impaired by the said administrative acts may appeal for relief. The foregoing is different from the general measures imposed by the government on the public or abstract rules on concrete matters that do not produce tangible results in the context of public law or impact on their rights or interests. In this case, the defendant public authority altered the urban plan that it had announced ...the plaintiff's appeal, against the defendant public authority's alteration plan, based on the argument that the said alteration will diminish the value of its land thereby injuring its interests, is not prohibited by the law." The objective of the foregoing is consistent with this Interpretation. The said Yuan, when handling the case at hand, did not consider or determine the substance of this administrative litigation matter concerning the alteration of an urban plan. Rather, the same Court dismissed the applicant's claim, by its Ruling No.103 (Ad.Ct., 1976), based on the reasoning that since the relevant authority's alteration of an urban plan is

行政處分，人民對之不得提起訴願或行政訴訟等理由，將聲請人等之請求以六十五年度裁字第一〇三號裁定予以駁回，則與上述意旨有所未合。本院釋字第一四八號解釋，應予補充釋明。

not an administrative act targeted at specific individuals, the people may not initiate appeals or administrative litigations against the said act. The Ruling is incompatible with this Yuan's reasoning set forth above. Thus, the reasoning shall supplement this Yuan's Interpretation No.148.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.157（April 13, 1979）*

ISSUE: May a public functionary without the supervisory power over private schools serve concurrently as a chairman or director of a private school?

RELEVANT LAWS:

Articles 16, 20, 21 and 51 of the Private School Act（私立學校法第十六條、第二十條、第二十一條及第五十一條）; Article 27 of the Civil Code（民法二十七條）; Article 14 of the Public Functionary Service Act（公務員服務法第十四條）; J.Y. Interpretation No. 131（司法院釋字第一三一號解釋）.

KEYWORDS:

private school（私立學校）, chairman of the board of directors（董事長）, director（董事）, public functionary（公務人員）.**

HOLDING: The Private School Act provides that any civil servant who has the authority to supervise a private school may not serve as director on the board of a private school. J.Y. Interpretation No. 131, which holds that a public

解釋文：私立學校法施行後，對於私立學校不具監督權之公務員，除法律或命令另有規定外，亦不得兼任私立學校之董事長或董事，本院釋字第一三一號解釋，仍應有其適用。

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* Translated by Li-Chih Lin, Esq., J.D.

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functionary who does not have the authority to supervise a private school may not serve as a chairman or a director of a private school without authorization under the law or ordinance is still applicable to a public functionary who does not have the authority to supervise a private school.

REASONING: Private schools have a duty to educate. The primary business of a private school must be decided by its chairman or directors on the board of the school under the law (See Articles 20, 21 and 51 of the Private School Act and Article 27 of the Civil Code) Such business is not the "business" referred to in Article 14 of the Public Functionary Service Act. Public functionaries have an obligation to serve their country faithfully. To maintain impartiality and to prevent the adverse effect of other employment on the performance of his or her civil duty, a public functionary may not take another civil position or conduct other business without authorization under the law or ordinance. If the competent authority concludes functionary to serve concurrently as a that it is necessary to authorize a pub-

解釋理由書：私立學校，負作育人才之重任，其主要業務，依法均須董事長及董事決定（參看私立學校法第二十條、第二十一條、第五十一條及民法第二十七條）。此項業務，要難謂非公務員服務法第十四條所稱之業務。公務員對國家負有忠實服務之義務，為保持其超然地位及防止兼任其他業務有礙其本身職務之執行，除法律或命令規定得由公務員兼任者外，不得兼任他項公職或業務。如主管機關基於實際需要，認為有准許兼任私立學校董事長或董事之必要時，自得另以法令規定之。本院釋字第一三一號解釋所指不得兼任私立學校董事長或董事之公務員，並非僅以現任主管教育行政機關人員或對私立學校具有監督權之公務員為限。私立學校法第十六條：「現任主管教育行政機關人員或對私立學校具有監督權之公務員，不得兼任董事」之規定，係擴大前

lic chairman or a director on the board of a private school, the competent authority may enact a statute to regulate such authorization. J.Y. Interpretation No. 131 holds that a public functionary may not serve as a chairman or a director on the board of a private school. This holding is not limited to the personnel currently working in an educational or administrative government agency or to a public functionary who has the authority to supervise a private school. Article 16 of the Private School Act provides that any personnel currently working in an educational or administrative government agency or any public functionary who has the authority to supervise a private school may not serve as a director on the board of a private school. This provision is to enlarge the scope of restriction set forth in Article 17 of the Regulation Governing Private Schools, which provides that any personnel currently working in an educational or administrative government agency may not serve as a director on the board of a private school. Article 16 of the Private School Act does not preclude the application of Article 14 of the Public

私立學校規程第十七條所定：「……現任有關主管教育行政機關人員，不得兼任董事」之禁止範圍，並未排除公務員服務法第十四條規定之適用，故私立學校法施行後，對於私立學校不具監督權之公務員，除法律或命令另有規定外，亦不得兼任私立學校之董事長或董事，本院釋字第一三一號解釋，仍應有其適用。

Functionary Service Act. Therefore, even though the Private School Act has been promulgated, a public functionary who does not have the authority to supervise a private school may not serve as a private school's president or as a chairman or a director on the board of a private school without authorization under the law or ordinance. J.Y. Interpretation No. 131 is still applicable to a public functionary who does not have the authority to supervise a private school.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.158（June 22, 1979）*

ISSUE: Are the relevant provisions of the Public Functionaries Appointment Act regarding the passive qualifications of a public functionary applicable to a briber?

RELEVANT LAWS:

Articles 4 and Article 7 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條及第七條）; J.Y. Interpretation No. 96（司法院釋字第九十六號解釋）; Article 11, Paragraph 1, and Article 12, Paragraph 2, of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion（戡亂時期貪污治罪條例第十一條第一項及第十二條第二項）; Article 15, Paragraph 2, of the Public Functionaries Appointment Act（公務人員任用法第十五條第二項）.

KEYWORDS:

the conduct of offering a bribe（行賄行為）, corruptive conduct（貪污行為）, public functionary（公務人員）.**

HOLDING: Regardless of the identity of the offender, the conduct of offering a bribe is distinct from the corruptive conduct of accepting a bribe in

解釋文：行賄行為，不論行賄人之身分如何，其性質均與貪污行為有別，不適用公務人員任用法第十五條第二款之規定，本院釋字第九十六號解釋

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nature. Article 15, Paragraph 2, of the Public Functionaries Appointment Act is not applicable to the conduct of offering a bribe. J.Y. Interpretation No. 96, which holds that the conduct of offering a bribe prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance, is consistent with the substance of this Judicial Interpretation and shall therefore be upheld.

仍予維持。

REASONING: The Grand Justices Council reached a resolution at the 180th Grand Justices Council Meeting stating that: "When a central or local government agency applies for a supplemental constitutional interpretation of a judicial interpretation because a controversy has arisen from the application of the Constitution, statutes or ordinances under their authorities pursuant to that interpretation, the Grand Justices Council may provide a supplemental constitutional interpretation of the judicial interpretation at issue pursuant to the provisions set forth in Article 4 or Article 7 of the Grand Justices Council Adjudication Act." The purpose of the aforementioned resolution is

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。」係以闡明原解釋適用時所生之疑義或予更正、補充為主旨。本件係考試院對於本院釋字第九十六解釋發生疑義，依照上項決議，認為應予解釋。

to clarify the controversy arising from the application of the judicial interpretation or to ratify or supplement the judicial interpretation. This J.Y. Interpretation was applied by the Examination Yuan under its authority for a controversy arising from the application of J.Y. Interpretation No. 96, which held that the conduct of offering a bribe prescribed in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance. The Examination Yuan concludes that the Grand Justices Council shall provide a supplemental constitutional interpretation of the J.Y. Interpretation No. 96 pursuant to the aforementioned resolution.

To offer a bribe, it is not necessary that the offender must have a specific identity (public functionary). While the counterpart of offering a bribe to a public functionary is the corruptive conduct of a public functionary accepting a bribe, the elements of offense, criminal sanction, and reduction or exemption of sentence for offering a bribe are different from the elements of offense, criminal sanction, and reduction or exemption of sentence

按行賄行為，其犯罪主體不以有特定身分為必要，雖與公務人員受賄之貪污行為具有對行關係，但其犯罪構成要件、處罰及刑之減免均不相同。故其行為之性質與貪污行為有別。戡亂時期貪污治罪條例第十一條第一項之規定，旨在就對於依據法令從事公務之人員及受公務機關委託承辦公務之人行賄而加重處罰，並非變更行賄行為之性質。縱因其情節輕微，而其行求期約或交付財物在三千元以下者，依同條例第十二條第

for a public functionary accepting a bribe. Thus, the conduct of offering a bribe is distinct from the corruptive conduct of accepting a bribe in nature. The provisions in Article 11, Paragraph 1, of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion (hereinafter "The Act" were set forth to provide an additional sanction on a person who performs civil duty under the law or under commission by a government agency. The provisions in Article 11, Paragraph 1, of the Act were not set forth to change the nature of the bribing conduct. Even when the bribing conduct may be separately governed by Article 12, Paragraph 2, of the Act or other Acts which provide a lenient sentence when the bribing conduct is not serious, and the bribe demanded within a specific time is less than NT$ 3000, the conduct of offering a bribe is still distinct from the corruptive conduct of accepting a bribe. Thus, Article 15, Paragraph 2, of the Public Functionaries Appointment Act is not applicable to the conduct of offering a bribe. J.Y. Interpretation No. 96, which held that the conduct of offering a bribe prescribed

二項適用有較輕處罰之刑法或其他法律，致適用法律有所差異，亦不能因此之故與貪污行為混為一談，自不適用公務人員任用法第十五條第二款之規定，本院釋字第九十六號解釋，與此主旨並無不同，仍應予以維持。

in Article 122, Paragraph 3, of the Criminal Code does not constitute an offense of malfeasance, is consistent with the substance of this Judicial Interpretation and shall therefore be upheld.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.159（September 21, 1979）*

ISSUE: How should the publication of a written criminal judgment in a newspaper be enforced?

RELEVANT LAWS:

Articles 315, 220, 470 and 471 of the Code of Criminal Procedure（刑事訴訟法第三百十五條、第二百二十條、第四百七十條及第四百七十一條）.

KEYWORDS:

criminal perjury（刑法偽證罪）, false accusation（誣告罪）, defamation（妨害名譽罪）, fraud offense（信用罪）, the entire or partial judgment（判決書全部或一部）, separate ruling（裁定）, the final judgment of the case（確定判決）.**

HOLDING: Article 315 of the Code of Criminal Procedure provides that a defendant who is liable to publish the entire or partial judgment in the newspaper shall also pay for the cost. The court must make a separate ruling to impose this sanction on the defendant. If the defendant fails to comply with the court's

解釋文：刑事訴訟法第三百十五條所定：「將判決書全部或一部登報，其費用由被告負擔」之處分，法院應以裁定行之。如被告延不遵行，由檢察官準用同法第四百七十條及第四百七十一條之規定執行。本院院字第一七四四號解釋，應予補充。

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ruling, the prosecutor may execute the court's ruling pursuant to Articles 470 and 471 of the Code of Criminal Procedure. J.Y. Interpretation No. 1744 is therefore supplemented accordingly.

REASONING: Article 315 of the Code of Criminal Procedure provides that a defendant who is convicted of criminal perjury and false accusation or is convicted of defamation and fraud offense, is liable to publish the entire or partial judgment in the newspaper and shall also pay for the cost. The judgment referred to in Article 315 of the Code of Criminal Procedure means the final judgment of the case. If a victim or a person who has standing files a motion to demand that the defendant publish the entire or partial judgment in the newspaper, the court shall make a separate ruling on whether to grant or deny the motion pursuant to Article 220 of the Code of Criminal Procedure. If the court grants the motion but the defendant fails to comply with the court's ruling, the prosecutor may execute the court's ruling pursuant to Articles 470 and 471 of the Code of Criminal Pro-

解釋理由書：按犯刑法偽證及誣告罪章或犯妨害名譽及信用罪章之罪者，因被害人或其他有告訴權人之聲請，得將判決書全部或一部登報，其費用由被告負擔，刑事訴訟法第三百十五條（舊刑事訴訟法第三百零七條）設有規定。此項判決，係指確定判決而言。如經被害人或其他有告訴權人聲請將該判決書登報，法院就其聲請所為之處分，刑事訴訟法既未規定須經判決，依同法第二百二十條規定，應由法院以裁定行之。被告如延不遵行，由檢察官準用同法第四百七十條及第四百七十一條之規定執行，本院院字第一七四四號解釋，應予補充。

cedure. J. Y. Interpretation No. 1744 is therefore supplemented accordingly.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.160（December 21, 1979）*

ISSUE: Is the provision constitutional that no appeal may be filed with the court of third instance where the potential benefits of a successful appeal will not exceed the statutory minimum amount?

RELEVANT LAWS:

Articles 1, 16 and 23 of the Constitution（憲法第一條、第六條及第二十三條）; J.Y. Interpretation No. 154（司法院釋字第一五四號解釋）; Article 466, Paragraph 1, of the Code of Civil Procedure（民事訴訟法第四百六十六條第一項）.

KEYWORDS:

the right to sue（訴訟之權）, duty to adjudicate the case（依法審判之義務）, the amount of compensation（訴訟求償金額）, property dispute（財產權上之訴訟）, litigation restriction（訴訟限制）.**

HOLDING: Article 466, Paragraph 1, of the Code of Civil Procedure, which provides that the plaintiff may not file a second appeal if the amount of compensation for a property dispute in the appeal is less than NT$ 8000, is constitutional.

解釋文：民事訴訟法第四百六十六條第一項：「對於財產權上訴之第二審判決，如因上訴所得受之利益，不逾八千元者，不得上訴」之規定，與憲法並無牴觸。

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REASONING: The right to sue provided to the people in Article 16 of the Constitution of the Republic of China is a right protected by the judiciary. The aforementioned right to sue was upheld in J.Y. Interpretation No.154, which stated that when a person's right is infringed, he or she has a right to bring a legal action for remedy and the court which has the jurisdiction of the case has a duty to adjudicate the case. While the Constitution provides a right to sue to the people, it does not specify that a person's right to sue must be protected by providing the plaintiff a right to exhaust all legal remedies including granting a right to appeal to an intermediate appellate court or the court of last resort (the Supreme Court). Whether a person's right to sue is properly protected under the Constitution shall be determined by the nature of an individual case and shall be governed by fair and reasonable legislations enacted by the legislature. Not every plaintiff must be afforded an opportunity to exhaust all legal remedies in order to protect his or her right to sue under the Constitution. Article 466, Paragraph 1, of the Code of Civil

解釋理由書：按憲法第十六條所謂人民有訴訟之權，乃人民在司法上之受益權，指人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務而言，經本院大法官會議釋字第一五四號解釋理由釋明在案。此項權利之行使，究應經若干審級，憲法並未設有明文，自應衡量訴訟案件之性質，以法律為合理之規定，非必任何案件均須經相同審級，始與憲法相符。民事訴訟法第四百六十六條第一項對於財產權上訴訟之第二審判決，如因上訴得受之利益，不逾八千元者，不得上訴於第三審之規定，即係本此意旨所定之訴訟制度，對所有當事人一體適用，以發揮定分止爭之功能，尚難謂於訴訟權之行使，有何妨礙。至上開規定，將來有無更張之必要，係屬立法上待酌之問題，不能以此指為違憲。

Procedure is enacted based on this principle. It provides that if the amount of compensation for a property dispute in the appeal is less than NT$ 8000, the plaintiff may not file a second appeal. This litigation restriction is applicable to all litigants for the purpose of settling disputes. It is hard to argue that this litigation restriction will infringe upon the right to sue guaranteed by the Constitution. Whether this litigation restriction shall be modified or revised in the future is for the legislature to decide. The legislative discretion is not a justifiable reason to hold Article 466, Paragraph 1, of the Code of Civil Procedure unconstitutional.

In sum, the provisions set forth in Article 466, Paragraph 1, of the Code of Civil Procedure are in compliance with Articles 1, 16 and 23 of the Constitution of the Republic of China.

綜上說明，民事訴訟法第四百六十六條第一項之規定與憲法第一條、第十六條及第二十三條，並無牴觸。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.161（January 18, 1980）*

ISSUE: How should the effective date of a statute or regulation be calculated?

RELEVANT LAWS:

Article 13 of t the Standard Act for the Laws and Rules（中央法規標準法第十三條）.

KEYWORDS:

effective date（生效日）, the date of proclamation（公布日）.**

HOLDING: The effective date of a statute or regulation as provided in Article 13 of the Standard Act for the Laws and Rules shall include the date of publication or proclamation.

解釋文：中央法規標準法第十三條所定法規生效日期之起算，應將法規公布或發布之當日算入。

REASONING: When a statute or regulation provides that it will take effect from the date of publication or proclamation, the legally effective date is the third day from the date of publication or proclamation according to Article 13 of

解釋理由書：按法規明定自公布或發布日施行者，自公布或發布之日起算至第三日起發生效力，中央法規標準法第十三條定有明文，其所謂「自公布或發布之日起算至第三日」之文義，係將法規公布或發布之當日算入至第三

* Translated by J. P. Fa.

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the Standard Act for the Laws and Rules. It does not exclude the date of publication or proclamation when calculating the effective date and accordingly it differs from Article 120 of the Civil Code.

日起發生效力，此項生效日期之計算，既為中央法規標準法所明定，自不適用民法第一百二十條第二項之規定。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Yi-Po Cheng filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光與鄭大法官玉波分別提出不同意見書。

J. Y. Interpretation No.162（April 25, 1970）*

ISSUE: 1.Is Article 81 of the constitution applicable to the Chief Judge of the Administrative Court or the Chairperson of the Commission on the Disciplinary Sanction of Functionaries?

2.Is a judge of the Administrative Court or a commissioner of the Commission on the Disciplinary Sanction of Functionaries considered as a "judge" under the Constitution?

RELEVANT LAWS:

Articles 77, 80 and 81 of the Constitution（憲法第七十七條, 第八十條及第八十一條）; J.Y. Interpretation No. 13（司法院釋字第十三號解釋）.

KEYWORDS:

the President of the Administrative Court（行政法院院長）, the Chief Commissioner of the Public Functionaries Disciplinary Commission（公務員懲戒委員會委員長）, presiding judge（庭長）, deliberation（審議）, disciplinary action（懲戒案件）, tenure（終身職）, the supreme judicial agency of the country（國家最高司法機關）, civil cases（民事訴訟）, criminal cases（刑事訴訟）, administrative cases（行政訴訟）, dismissal（免職）, suspension or discharge of official duties（停職）, incompetency（不能勝任職務）, the qualification of a judge（法官任用資格）.**

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* Translated by Li-Chih Lin, Esq., J.D.

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

HOLDING: 1. The President of the Administrative Court and the Chief Commissioner of the Public Functionaries Disciplinary Commission are the administrative heads of the respective agencies. Therefore, the provisions set forth in Article 81 of the Constitution are not applicable to the President of the Administrative Court or the Chief Commissioner of the Public Functionaries Disciplinary Commission.

解釋文：一、行政法院院長、公務員懲戒委員會委員長，均係綜理各該機關行政事務之首長，自無憲法第八十一條之適用。

2. The adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission have authority to adjudicate or deliberate administrative cases independently and impartially pursuant to the law without political interference. Therefore, the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission should be considered as judges under the Constitution in accordance with Articles 78 and 80 of the Constitution. The purpose of granting tenure to judges under Article 81 of the Constitution is to allow judges to adjudicate or deliberate cases

二、行政法院評事、公務員懲戒委員會委員，就行政訴訟或公務員懲戒案件，分別依據法律，獨立行使審判或審議之職權，不受任何干涉，依憲法第七十七條、第八十條規定，均應認係憲法上所稱之法官。其保障，應本發揮司法功能及保持法官職位安定之原則，由法律妥為規定，以符憲法第八十一條之意旨。

independently and impartially pursuant to the law without political interference. The respective entitlements granted to the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission shall be properly regulated by law to allow them to exercise judicial functions and to maintain job stability in compliance with the intention and purpose of Article 81 of the Constitution.

REASONING: 1. The President of the Administrative Court and the Chief Commissioner of the Public Functionaries Disciplinary Commission are the administrative heads of the respective agencies. The President of the Administrative Court, who also serves as an adjudicator, may be required by his/her position to serve as a presiding judge. The Chief Commissioner of the Public Functionaries Disciplinary Commission does not participate in the deliberation of a disciplinary action against a civil servant. Neither the President of the Administrative Court nor the Chief Commissioner of the Public Functionaries Disciplinary omission is consid-

解釋理由書：一、行政法院院長、公務員懲戒委員會委員長，均係綜理各該機關行政事務之首長。行政法院院長兼任評事，並得充庭長，乃擔任院長職務之結果；公務員懲戒委員會委員長，並不參與懲戒案件之審議，均非憲法第八十條所稱之法官，無終身職之可言。故行政法院院長、公務員懲戒委員會委員長，自無憲法第八十一條之適用。

ered to be a judge under Article 80 of the Constitution and is not entitled to tenure. Therefore, the provisions set forth in Article 81 of the Constitution are not applicable to the President of the Administrative Court or the Chief Commissioner of the Public Functionaries Disciplinary Commission.

2. Article 77 of the Constitution provides that the Judicial Yuan is the supreme judicial agency of the country, adjudicating civil, criminal or administrative cases and civil servant disciplinary actions. The adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission have authority to adjudicate or deliberate administrative cases independently and impartially pursuant to the law without political interference. Therefore, the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission should be considered as judges under the Constitution in accordance with Article 80 of the Constitution. J. Y. Interpretation No. 13 has clarified that a judge under Article 81

二、司法院為國家最高司法機關，掌理民事、刑事、行政訴訟之審判及公務員之懲戒。憲法第七十七條定有明文。行政法院評事，公務員懲戒委員會委員，就行政訴訟或公務員懲戒案件，分別依據法律，獨立行使審判或審議之職權，不受任何干涉，依同法第八十條規定，均應認係憲法上所稱之法官。而憲法第八十一條所稱之法官，係指同法第八十條之法官而言，業經本院釋字第十三號解釋有案。惟憲法第八十一條「法官為終身職」之保障規定，固在使法官能依法獨立行使職權，無所顧忌，但非謂法官除有同條所定之免職、停職等情事外，縱有體力衰弱致不能勝任職務者，亦不能停止其原職務之執行而照支俸給，故行政法院評事及公務員懲戒委員會委員之保障，應本發揮司法功能及保持法官職位安定之原則，由法

of the Constitution is the same as a judge prescribed in Article 80 of the Constitution. The purpose of granting tenure to judges under Article 81 of the Constitution is to allow judges to adjudicate or deliberate cases independently and impartially pursuant to the law without political interference. However, judges entitled to tenure are not exempted from dismissal, suspension or discharge of official duties due to incompetency. Thus the entitlements granted to the adjudicator of the Administrative Court and the commissioner of the Public Functionaries Disciplinary Commission shall be properly regulated by law to allow them to exercise the judicial functions and to maintain the job stability in compliance with the intention and purpose of Article 81 of the Constitution. To ensure that judges properly perform their official duties, their qualifications shall also be regulated by law accordingly.

律妥為規定，以符憲法第八十一條之意旨，至法官任用資格應如何求其適當，俾能善盡職責，乃屬立法時考慮之問題，併予敘明。

Justice Shih-Ron Chen filed dissenting opinion in part.

本號解釋陳大法官世榮提出一部不同意見書。

J. Y. Interpretation No.163（June 20, 1980）*

ISSUE: Shall income tax be levied on the compensation left, if any, acquired by the lessee of a farmland for the termination of the lease contract after the deduction of necessary expenses and actual losses?

RELEVANT LAWS:

Category 9 of Paragraph 1 of Article 14 of the Income Tax Act（所得稅法第十四條第一項第九類）; Paragraph 1 of Article 77 of the Equalization of Land Rights Act（平均地權條例第七十七條第一項）; Paragraph 2 of Article 56 of the Enforcement of the Equalization of the Urban Land Rights Act（實施都市平均地權條例第五十六條第二項）.

KEYWORDS：

to terminate the lease contract of leased farmland（出租耕作終止租約）, compensation（補償金）, income tax（所得稅）.**

HOLDING: When leased farmland, according to the laws, has been designated for the purpose of construction, and then the lessor terminates the lease contract in order to take the land back to

解釋文：出租耕地經依法編為建築用地者，出租人為收回自行建築或出售作為建築使用，而終止租約時，依法給與承租人該土地地價三分之一之補償金，於依具體事實，扣除必要費用及

* Translated by Jer -Shenq Shieh.

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

use for the purpose of construction or to sell it for the purpose of construction, according to the laws, the lessor shall compensate the lessee with the amount equivalent to one third of the land value, and after the deduction, according to specific facts, of necessary expenses and actual losses, if there is any compensation left, income tax shall be levied according to Category 9 of Paragraph 1 of Article 14 of the Income Tax Act.

實際所受損失後，如仍有所得，應依所得稅法第十四條第一項第九類課徵所得稅。

REASONING: When leased farmland, according to the laws, has been designated for the purpose of construction, and then the lessor terminates the lease contract in order to take the land back to use for the purpose of construction or to sell it for the purpose of construction, Paragraph 2 of Article 56 of the Act Governing Enforcement of the Equalization of Urban Land Rights, as amended and promulgated on February 12, 1968, provides that the lessor "shall compensate the lessee with the amount equivalent to one third of the declared value of the land, besides compensating the lessee for the expenses he has incurred

解釋理由書：出租耕地經依法編為建築用地，出租人為收回自行建築或出售作為建築使用，而終止租約時，非出於承租人之自由意思，為兼顧其生活，減少租佃糾紛，以利都市建設，因於民國五十七年二月十二日修正公布之實施都市平均地權條例第五十六條第二項規定，出租人「除應補償承租人為改良土地所支付之費用，及尚未收穫之農作改良物外，並應給與該土地申報地價三分之一之補償。」該條例於民國六十六年二月二日修正為平均地權條例，並於第七十七條第一項將上開規定修正為：「耕地出租人依前條規定終止租約收回耕地時，除應補償承租人為改良土地所支付之費用及尚未收穫之農作改良

in making land improvements as well as for any crops not yet harvested," for this termination is not executed by the lessee voluntarily, and the lessee's living expenses need to be taken into account as well in order to reduce the disputes between the lessor and lessee and to facilitate the urban development. The aforesaid Act was reenacted as the Equalization of Land Rights Act on February 1,1977, and the provision of Paragraph 1 of Article 77 of this Act has revised the above-mentioned provision as "In terminating the lease contract and taking the land back according to the provisions of the preceding Article, the lessor shall compensate the lessee for the expenses he has incurred in making land improvements as well as for any crops not yet harvested. In addition, if the termination is to take the land back for the lessor himself to use for the purpose of construction, the lessor shall calculate the land value increment tax beforehand by the announced current land value at the time of the termination of lease contract, and compensate the lessee with the amount equivalent to one third of the difference between the announced

物外，其為自行建築者，應就終止租約當期之公告土地現值，預計土地增值稅，並按該公告土地現值，減除預計土地增值稅後餘額三分之一給予補償；其為出售供他人建築者，給與該土地繳納土地增值稅後餘額三分之一之補償」，以補償租約終止後，承租人如有遷徒、轉業或其他支出之必要費用及其租約預期存續期間實際所受損失；此等金額，自非對承租人應課徵所得稅之所得。故上項補償金，於依具體事實，扣除必要費用及實際所受損失後，如仍有所得，應依所得稅法第十四條第一項第九類課徵所得稅。

current land value and the anticipated land value increment tax; if the termination is to sell the land out for others to do the construction, the lessor shall compensate the lessee with the amount equivalent to one third of the difference between the current land value and the land value increment tax." This provision is in order to compensate the lessee, after the termination of the lease contract, for the costs of moving, changing jobs or other paid necessary expenses, and the actual loss derived from the expectation of the continuance of the lease contract, if any; this amount of money does not belong to the income upon which the income tax shall be levied. However, after the deduction, according to specific facts, of necessary expenses and actual losses, if there is any compensation left, income tax shall be levied on it according to Category 9 of Paragraph 1 of Article 14 of the Income Tax Act.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.164（July 18, 1980）*

ISSUE: Is there any application of the provisions of the extinctive prescription on the right to claim the removal of the interference by the owner of a registered estate?

RELEVANT LAWS:

J. Y. Interpretation No.107（司法院釋字第一〇七號解釋）; Article 125 and Article 767 of the Civil Code（民法第一百二十五條、第七百六十七條）.

KEYWORDS：

registered estate（已登記不動產）, right to claim the removal of the interference（除去妨害請求權）, extinctive prescription（消滅時效）.**

HOLDING:. The right to claim the removal of the interference by the owner of a registered estate is not within the scope of the Interpretation No.107 of this Yuan. However, based on the nature of this right, there will be no application of the provision of the extinctive prescription in Article 125 of the Civil Code either.

解釋文：已登記不動產所有人之除去妨害請求權，不在本院釋字第一〇七號解釋範圍之內，但依其性質，亦無民法第一百二十五條消滅時效規定之適用。

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* Translated by Jer -Shenq Shieh.

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

REASONING: For according to the provisions of Article 767 of the Civil Code, the rights of the owner of a thing, as to demanding its return from anyone who possesses it without authority or who seizes it, claiming the removal of the interference on those who interfere with his ownership and claiming the prevention of such interference on those who might interfere with it, are all for the purpose of preserving the complete exercise of the ownership, being the same in nature, and therefore as for whether each of them shall have the application of the provisions about the extinctive prescription, there should be no diversity among these interpretations. If there is any diversity among them, not only it will unavoidably cause a self-contradiction in theory, but also it will cause difficulty in completely exercising the power of the ownership in practice. Interpretation No. 107 by this Yuan has expounded: "The right to claim the repossession by the owner of a registered estate does not have the application of the provision of the extinctive prescription in Article 125 of the Civil Code." If the right to claim the removal of the inter-

解釋理由書：按民法第七百六十七條規定，所有人對於無權占有或侵奪其所有物者之返還請求權，對於妨害其所有權者之除去請求權及對於有妨害其所有權之虞者之防止請求權，均以維護所有權之圓滿行使為目的，其性質相同，故各該請求權是否適用消滅時效之規定，彼此之間，當不容有何軒輊。如為不同之解釋，在理論上不免自相矛盾，在實際上亦難完全發揮所有權之功能。「已登記不動產所有人之回復請求權，無民法第一百二十五條消滅時效規定之適用」，業經本院釋字第一〇七號解釋在案。已登記不動產所有人之除去妨害請求權，有如對於登記具有無效原因之登記名義人所發生之塗銷登記請求權，若適用民法消滅時效之規定，則因十五年不行使，致罹於時效而消滅，難免發生權利上名實不符之現象，真正所有人將無法確實支配其所有物，自難貫徹首開規定之意旨。故已登記不動產所有人之除去妨害請求權，雖不在上開解釋範圍之內，但依其性質，亦無民法第一百二十五條消滅時效規定之適用。

ference by the owner of a registered estate, the right to claim the cancellation of a registration implying the invalidating cause against the person whose name is registered in the register, for example, has the application of the provisions of the extinctive prescription, it will be abolished by prescription if it is not exercised within fifteen years. Then this would unavoidably cause an inconsistency between the right in name and the right in reality, and the real owner of a thing could not actually possess the thing, and the purpose of this Article could not be followed. Therefore although the right to claim the removal of the interference by the owner of a registered estate is not within the scope of the above-mentioned Interpretation, based on the nature of this right, there will be no application of the provision of the extinctive prescription in Article 125 of the Civil Code either.

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Yi-Po Cheng filed dissenting opinion.

Justice Shun-Shin Hong filed dissenting opinion.

本號解釋姚大法官瑞光、鄭大法官玉波與洪大法官遜欣分別提出不同意見書。

J. Y. Interpretation No.165（September 12, 1980）*

ISSUE: Articles 32, 73 and 101 of the Constitution provide that no member of the National Assembly, Legislature and Control Yuan shall be held liable for opinions expressed and votes cast during his attendance at its respective session, should the-said provisions be applicable *mutatis mutandis* to the delegates of the Provincial Assemblies and Local Councils?

RELEVANT LAWS:

Articles 32, 73, 78 and 101 of the Constitution（憲法第三十二條、第七十三條、第七十八條、第一百零一條）; Articles 4 and 7 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條、第七條）; J. Y. Interpretation No.122（司法院釋字第一二二號解釋）.

KEYWORDS：

Local Council（地方議會）, freedom of speech（言論自由）.**

HOLDING: Delegates of the Provincial Assemblies and Local Councils shall not be held responsible for opinions expressed at the Council meetings regarding matters of such meetings. Neverthe-

解釋文：地方議會議員在會議時就有關會議事項所為之言論，應受保障，對外不負責任。但就無關會議事項所為顯然違法之言論，仍難免責。本院釋字第一二二號解釋，應予補充。

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* Translated by Jiunn-rong Yeh.

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less, they shall be held responsible for expressed opinions that are unrelated to the subject matters and clearly in violation of laws. The foregoing shall supplement the explanation in this Yuan's Interpretation No.122.

REASONING: Article 78 of the Constitution prescribes that the Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and regulations. A petition for re-interpretation may be filed in accordance with Articles 4 and 7 of the Grand Justices Council Adjudication Act, should national or local government agencies, when applying Constitution, laws and regulations, have doubts concerning a previous interpretation made by this Council. This was decided in the 118th Council meeting. The concerned case was filed with this Council before by the Control Yuan, indicating that Explanation No. 3735 of the Judicial Yuan on the responsibility of magistrate councilors for expressed opinions and another interpretative rule made by the Ministry of the Interior were inconsistent with the Constitu-

解釋理由書：憲法第七十八條規定：「司法院解釋憲法，並有統一解釋法律及命令之權。」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，業經本會議第一一八次會議決議在案。本件前經監察院以本院「院解字第三七三五號對縣參議員發言責任之解釋及內政部依據該項解釋所為之釋示，顯屬違憲，且不應適用於行憲今日之台灣省議會及各縣市議會議員。」函請予以解釋。經以釋字第一二二號解釋後，監察院依上開決議，聲請補充解釋，應予受理。合先說明。

tion. It was asserted that after the Constitution went into effect such interpretations should not have been made applicable to current members of the provincial assemblies and county or city councils. This Council had considered such a petition and rendered Interpretation No. 122. However, because the Control Yuan is requesting re-interpretation of No. 122, based on the aforementioned meeting resolution, this Council makes this Interpretation accordingly.

Articles 32, 73 and 101 of the Constitution protect delegates of the National Assembly and members of the Legislative and Control Yuans from being held responsible for opinions expressed or votes cast at the meetings of the Assembly and in the Yuans. This is to assure the people's national representatives' freedom of speech and vote in order for them to properly carry out their duty to express concerns about and criticisms of the government. The Constitution does not, however, expressly extend such protection to local representatives of the people, nor do the constitutions of other countries. Among

憲法第三十二條、第七十三條及第一百零一條，對於國民大會代表、立法委員及監察委員在會議時或院內所為之言論及表決，分別特設對外不負責任之規定，旨在保障中央民意代表在會議時之言論及表決之自由，俾能善盡言責。關於地方民意代表言論之保障，我國憲法未設規定，各國憲法亦多如此。未設規定之國家，有不予保障者，如日本是（參考日本最高裁判所昭和四十二年五月二十四日大法庭判決），有以法規保障者，如我國是。地方議會為發揮其功能，在其法定職掌範圍內具有自治、自律之權責，對於議員在會議時所為之言論，並宜在憲法保障中央民意代

them, some, such as that of Japan, do not extend such protection to local representatives (See the decision by the Grand Tribunal of the Supreme Court of Japan on May 24, 1967), while others may provide statutory protection such as our country's does. For the Provincial Assemblies and Local Councils to function well, they should enjoy self-governance and self-discipline within their legally prescribed jurisdictions and duties. Moreover, in the spirit of the Constitution, which protects freedom of speech of national representatives, it shall also be appropriate to extend such protection, in accordance with laws, to delegates of the Provincial Assemblies and Local Councils regarding opinions expressed at the meetings. This is to safeguard delegates of the Provincial and Local Councils when expressing the people's concerns about and criticisms of local governments. Nonetheless, since such protection is to assure that delegates of the Provincial Assemblies and Local Councils properly carry out their duties, it shall be limited to matters with regard to discussing bills, addressing inquiries, etc., at the meetings. Should opinions on unrelated

表言論之精神下，依法予以適當之保障，俾得善盡表達公意及監督地方政府之職責。惟上項保障，既在使地方議會議員順利執行職務，自應以與議案之討論、質詢等有關會議事項所為之言論為限，始有免責之權，如與會議事項無關，而為妨害名譽或其他顯然違法之言論，則係濫用言免責權；而權利不得濫用，乃法治國家公法與私法之共同原則，即不應再予保障。故地方議會議員在會議時就有關會議事項所為之言論，應受保障，對外不負責任。但就無關會議事項所為顯然違法之言論，仍難免責。本院釋字第一二二號解釋應予補充。

matters be expressed at the meetings and be libelous, defamatory, or in violation of laws, they shall be considered as abuses of such protection. Then, such protection shall be removed given the principle applicable to both public and private laws that those who abuse rights should no longer be protected in accordance with the rule of law. To sum up, delegates of the Provincial Assemblies and Local Councils shall not be held responsible for opinions expressed at the Council meetings and with regard to matters of such meetings. Nevertheless, they shall be held responsible for expressed opinions that are unrelated to the subject matters and clearly in violation of laws. The foregoing shall supplement the explanation in this Yuan's Interpretation No.122.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋陳大法官世榮提出不同意見書。

J. Y. Interpretation No.166（November 7, 1980）*

ISSUE: The Act Governing the Punishment of Police Offences permits the police to impose sanctions of administrative detention and forced labor upon offenders. Does the said Act constitute an infringement of physical freedom guaranteed by the Constitution?

RELEVANT LAWS:

Article 8, Paragraph 1 of the Constitution（憲法第八條第一項）; Act Governing Offences Punished by the Police Offences（違警罰法）.

KEYWORDS:

personal freedom（個人自由）.**

HOLDING: The police sanctions of administrative detention and forced labor stipulated by the Act Governing the Punishment of Police Offences are sanctions on physical freedom. In order to comply with the requirements of Article 8, Paragraph 1, of the Constitution, these sanctions shall be promptly administered by courts based on legal process.

解釋文：違警罰法規定，由警察官署裁決之拘留、罰役，係關於人民身體自由所為之處罰，應迅改由法院依法定程序為之，以符憲法第八條第一項之本旨。

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* Translated by Professor J. P. Fa.

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REASONING: Article 8, Paragraph 1, of the Constitution provides the guarantee of physical freedom. Except in the case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police department in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a court in accordance with the procedure prescribed by law. Although the police have the authority to arrest or detain people, any sanctions restricting physical freedom are within the court's exclusive jurisdiction. Since administrative detention and forced labor are sanctions on physical freedom, they shall be imposed by courts according to legal process. In other words, despite the fact that relevant provisions predated the Constitution and had not been amended for the public interest (social safety and danger prevention), reprehensible conduct still had to be subject to due punishment. According to the rule of changed circumstances, the more than thirty years since the passage of the abovementioned provisions had made it abundantly clear that, for the guarantee

解釋理由書：按人民身體之自由，應予保障，除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程序不得逮捕拘禁，非由法院依定程序不得審問處罰，憲法第八條第一項定明文。是警察機關對於人民僅得依法定程序逮捕或拘禁，至有關人民身體自由之處罰，則屬於司法權，違警罰法所定由警察官署裁決之拘留、罰役，既係關於人民身體自由之處罰，即屬法院職權之範圍，自應由法院依法定程序為之，惟違警行為原非不應處罰，而違警罰法係行憲前公布施行，行憲後為維護社會安全及防止危害，主管機關乃未即修改，迄今行憲三十餘年，情勢已有變更，為加強人民身體自由之保障，違警罰法有關拘留、罰役由警察官署裁決之規定，應迅改由法院依法定程序為之，以符憲法第八條第一項之本旨。

of physical freedom, the administrative detention and compulsory labor imposed by the police had to be transferred to the court as soon as possible to meet the requirements of Article 8, Paragraph 1, of the Constitution.

J. Y. Interpretation No.167（March 13, 1981）*

ISSUE: Is a company which has changed its organization from a limited company to a company limited by shares required to pay deed tax for its immovable property?

RELEVANT LAWS:

Articles 106, 156, 411, and 415 of the Company Act（公司法第一百零六條、第一百五十六條、第四百十一條及第四百十五條）; Article 2 of the Deed Tax Act（契稅條例第二條）.

KEYWORDS：

change of organization（變更組織）, right on immovable property（不動產權利）.**

HOLDING: When a limited company changes its organization into a company limited by shares in accordance with the Company Act, the existence and continuity of its status as a juristic person is not affected. When the company's right on immovable property is changed to the name of the company limited by shares, principle of taxation by law, no deed tax

解釋文：有限公司依公司法規定變更其組織為股份有限公司，其法人人格之存續不受影響，就該公司之不動產權利變更為股份有限公司之名義時，無契稅條例第二條第一項之適用，依租稅法律主義，自不應課徵契稅。但非依法變更組織者，其不動產權利之移轉，不在此限。

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* Translated by Dr. C.Y. Huang of Tsar & Tsai Law Firm.

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

shall be levied. However, this is not applicable to the transfer of the right on immovable property of a company which changes its organization without following the law.

REASONING: The petition for Interpretation was filed before the amendment of the Company Act on May 9, 1980. However, as far the applicability of the provisions regarding change of organization of a limited company is concerned, the interpretation is still necessary, and the petition is accepted.

解釋理由書：本件聲請，雖在公司法於六十九年五月九日修正前，惟涉及有限公司變更組織規定適用疑義，仍有解釋之必要，故予受理，合先說明。

As expressly provided in Paragraph 1 of Article 2 of the Deed Tax Act, any purchaser and acceptor of a dien, exchange, donation and partition of immovable property, and any acquirer of ownership thereof by virtue of possession shall procure and use official deed forms and pay deed taxes. For a limited company that changes its organization to a company limited by shares, the change of its rights on immovable property to the name of the company limited by shares is not within the scope of tax payment under the said

查不動產之買賣、承典、交換、贈與、分割或因占有而取得所有權者，均應購用公定契紙，申報繳納契稅，契稅條例第二條第一項定有明文。有限公司依公司法規定變更組織為股份有限公司者，其不動產權利變更為股份有限公司之名義，並非該條所定應申報納稅之範圍。蓋有限公司依公司法第一百零六條、第一百五十六條第三項、第四百十一條及第四百十五條規定，變更組織為股份有限公司，僅係有限公司為鼓勵大眾投資，促進經濟發展，而改變其組織形態而已，並非另行設立新公司，故其

provision of law. The purpose of a limited company that changes its organization in accordance with Article 106, Paragraph 3, of Article 156, Article 411, and Article 415 of the Company Act is to encourage the public to make investments and to promote economic development rather than set up a new company. Therefore, the existence and continuity of its status as a juristic person is not affected. The rights and obligations originally belonging to the limited company are to be enjoyed or assumed by the company limited by shares after change. It does not make any difference even if such rights are related to immovable property. This is crystal clear in view that when the Company Act was amended on May 9, 1980, the substantive requirements for a limited company to change its organization were not amended; such change was deleted from the reasons for dissolution of a limited company; the provisions for merger of companies no longer apply mutatis mutandis; and amendment registration was expressly required so as to eliminate the concerns in practice. Therefore, when a limited company changes its organization

法人人格之存續，不受影響，原屬有限公司之權利或義務，自應由變更後之股份有限公司繼續享有或負擔，即使其權利係與不動產有關，亦無不同。此種情形，觀之公司法於六十九年五月九日修正時，就上列有限公司變更其組織為股份有限公司之實質要件，未予修正，僅刪除此項變更為有限公司之解散原因，亦不再準用公司合併之規定，並明定應辦理變更登記，以澄清實務上之疑義，甚為顯然。因之有限公司依公司法規定變更其組織為股份有限公司時，就該公司之不動產權利變更為股份有限公司之名義，無契稅條例第二條第一項之適用，依租稅法律主義，自不應課徵契稅。但非依法變更，而有不動產權利移轉之事實者，仍應依法處理。

into a company limited by shares, Paragraph 1 of Article 2 of the Deed Tax Act does not apply to the change of the company's right on immovable property to the name of the company limited by shares. Pursuant to the principle of taxation by law, no deed tax shall be levied. However, if the change is not made according to law and if the right on immovable property is transferred, such situation shall still be handled according to law.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.168（May 8, 1981）*

ISSUE: Should a judgment on the merits of a re-litigated case be dismissed if that final and binding judgment is rendered prior to an earlier judgment of the same case being finalized?

RELEVANT LAWS:

Article 302, Subparagraph 1 and Article 303, Subparagraph 2 of the Code of Criminal Procedure（刑事訴訟法第三百零二條第一款、第三百零三條第二款）.

KEYWORDS：

extraordinary appeal（非常上訴）, dismissal judgment（不受理判決）, public prosecution（公訴）, private prosecution（自訴）.**

HOLDING: Article 303, Subparagraph 2, of the Code of Criminal Procedure expressly provides that a dismissal judgment should be entered for cases already being litigated by public or private prosecution and then relitigated before the same court. When the judgment of a prior litigation is not finalized after the judgment of the later litigation is rendered but

解釋文：已經提起公訴或自訴之案件，在同一法院重行起訴者，應諭知不受理之判決，刑事訴訟法第三百零三條第二款，定有明文。縱先起訴之判決，確定在後，如判決時，後起訴之判決，尚未確定，仍應就後起訴之判決，依非常上訴程序，予以撤銷，諭知不受理。

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* Translated and edited by Professor Andy Y. Sun.

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before the later judgment is finalized, the judgment of the later litigation shall be dismissed in accordance with the process of extraordinary appeal.

REASONING: *Res judicata* is a fundamental principle of our Code of Criminal Procedure.[1] Article 303, Subparagraph 2, of the Code of Criminal Procedure expressly provides that a dismissal judgment should be entered for cases already being litigated by public or private prosecution and then relitigated before the same court. As long as the same case has been legally prosecuted by public or private prosecution, it cannot be relitigated

解釋理由書：按一事不再理，為我刑事訴訟法之基本原則。已經提起公訴或自訴之案件，在同一法院重行起訴者，應諭知不受理之判決，為同法第三百零三條第二款所明定。蓋同一案件，既經合法提起公訴或自訴，自不容在同一法院重複起訴，為免一案兩判，對於後之起訴，應以形式裁判終結之。而同法第三百零二條第一款所定，案件曾經判決確定者，應諭知免訴之判決，必係法院判決時，其同一案件，已經實

[1]. Recognizing the subtle differences between the terms "一事不再理" in civil law and "*res judicata*" in common law system in that the former does not necessarily cover the claims or issues already being fully and finally adjudicated, this is nevertheless and possibly the closest resemblance of concepts. *Res judicata* is the principle that a final judgment of a competent court is conclusive upon the parties in any subsequent litigation involving the same cause of action. Note that the legal system of the Republic of China does not distinguish claims preclusion (*res judicata*) from issues preclusion (*collateral estoppel*). According to the U.S. Supreme Court (as declared by the late Justice Potter Stewart), "[u]nder *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. As this Court and other courts have often recognized, *res judicata* and *collateral estoppel* relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *See* Allen

in the same court. A procedural judgment should then be entered to terminate the latter action. Article 302, Subparagraph 1, of the same Act provides that a dismissal judgment shall be entered on a case whose final and binding judgment has already been rendered. Considering that this provision expressly provides that a "final and binding judgment has already been rendered," doubtless it is applicable only when a final and binding judgment on the merits has been rendered on the case. Consequently, although a judgment on the merits of the later litigation is finalized prior to the earlier judgment of the former litigation, since that later litigation judgment is not yet finalized at the time the earlier judgment is rendered, that earlier judgment, therefore, is not legally bound by the later judgment as there is not yet the effect of stare decisis. As a result, there is no ground for the application of Article 302, Subparagraph 1, by issuing a dismissal judgment, and the earlier judgment on the merits does not become unlawful either even when the later judgment becomes finalized first. Thus, the later litigation, in accordance with Article

體判決確定，始有該條款之適用，此由該條款明定：「曾經判決確定者」觀之，洵無庸疑。故法院對於後之起訴，縱已為實體判決，並於先之起訴判決後，先行確定，但後起訴之判決，於先起訴判決時，既未確定，即無既判力，先起訴之判決，依法不受其拘束，無從依同法第三百零二條第一款之規定為免訴之諭知，其所為實體判決，自不能因後起訴之判決先確定，而成為不合法。從而，後之起訴，依上開第三百零三條第二款之規定，本不應受理，倘為實體判決，難謂合法，如已確定，應依非常上訴程序，予以撤銷，諭知不受理。

303, Subparagraph 2, of the same Act, should not have been accepted; its judgment on the merit may hardly be considered lawful, and a writ of dismissal should be issued in accordance with the process of extraordinary appeal if that judgment is indeed finalized.

J. Y. Interpretation No.169（July 31, 1981）*

ISSUE: Is a judicial judgment based on an alleged unconstitutional administrative ordinance that had been repealed before the cause of action accrued unconstitutional?

RELEVANT LAWS:

Article 172 of the Constitution（憲法第一百七十二條）; Article 8 of the Public Functionaries Retirement Act（公務人員退休法第八條）.

KEYWORDS:

Taiwan Forestry Bureau（臺灣省林務局）.**

HOLDING: At the time the cause of petition occurred, if the alleged unconstitutional administrative ordinance by the petitioner had already been repealed, even if based on which a court has already rendered a judgment, the issue is whether the petition may seek redress or remedy in accordance with the litigation procedure, not whether there is any contradiction with the Constitution.

解釋文：聲請人指為違憲之命令，於其請求裁判之事項發生時，業經廢止者，該命令既已失其效力，縱令法院採為裁判之依據，亦僅係可否依訴訟程序請求救濟，尚不發生是否牴觸憲法問題。

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* Translated by Professor Andy Y. Sun.

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REASONING: In summary, the petitioner claims that he filed a request for retirement in 1974 to the Jade Mountain District Office of the Taiwan Forestry Bureau. Yet the pension he received did not include a certain "professional supplement," an item deleted in accordance with Article 11 of the Measures on the Adjustment of Compensation to Military, Government and Education Personnel of 1971, promulgated by the Executive Yuan. The Supreme Court, in its (67) Tai Shun No. 1464 Judgment, ruled against the petitioner by relying on the same provision. Now the petitioner files the present petition claiming this regulation contradicts Article 8 of the Public Functionaries Retirement Act and Article 172 of the Constitution.

解釋理由書：本件聲請解釋意旨略稱：聲請人於民國六十三年間，向台灣省林務局玉山林區管理處聲請退休，該處所發給之退休金，未將「專業補助費」列入退休俸額內計算，係依行政院令頒「六十年度軍公教人員待遇調整辦法」第十一條辦理，經訴請給付，最高法院六十七年度台上字第一四六四號判決亦適用該辦法第十一條為聲請人敗訴之判決確定。該項命令，有牴觸公務人員退休法第八條及憲法第一百七十二條之疑義，聲請解釋。

That ordinances, regulations, or rules contradictory to the Constitution or laws shall be null and void, as provided in Article 172 of the Constitution, means those regulations still in effect whose content contradicts the Constitution or laws. The regulation in question here was repealed as of July 1, 1973, in accordance with Tai

查憲法第一百七十二條所稱命令與憲法或法律牴觸者無效，係指命令尚屬有效，而其內容牴觸憲法或法律者而言。上開辦法，業經行政院於六十二年六月十五日以台六十二人政肆字第一九五〇〇號函令自六十二年七月一日起廢止，並經台灣省政府於同月二十七日以府人丙字第六八七六五號函轉知所屬機

(62) Ren Cheng Si Tze No. 19500 Letter, issued by the Executive Yuan on June 15, 1973, and transmitted to all subordinate agencies through the Taiwan Provincial Government by its Fu Ren Bin Tze No. 68765 Letter on June 27. Since this regulation was repealed prior to the petitioner's request for retirement, the calculation of his pension was not based on that regulation, which can be found in Taiwan Forestry Bureau's (70) Lin Ren Tze No. 24203 Letter of Response, issued on June 18, 1981. Therefore, the alleged unconstitutional regulation was repealed and had lost its effect before the cause of action was raised. Even though a court has already rendered a judgment based on this regulation, the issue is whether the petition may seek redress or remedy in accordance with the litigation procedure, not whether there is any contradiction with the Constitution.

關，該辦法既已於聲請人退休前廢止，其退休金之計發，亦非依該辦法辦理，有台灣省政府農林廳林務局於七十年六月十八日七十林人字第二四二〇三號復函可稽。是聲請人指為違憲之上述命令，於其請求裁判之事項發生時，業經廢止，失其效力，縱令法院採為裁判之依據，亦僅係可否依訴訟程序請求救濟，尚不發生是否牴觸憲法問題。

J. Y. Interpretation No.170（September 25, 1981）*

ISSUE: Does the Administrative Proceedings Act constrain the people's right of instituting legal proceedings protected by the Constitution in providing that the administrative court shall dismiss a suit if it finds that an administrative litigation should not have been instituted or that the suit has been instituted against the legal procedure?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 14, Paragraph 1 of the Administrative Proceedings Act（行政訴訟法第十四條第一項）; Article 47, Paragraph 2 of the Act Governing the Punishment of Police Offences（違警罰法第四十七條第二項）.

KEYWORDS:

administrative proceeding（行政訴訟）, administrative court（行政法院）, legal procedure（法定程序）, right of instituting legal proceedings（訴訟權）.**

HOLDING: The Administrative Proceedings Act provides in Article 14, Paragraph 1, that: "If the administrative should not have been initiated or that the

解釋文：行政訴訟法第十四條第一項：「行政法院審查訴狀，認為不應提起行政訴訟或違背法定程序者，應附理由以裁定駁回之」之規定，與憲法

* Translated by Raymond T. Chu.

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court, upon examining the complaint, finds that an administrative litigation suit has been initiated against the legal procedure, it shall dismiss the case by a ruling with statement of the grounds therefor." This provision is not in conflict with Article 16 of the Constitution.

第十六條並無牴觸。

REASONING: While the people shall have the right of instituting legal proceedings under Article 16 of the Constitution, the procedure for conducting the action is subject to prescription of law. The Administrative Proceedings Act provides in Article 14, Paragraph 1, that: "If the Administrative Court, in examining the complaint, finds that an administrative litigation should not have been initiated or that the suit has been initiated against the legal procedure, it shall dismiss the case by a ruling with statement of the grounds therefor." The provision is intended to instruct the administrative court on the manner of disposing the case if the court, upon examining the cause stated in the plaintiff's complaint in the eyes of relevant laws (such as Article 1 of the Administrative Proceedings Act and Article

解釋理由書：人民有訴訟之權，憲法第十六條固定有明文，惟訴訟如何進行，應另由法律定之。查行政訴訟法第十四條第一項：「行政法院審查訴狀，認為不應提起行政訴訟或違背法定程序者，應附理由以裁定駁回之」之規定，係明示行政法院對於當事人提出之訴狀所載事項，依有關法律之規定，予以審查（如行政訴訟法第一條、違警罰法第四十七條第二項），認為不應提起行政訴訟或其提起違背法定程序者，所定之處理方式，並為使當事人明瞭緣由，應附述理由，故本條非屬限制訴訟權之規定，與憲法第十六條保障人民訴訟權之本旨，無牴觸之可言。

47, Paragraph 2, of the Act Governing the Punishment of Police Offences), finds that an administrative litigation should not have been instituted or it shall have been instituted in a manner non conformable with legal procedure, and to require further that the court give its reasons for its decision to help the party understand. Accordingly, the law is not meant to constrain the right of instituting legal proceedings, and is not in conflict with the purpose of Article 16 of the Constitution in protecting the people's right of instituting legal proceedings.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。

J. Y. Interpretation No.171（October 23, 1981）*

ISSUE: Article 1090 of the Civil Code stipulates: "When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may admonish the parent." Is the specified wording of 'the nearest senior relative(s)' meant to refer to the nearest senior relative of 'the abusive parent' or 'the abused child'?

RELEVANT LAWS:

Article 1090 of the Civil Code（民法第一千零九十條）.

KEYWORDS:

abuse of parental rights（親權濫用）, family council（親屬會議）.**

HOLDING: Article 1090 of the Civil Code stipulates: "When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may admonish the parent. An application may be made to the court for suspending all or some of the parental rights shall the alleged admonition be in vain." That specified wording of 'the

解釋文：民法第一千零九十條：「父母濫用其對於子女之權利時，其最近尊親屬或親屬會議，得糾正之。糾正無效時，得請求法院宣告停止其權利之全部或一部」之規定，所稱其最近尊親屬之「其」字，係指父母本身而言，本院院字第一三九八號解釋，應予維持。

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

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nearest senior relative(s)' is meant to refer to the nearest senior relative(s) of 'the abusive parent'. Thus the Interpretation Yuan-tze No. 1398 of this Yuan shall be reaffirmed.

REASONING: At the 118th Meeting of the Grand Justices Council of the Judicial Yuan, it was resolved that "when a central or local government agency, in the application of the Constitution, laws or administrative orders, encounters doubts on 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 petition concerns questions raised by the Supreme Court about Interpretation Yuan-tze No. 1398 of the Judicial Yuan, thus it shall be re-interpreted in accordance with the above resolution.

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。」本件係最高法院對於本院院字第一三九八號解釋適用發生疑義，聲請解釋，依照上項決議應予解釋，合先說明。

Article 1090 of the Civil Code stipulates: "When a father or a mother abuses his/her parental right(s), the nearest senior relative(s) or the family council may

按民法第一千零九十條規定：「父母濫用其對於子女之權利時，其最近尊親屬或親屬會議，得糾正之。糾正無效時，得請求法院宣告停止其權利之

admonish the parent. An application may be made to the court for suspending all or some of the parental rights shall the alleged admonition be in vain." It is obvious, from synthetic observation of the legal wording, that 'the nearest senior relative(s)' specifically refers to the nearest senior relative(s) of the abusive parent. On the basis of Chinese family ethics, the legal admonition of abusive parental rights is considered to be under the appropriate authority of the parent's senior relative(s) apart from a legally organized family council, and the above provision in question shall thus be read accordingly. If 'the nearest senior relative(s)' referred to the abused child's nearest senior relatives, the admonishers could have been the abusive parents themselves, and the situation would have been unacceptable. Even in cases where one of the parents is not the abuser and such detached status might qualify such parent as an independent admonisher, doubts would also be raised as to the effectiveness of the admonition itself, for a father assumes equal status with a mother and neither has more parental rights than the other. In such circum-

全部或一部。」該條文中所稱「其最近尊親屬」之「其」字，與上下文中所用有關「其」字綜合觀察，乃係指父母本身而言，至為明顯。蓋關於父母濫用其對子女之權利，須要糾正時，除依法得由親屬會議為之外，所稱其最近尊親屬之糾正，基於我國倫常觀念，自以輩分較高於被糾正人之尊親屬行之，方屬相當。如認「其最近尊親屬」之「其」字，係指被濫用權利之子女言，則子女之最近尊親屬為父母，成為糾正人，而濫用權利之人，亦為父母，成為被糾正人，於理不合。倘以父或母之一方對子女有濫權行為，另一方居於超然地位，固有差異；但父與母地位平等，既無尊卑之分，曷能為有效之糾正；至此種情形，尚應注意其他法律（例如兒童福利法）之適用，以達保護子女權益之目的。故本院院字第一三九八號解釋應予維持。

stances, though, the applicability of other laws (the Children Welfare Act, for instance) has to be considered for the purposes of safeguarding the rights and interests of the child. Therewith, the Interpretation Yuan-tze No. 1398 of this Yuan shall be reaffirmed.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。

J. Y. Interpretation No.172（December 18, 1981）*

ISSUE: Is there any conflict with the Constitution when the Regulation for the Correction of Birth Date on the Household Registration Record provides that the so-called other satisfactory credentials shall be limited to those believable original credentials?

RELEVANT LAWS:

Articles 15, 18, and 172 of the Constitution（憲法第十五條、第十八條及第一百七十二條）; Article 7 of the Standard Act for the Laws and Rules（中央法規標準法第七條）；Article 36 of the Household Registration Act（戶籍法第三十六條）; Article 19, Paragraph 1, Subparagraph 14 of the Enforcement Rules of the Household Registration Act（戶籍法施行細則第十九條第一項第十四款）; Article 3, Paragraph 1, Subparagraph 6 and Paragraph2, of the Regulation for the Correction of Birth Date on Household Registration Record（更正戶籍登記出生年月日辦法第三條第一項第六款、第二項）.

KEYWORDS:

right to work（工作權）, right to hold public office（服公職權）, application for correction of the household registration record（戶籍登記更正之申請）, original credentials（原始證件）, due exercise of authority（職權之正當行使）.**

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* Translated by Jer -Shenq Shieh.

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

HOLDING: Article 3, Paragraph 1, Subparagraph 6 and Paragraph2, of the Regulation for the Correction of Birth Date on Household Registration Record issued by the Ministry of the Interior provide that the so-called other satisfactory credentials, which have been submitted for applying for correction of the birth date on the household registration record, shall be limited to those believable original credentials. The above-mentioned provision is for the purpose of achieving the preciseness of the correction, not going beyond the legal authority of the Ministry of the Interior. This provision does not infringe upon people's right to work and right to hold public office which are guaranteed by the Constitution as well, and therefore there is no conflict with the Constitution.

解釋文：內政部令頒「更正戶籍登記出生年月日辦法」第三條第一項第六款及同條第二項，申請更正戶籍登記之出生年月日所提出之其他足資證明文件，以可資採信之原始證件為限之規定，旨在求更正之正確，並未逾越內政部法定職權，對憲法所保障人民之工作權及服公職之權，亦無侵害，尚難謂為與憲法有何牴觸。

REASONING: For Article 172 of the Constitution provides: "Regulations that are in conflict with the what kind of credentials should be submitted and Constitution or with statutes shall be null and void," and Article 7 of the Standard Act for the Laws and Rules also provides

解釋理由書：按憲法第一百七十二條規定：「命令與憲法或法律牴觸者無效。」又中央法規標準法第七條規定：各機關依其法定職權或基於法律授權，得訂定命令，並於發布後，即送立法院。是各機關發布之命令，於不牴觸憲法或法律及不侵害人民權利之範圍

that every administrative agency, according to its legal authority or based upon the delegation of the statutes, may set up the regulations and after the issuance of these regulations, shall immediately delivery them to the Legislative Yuan, the issuance of regulations by every administrative agency, except for the issuance of those being in conflict with the Constitution or infringing upon people's rights, is within the due exercise of its authority. Article 36 of the Household Registration Act only provides that if there is any mistake or omission in the household registration record, it shall be corrected, and also Article 19, Paragraph 1, Subparagraph 14 of the Enforcement Rules of the Household Registration Act only provides: "In reference to the correction of the record, if it is not a mistake derived from the process of keeping the record, the applicant shall submit credentials at the time the application is made." As for would be believable when a person applies for correction of the birth date on the household registration record, it is not provided by the Act. The Ministry of the Interior in the Central Government is the authority concerned

內，即屬其職權之正當行使。戶籍法第三十六條僅規定，戶籍登記事項有錯誤或脫漏時，應為更正之登記，戶籍法施行細則第十九條第一項第十四款亦僅定：更正登記，非過錄錯誤者，申請人應於申請時提出證明文件。至人民申請更正戶籍出生年月日之登記，究應提出何種證明文件，方可採信，法律未設規定，內政部係戶籍行政之中央主管機關，為求全國戶政機關處理此類事件之正確，乃頒訂更正戶籍登記出生年月日辦法，並於民國六十五年二月十六日及六十七年五月十二日先後修正發布時，均經報行政院核備並送請立法院查照。其第三條第一項第六款及同條第二項所定。申請更正戶籍登記之出生年月日提出之其他足資證明文件，以經該管戶政事務所主任查明屬實，足以確定其戶籍登記出生年月日確屬錯誤，可資採信之原始證件為限，旨在求其更正之正確，並未逾越內政部法定職權範圍，係屬行政權之正當行使；對於憲法所保障人民之工作權及服公職之權，亦無所侵害，尚難謂為與憲法有何牴觸。

with the administration of the household registration, and in order to make all the household administrative agencies throughout the country deal precisely with similar cases, the Ministry set up and issued the Regulation for the Correction of Birth Date on Household Registration Record. In addition, the Regulation was reported to the Executive Yuan for examination and delivered to the Legislative Yuan for reference when it was amended and promulgated both on February 16, 1976, and on May 12, 1978. According to Article 3, Paragraph, Subparagraph 6 and Paragraph 2, of the Regulation, the so-called other satisfactory credentials, which have been submitted for applying for correction of the birth date on the household registration record, shall be limited to those believable original credentials, which shall have been examined and deemed to be true by the director of the household administration office and shall be sufficient to confirm there actually being a mistake in the birth date on the household registration record. The above-mentioned provision is for the purpose of achieving the preciseness of the

correction, not going beyond the legal authority of the Ministry of the Interior, and is within the due exercise of the administrative authority; this provision does not infringe upon people's right to work and right to hold public office which are guaranteed by the Constitution as well, and therefore there is no conflict with the Constitution.

J. Y. Interpretation No.173（March 5, 1982）*

ISSUE: Is the directive issued by the Ministry of Finance unconstitutional to the effect that a person receiving more value of jointly owned land gratuitously transferred upon partition than prior to the partition should pay land value increment tax?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 5 of the Land Tax Act（土地稅法第五條）.

KEYWORDS:

land transferred without compensation（土地無償移轉）, subdivision of co-owned land（共有土地分割）, land value increment tax（土地增值稅）.**

HOLDING: It is clearly prescribed in Article 5, Paragraph 1, Subparagraph 2, of the Land Tax Act that where land is transferred without compensation, the person who pays the land value increment tax is the person who acquires the land ownership. With regard to the subdivision of co-owned land, when the value of land acquired through subdivi-

解釋文：土地為無償移轉者，土地增值稅之納稅義務人為取得所有權人，土地稅法第五條第一項第二款定有明文。共有土地之分割，共有人因分割所取得之土地價值，與依其應有部分所算得之價值較少而未受補償時，自屬無償移轉之一種，應向取得土地價值增多者，就其增多部分課徵土地增值稅。財政部（六七）台財稅第三四八九六號

* Translated by Louis Chen, Professor of Law.

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sion by co-owners is lower than the value calculated based on their respective portions and they are not compensated, this is considered one form of transfer without compensation. Therefore, the land value increment tax should be levied on that incremental portion of land of the co-owner who obtained a higher land value. The Ministry of Finance Directive (67) Tai-Tsai-Shui-Tze No. 34896, regarding the expropriation of the land value increment tax does not contravene the aforementioned rule, and is therefore not in conflict with Article 19 of the Constitution.

函，關於徵收土地增值稅之部分，與首開規定並無不符，亦難認為與憲法第十九條有所牴觸。

REASONING: It should first be noted that, the directive at issue, i.e., the Ministry of Finance Directive No. (67)-T.T.S.-34896, was in response to the request made by Hsu Ming-Fu on May 23, 1978, which was also made known to various tax offices under the said Ministry, and was later applied by the Administrative Court in rendering one of its final decisions, i.e., Judgment P.T. No. 225 (Adm. Ct. 1981), and thus should be considered as an order. Accordingly, the

解釋理由書：本件財政部（六七）臺財稅第三四八九六號函，係對於徐明夫六十七年五月二十三日請示之釋答，經該部分知所屬財稅機關，為行政法院七十年度判字第二二五號確定終局判決所適用，具有命令性質，聲請人聲請解釋，核與司法院大法官會議法第四條第一項第二款規定相符，應予受理，合先說明。

petition for interpretation made by the Petitioner has satisfied the requirements of Article 4-I (ii) of the Grand Justices Council Adjudication Act and hence should be heard by this Court.

Article 5, Paragraph 1, Subparagraph 2, of the Land Tax Act clearly provides that where land is transferred without compensation, the person who pays the land value increment tax is the person who acquired the land ownership. Paragraph 2 of the same article further provides that the term "transfer without compensation" refers to transfer by legacy and gift, and by other such comparable forms of transfer; therefore, such transfer is not limited to legacies and gifts alone. This can be perceived by the term "other such comparable forms of transfer". Where co-owned land is subdivided, the sole ownership of each subdivided portion is derived from the intra-transfer of each co-owner's respective share. When the value of the land acquired by a co-owner through subdivision is higher than his or her respective share, and such co-owner has not compensated other co-owners who

按土地為無償移轉者，土地增值稅之納稅義務人為取得所有權人，土地稅法第五條第一項第二款定有明文，同條第二項復規定，所稱無償移轉，指遺贈及贈與等方式之移轉，並非以遺贈及贈與為限，此觀其下列有「等方式之移轉」六字甚明。共有土地之分割，係各共有人以其應有部分相互移轉而取得分得部分之單獨所有權，共有人取得土地之價值超過其應有部分，而未對於取得土地價值少於其應有部分之共有人補償者，自屬無償移轉之一種，應向取得土地價值增多者就其增多部分課徵土地增值稅，以免土地之自然漲價，不能歸公。至平均地權條例施行細則第六十五條第一項：「共有土地分割者，分割後各共有人取得之土地價值，與依原持有比例所算得之價值相等時，免徵土地增值稅，但其價值不等時，應向取得之土地價值減少者，就其減少部分課徵土地增值稅」。及土地稅法施行細則第四十二條第二項：「共有土地照原有持分比

received lower land values for their respective portions, this is considered one form of transfer without compensation. Therefore, the land value increment tax shall be levied on that portion of land calculated at a higher value and be paid by such co-owner who obtained the higher land value, so as to ensure that the increment will be shared by the people in common. With respect to the rules under Article 65, Paragraph 1, of the Enforcement Rules of the Equalization of Land Rights Act: "Where co-owned land is subdivided, if the value of the portion of land each co-owner acquired after subdivision is comparable to the value as computed from his or her own original share, no land value increment tax will be levied, but if the value is not comparable, co-owners whose land is calculated at a lower value should pay the land value increment tax on that lesser portion of land value" and Article 42, Paragraph 2, of the Enforcement Rules of the Land Tax Act : "When the co-owned land value for subdivision uses the original owner's share as the basis of calculation, no land value increment tax will be levied.

例計算所得之價值分割者，不徵土地增值稅。但不依原有持分比例計算所得之價值分割者，應向取得土地價值減少者，就其減少部分課徵土地增值稅」各規定，就取得土地價值減少而未受補償者言，與上開法律之規定不合，自難適用。財政部（六七）臺財稅第三四八九六號函：「共有土地辦理分割後，各人取得之土地價值，按分割時之公告現值計算與依原持有比例所算得之價值不等，而彼此間又無補償之約定者，依照遺產及贈與稅法第五條第二款規定：『以顯著不相當之代價讓與財產、免除或承擔債務者，其差額部分』以贈與論，應依法課徵贈與稅，此時，取得土地價值增多者，為受贈人，應由稅捐稽徵機關就其增多部分，課徵土地增值稅。」其理由雖有未洽，但關於向無償移轉而取得所有權人徵收土地增值稅之部分，核與土地稅法第五條第一項第二款及同條第二項規定並無不符，自不受上開施行細則規定之影響，亦難認為與憲法第十九條有所牴觸。又共有土地因分割而移轉，其共有人所取得之土地價值與依其應有部分所算得之價值相等，如於分割時該土地有漲價情形，應否課徵土地增值稅，不在聲請解釋範圍內，無庸解釋，併予敘明。

However, if the land value for subdivision did not use the original owner's share as a basis for calculation, the land value increment tax should be levied upon the co-owner who received the lower land value on that lesser portion of land" or co-owners whose land is calculated at a lower value and have not been compensated. However, the aforementioned rules are incompatible and difficult to apply. The Ministry of Finance Directive (67) Tai-Tsai-Shui-Tze No. 34896, issued on March 5, 1971, states: "After the subdivision of co-owned land, in case each co-owner's land value as determined from the calculation of the publicly announced land value at the time of subdivision and the land value computed from the original owner's share is not comparable, and there is no agreement on compensation between co-owners, the rule under Article 5, Subparagraph 2, of the Estate and Gift Tax Act states: "Where a property is transferred, and a debt is remitted or undertaken with apparent disparity of price, that deficit portion" shall be deemed as inheritance, and estate tax shall be levied in accordance with act; at this time, the

owner whose land was appraised at a higher value will be the beneficiary, and the competent tax authority shall levy the land value increment tax upon that excess portion of land value? Although the reasoning is inappropriate, regarding that portion of the land value increment tax levied upon the owner who obtained land ownership from transfer without compensation, it is deemed to be consistent with the rules provided under Article 5, Paragraph 1, Subparagraph 2, and Paragraph 2 of the same article, and thus shall not be affected by the enforcement rules stated above, and should not be considered contradictory to Article 19 of the Constitution. In addition, when co-owned land is transferred due to subdivision, the land value obtained by all co-owners and the value as calculated based on their own respective shares are comparable. In case there is an increase in price of the land during the subdivision, or whether a land value increment tax should be levied or not, is not within the scope of this petition for reasoning. Thus, we point out that there is no need to provide reasoning for these issues.

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋姚大法官瑞光、陳大法官世榮分別提出不同意見書。

J. Y. Interpretation No.174（April 16, 1982）*

ISSUE: What is the force and effect of an interpretation issued by the Judicial Yuan where the law or regulation based on which the interpretation was made has changed but a new interpretation has yet to be issued?

RELEVANT LAWS:

Articles 6 and 12 of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion（動員戡亂時期貪污治罪條例第六條、第十二條）; J. Y. Interpretations Nos. Yuan-je Tze 3015 and Yuan-je Tze 3080（司法院院解字第三零一五號、院解字第三零八零號解釋）.

KEYWORDS:

amendment of the ruling content（法令內容變更）, interpretation of an amendment（變更解釋）, the validity of an explanation（解釋之效力）.**

HOLDING: This Yuan explains, where there is an amendment to the content of its basis of rulings, prior to rendering an interpretation of its amendment, if the objective of the new ruling is consistent with the previous ruling, the legal

解釋文：本院解釋，其所依據之法令內容變更者，在未經變更解釋前，若新舊法令之立法本旨一致，法理相同，解釋之事項尚存或解釋之內容有補充新法之功用者，仍有其效力。依法令從事公務之人員侵占職務上持有之非

* Translated by Louis Chen, Professor of Law.

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cause is the same, the interpretation matter still exists or the content of the interpretation can be used to supplement the new ruling, the ruling remains valid. Under the ruling, where a public servant takes advantage of his or her position and occupies personal property which is not for public use, such act is considered embezzlement, and should be punishable separately in accordance with Article 6, Subparagraph 3 or 4, of the Anti-Corruption Act during the Period for Suppression of the Communist Rebellion. If the case is minor, and the proceeds or the property goods acquired are valued at less than NT$3,000, then Article 12, Paragraph 1, of the said act shall apply. This Yuan's Explanations Nos. 3080 and 3015 shall thus require supplemental interpretations.

公用私有財物者，為貪污行為，應分別按戡亂時期貪污治罪條例第六條第三款或第四款論罪。如其情節輕微，而其所得或所圖得財物在三千元以力。依法令從事公務之人員侵占職務下者，應有同條例第十二條第一項之適用。本院院解字第三〇八〇號及院解字第三〇一五號解釋，應予補充解釋。

REASONING: As clearly expressed in the reasoning of J.Y. Interpretation No. 108: "This Yuan explains, unless the ruling content has been amended and became null, prior to the establishment of an amendment, the ruling remains valid,

解釋理由書：查本院釋字第一〇八號解釋於其解釋理由書中明示：「本院解釋，除因法令內容變更而失效者外，在未經變更前，仍有其效力，不得牴觸。」其所謂因法令內容變更而失效，係指解釋所依據之法令業已失效，

and should not be otherwise contradicted." The citation that the ruling content has been amended and become void refers to a ruling used as interpretational basis that has become null, and the interpretation content is contradictory to the current ruling. If before the amendment of an interpretation, it appears that the legal objectives of the new and old rulings are consistent, the legal explanations are the same, the subject matter of the interpretation still exists or the content of the interpretation can be used to supplement the new ruling, then the existing ruling will remain in effect. For the authority who requested this interpretation, we want to clarify that since the Anti-Corruption Act used as ruling basis of our Explanations Nos. 3015 and 3080 was abolished, after the promulgation of the Act for Bribery Punishment during the Period for Suppression of the Communist Rebellion, it raises doubt as to the applicability of this interpretation.

解釋之內容復與現行法令牴觸者而言。若解釋未經變更前，而有新舊法令之立法本旨一致，法理相同，解釋之事項尚存或解釋之內容有補充新法之功用等情形者，仍有其效力。本件聲請解釋機關，對本院院解字第三〇一五號及院解字第三〇八〇號解釋所依據之懲治貪污條例業已廢止，於戡亂時期貪污治罪條例頒行後，可否援用，發生疑義，聲請解釋，合先釋明。

Based on regulations, concerning the act of embezzlement committed by public officials, in addition to the itemized

按依法令從事公務人員之貪污行為，戡亂時期貪污治罪條例除列舉者外，並於第六條第三款及第四款設有概

provisions of the Anti-Corruption Act, Article6, Subparagraphs 3 and 4, of the Act provides a general rule for application, and the purpose of such act is to implement punishment of embezzlement in order to ensure the ethical behavior of public officials. The provisions of the two abovementioned subparagraphs, under the principle that a special law has precedence over an ordinary law, shall have precedence over the provisions of the Criminal Code in application. Where a public official takes advantage of his or her position and occupies personal property that is not for public use, this is considered an act of embezzlement. As there is no specific provision for punishment under said statute, such action should be penalized in accordance with the abovementioned two subparagraphs depending upon whether this case is a matter concerning the competent authority or a supervisor. It is evident that the provisions of the two abovementioned subparagraphs and the legal purpose of Article 4, Subparagraphs 6 and 7, of the abolished Anti-Corruption Act are the same. The interpretations in our Explanations Nos. 3080 and 3015 still

括規定，其立法本旨在貫徹嚴懲貪污，以澄清吏治。該二款規定，依特別法優於普通法之原則，應先於刑法之規定而適用。公務人員侵占職務上持有之非公用私有財物者，為貪污行為，同條例既無處罰專條，自應視其是否主管或監督之事務等情節，分別按上開二款規定論罪。查該二款規定，與失效之懲治貪污條例第四條第六款及第七款之立法本旨相同，本院院解字第三〇八〇號及院解字第三〇一五號解釋，對現行法仍有補充之功用，自不因懲治貪污條例廢止而失其效力。惟如其情節輕微，而其所得或所圖得財物在三千元以下者，應有戡亂時期貪污治罪條例第十二條第一項規定之適用，併予補充解釋。

have supplemental application to the current ruling, and thus have not lost their effect due to the abolishment of the Anti-Corruption Act. However, if the case is minor, and the proceeds or the property goods acquired are valued at less than NT$3,000, then Article 12, Paragraph 1, of the Anti-Corruption Act shall apply and provide supplemental interpretation.

Justice Shau-Hsien Chai filed dissenting opinion.

本號解釋翟大法官紹先提出不同意見書。

J. Y. Interpretation No.175（May 25, 1982）*

ISSUE: May the Judicial Yuan propose and present bills of act to the Legislative Yuan?

RELEVANT LAWS:

Articles 77, 80 and 82 of the Constitution（憲法第七十七條, 第八十條及第八十二條）; J.Y. Interpretation No. 3（司法院釋字第三號解釋）.

KEYWORDS:

statutory bills（法律案）, the constitutional system of "separation of powers" and "checks and balances" among the five branches of the Central Government（五權分治，彼此相維之憲政體制）, legislative process（立法程序）, legislative power（立法權）, judicial power（司法權）, judicial legislation（司法法規）, the separation of power between the adjudication and the prosecution（審檢分隸）, judicial reform（司法改進）.**

HOLDING: Because the Judicial Yuan is the supreme judicial agency of the country, it naturally has the authority to propose and present statutory bills to the Legislative Yuan with regard to matters

解釋文：司法院為國家最高司法機關，基於五權分治彼此相維之憲政體制，就其所掌有關司法機關之組織及司法權行使之事項，得向立法院提出法律案。

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* Translated by Li-Chih Lin, Esq., J.D.

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within its authority based on the constitutional system of "separation of powers" and "checks and balances" among the five branches of the Central Government.

REASONING: To resolve the issue of whether the Judicial Yuan may propose and present statutory bills to the Legislative Yuan concerning matters within its authority, J. Y. Interpretation No. 3 has provided this Court with some guidance. Paragraph 3 of J. Y. Interpretation No. 3 states: As stated in the Preamble, our Constitution was established upon the teachings bequeathed by Dr. Sun Yat-sen, who founded the Republic of China. Five branches were established in accordance with Article 53 (the Executive Yuan), Article 62 (the Legislative Yuan), Article 77 (the Judicial Yuan), Article 83 (the Examination Yuan), and Article 90 (the Control Yuan). Each branch is the highest state agency independently discharging its duties, and is equal to the other branches, within the scope of each respective power as originally bestowed by the Constitution. As far as the discharge of duties is concerned, it is the re-

解釋理由書：查司法院關於所掌事項，是否得向立法院提出法律案，本院釋字第三號解釋，雖係就監察院可否提出法律案而為之解釋，但其第三段載有：「我國憲法依據　孫中山先生創立中華民國之遺教而制定，載在前言。依憲法第五十三條（行政），第六十二條（立法），第七十七條（司法），第八十三條（考試），第九十條（監察）等規定，建置五院，本憲法原始賦予之職權，各於所掌範圍內為國家最高機關，獨立行使職權，相互平等，初無軒輊。以職務需要言，監察、司法兩院各就所掌事項需向立法院提案，與考試院同，考試院對於所掌事項，既得向立法院提出法律案，憲法對於司法、監察兩院就其所掌事項之提案，亦初無有意省略或故予排除之理由。法律案之議決，雖為專屬立法院之職權，而其他各院關於所掌事項，知之較稔，得各向立法院提出法律案，以為立法意見之提供者，於法於理，均無不合。」等語，業已明示司法院得向立法院提出法律案。蓋司

sponsibility of the Control Yuan and Judicial Yuan, as with the Examination Yuan, to respectively propose and present statutory bills to the Legislative Yuan with regard to matters within its authority. While the Examination Yuan may propose and present statutory bills to the Legislative Yuan concerning matters within its authority, there is no reason for the Constitution to purposefully omit or intentionally preclude the granting of the same presentment power to the Judicial Yuan and Control Yuan. Whereas it is within the exclusive authority of the Legislative Yuan to pass or veto a statutory bill, it is reasonable and not in violation of any law for the other branches which are more familiar with matters under their respective authorities to express their advisory opinion and to propose and present statutory bills to the Legislative Yuan. Paragraph 3 of J. Y. Interpretation No. 3 clearly indicates that the Judicial Yuan may propose and present statutory bills to the Legislative Yuan with regard to matters within its authority. Because the Judicial Yuan is the supreme judicial agency of the country, it naturally has the author-

法院為國家最高司法機關，基於五權分治，彼此相維之憲政體制，並求法律之制定臻於至當，司法院就所掌事項，自有向立法院提出法律案之職責。且法律案之提出，僅為立法程序之發動，非屬最後之決定，司法院依其實際經驗與需要為之，對立法權與司法權之行使，當均有所裨益。

ity to propose and present statutory bills to the Legislative Yuan with regard to matters within its authority based on the constitutional system of "separation of powers" and "checks and balances" among the five branches of the Central Government to enact proper laws and regulations. The proposal and presentment of statutory bills by the Judicial Yuan to the Legislative Yuan is merely the initiative step of the legislative process, not the final legislative enactment. It is a proper exercise of the legislative power and the judicial power for the Judicial Yuan to propose and present statutory bills to the Legislative Yuan based on its practical experience and needs in adjudicating litigations.

In addition, it is a common goal of all modern civilized nations to protect the rights and interests of their nationals by respecting the judicial decisions and granting more authorities and duties to the judicial agencies. In order for the judicial legislations enacted to meet the actual needs of the people and to function properly, most of the supreme judicial

次按尊重司法，加強司法機關之權責，以保障人民之權利，乃現代法治國家共赴之目標。為期有關司法法規，更能切合實際需要，而發揮其功能，英美法系國家最高司法機關，多具有此項法規之制定權；大陸法系國家，亦有類似之制度。晚近中南美各國憲法，復有明定最高司法機關得為法律案之提出者。足見首開見解，不僅合乎我國憲法

agencies of the Anglo-American law nations are equipped with the authority to propose and present statutory bills to the supreme legislative agency of the country. Many supreme judicial agencies of the civil law countries are also equipped with a similar authority. Recently, the constitutions of many Central and South American countries have specified that the supreme judicial agency of the country may propose and present statutory bills to the supreme legislative agency with regard to matters within its authority. Therefore, it is evident that the opinion set forth in J. Y. Interpretation No. 3 is not only consistent with the legislative intent of our constitution, but also is in accordance with the trend of other national constitutions. Subsequent to the separation of power between the adjudication and the prosecution, the workloads borne by the Judicial Yuan have become increasingly heavy. To facilitate judicial reform, to establish the Judicial Yuan, the Constitutional Court and tribunals inferior to the Constitutional Court to adjudicate civil, criminal and administrative cases and disciplinary actions against the civil servants pursuant

之精神，並為世界憲政之趨勢。且自審檢分隸後，司法院所掌業務日益繁重，為利司法之改進，符合憲法第七十七條、第七十八條、第八十二條、設置司法院及各級法院，掌理民事、刑事、行政訴訟之審判，及公務員之懲戒；並由司法院行使解釋憲法，暨統一解釋法令之職權，以貫徹宏揚憲政之本旨，司法院就其所掌有關司法機關之組織及司法權行使之事項，得向立法院提出法律案。

to Articles 77, 78 and 82 of the Constitution, and to exercise its authority to uniformly interpret the provisions of the Constitution, the Judicial Yuan may propose and present statutory bills to the Legislative Yuan with regard to the organization of its subordinated judicial agencies and the matters governed by its judicial authorities.

J. Y. Interpretation No.176（August 13, 1982）*

ISSUE: Does the criminal act stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Criminal Code include causing the circulation of documents specified in Articles 210, 212, 213 and 215 of the Criminal Code?

RELEVANT LAWS:

Articles 5, Subparagraph 5, 210, 212, 213, 215, and 216 of the Criminal Code（刑法第五條第五款、第二百十條、第二百十二條、第二百十三條、第二百十五條及第二百十六條）.

KEYWORDS:

principle of territorialism（屬地主義）, principle of protection（保護主義）, the public trust and faith（公務信守）, public documents（公文書）, forgery and alteration of documents （偽造、變造文書）, making false entries（登載不實事項）, public seals（公印）, public servants（公務員）, perpetrator of a criminal offence（犯罪主體）.**

HOLDING: The criminal act stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Criminal Code does not include causing the circulation of documents specified in Articles 210,

解釋文：刑法第五條第五款所列第二百十六條之罪，不包括行使第二百十條、第二百十二條及第二百十五條之文書，但包括行使第二百十三條之文書。

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* Translated by WELLINGTON L. KOO, Formosa Transnational attorney at law.

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212 and 215 of the Criminal Code, except for that specified in Article 213 of the Criminal Code.

REASONING: The Criminal Code adopts the principle of territorialism, though the principle of protection is also applied thereto. However, for any R.O.C citizen committing criminal offences outside the territory of the R.O.C., the Criminal Code shall apply only, except for criminal acts listed in Articles 5 and 6 of the Code, when such criminal offences, if said citizen is proven guilty, shall result in a three-year minimum sentence of imprisonment: a legal principle that is clearly manifested in Article 7 of the Code. The purpose of Article 5, Subparagraph 5 of the Code is to emphasize the protection of the public trust and faith that lies within a public document, such that only Articles 211 and 214, both regarding public documents only, are listed therein. Therefore, even though Article 216 of the Code stipulates that "a person who causes circulation of a document specified in Articles 210 to 215 of the Code shall be penalized in accordance with provisions regarding

解釋理由書：我國刑法，以屬地主義為原則，雖兼採保護主義；但中華民國人民在中華民國領域外犯罪，除第五條及第六條所列各罪外，以其最輕本刑為三年以上有期徒刑者，始適用之，此觀之同法第七條自明。第二百十六條雖規定：行使第二百十條至第二百十五條之文書者，依偽造、變造文書或登載不實事項或使登載不實事項之規定處斷；但第五條第五款之設，重在保護國家之公務信守，故僅列第二百十一條、第二百十四條。依此意旨其所列第二百十六條之罪，自不包括行使第二百十條、第二百十二條及第二百十五條之文書。蓋第五條第五款，既不列第二百十條、第二百十二條及第二百十五條之偽造、變造或登載不實事項之文書，即無獨適用於其行使之理，此與第五條第五款僅適用於第二百十八條之偽造公印罪，而不列第二百十七條偽造印章罪，同其旨趣。至第二百十三條公務員登載不實罪，係以公務員為其犯罪主體，乃於第六條第三款另設規定。此項公文書，既在保護之列，行使之者，無論是

forgery and alteration of documents, making false entries or causing false entries to be made", criminal offences stipulated in Articles 210, 212 and 215 referred by Article 216 listed in Article 5, Subparagraph 5, of the Code should not be included. Since forgery and alteration of documents, making false entries or causing false entries to be made (specified respectively in Articles 211, 212 and 215 of the Code) are not listed in Article 6, Subparagraph 5 of the Code, it is groundless to claim the applicability of Article 6, Subparagraph 5 of the Code on the criminal offence of causing the circulation of documents. Such interpretation also applies to the fact that Article 5, Subparagraph 5 of the Code only applies to the criminal offence of forging public seals stipulated in Article 218 of the Code, without listing the criminal offence of forging seals stipulated in Article 217 of the Code. The criminal offence of making false entries in a public document by a public servant stipulated in Article 213 of the Code is then listed in Article 6, Subparagraph 3 of the Code on the ground that such public servant is the perpetrator of the criminal offence. Still,

否為公務員，均應處罰，故第五條第五款所列第二百十六條之罪，包括行使第二百十三條之文書。

be he or she public servant or not, the person causing the circulation of such public document containing false entries shall be penalized because such public document is protected by the Code. Consequently, the criminal offence stipulated in Article 216 listed in Article 5, Subparagraph 5 of the Code shall include the circulation of public documents specified in Article 213 of the Code.

Justice Shih-Ron Chen filed dissenting opinion in part.

本號解釋陳大法官世榮提出一部不同意見書。

J. Y. Interpretation No.177（November 5, 1982）*

ISSUE: Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure permits initiation of an action for retrial if the final judgment is based upon "apparently erroneous application of law or regulation." Does the said provision cover the situation where the Court consciously or unconsciously fails to apply the relevant provision of law in rendering its final judgment in order to implement the protection of the rights and interests guaranteed by the Constitution?

RELEVANT LAWS:

Article 496, Paragraph 1, Subparagraph 1 of the Code of Civil Procedure（民事訴訟法第四百九十六條第一項第一款）; Article 4, Paragraph 1, Subparagraph 2 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條第一項第二款）; Precedent T.T.T. No.170 (Sup. Ct 1971)（最高法院六十年台再字第一七〇號判例）.

KEYWORDS:

action for retrial（再審）, apparent erroneous application of provisions of law（適用法規顯有錯誤）.**

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* Translated by WELLINGTON L. KOO, and Formosa Transnational Attorneys at Law.

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HOLDING: The meaning of "apparent erroneous application of provisions of law" described in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure shall include the case of a simple failure to apply relevant provisions of law in the rendition of a final and binding judgment, where such failure presents material impact on the outcome of said judgment. In such instance, the protection of people's rights and interests guaranteed by the Constitution should dictate that the party thus aggrieved be permitted to initiate an action for retrial. The portion of the Supreme Court opinion in its Precedent T.T.T. No.170 (Sup. Ct., 1971) insofar as it is inconsistent with the above view, shall no longer be upheld. On the other hand, where such simple failure to apply relevant provisions presented no prejudicial effect on the outcome of the judgment, no retrial should be permitted. As such, said Supreme Court precedent should not be deemed as contrary to the Constitution.

解釋文：確定判決消極的不適用法規，顯然影響裁判者，自屬民事訴訟法第四百九十六條第一項第一款所定適用法規顯有錯誤之範圍，應許當事人對之提起再審之訴，以貫徹憲法保障人民權益之本旨。最高法院六十年度台再字第一七〇號判例，與上述見解未洽部分，應不予援用。惟確定判決消極的不適用法規，對於裁判顯無影響者，不得據為再審理由，就此而言，該判例與憲法並無牴觸。

An Interpretation given by this Yuan in response to a petition shall also be ap-

本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力。

plicable with respect to the legal action of the petitioner, for which the original petition was made.

REASONING: In its Precedent T.T.T.No.170, (Sup. Ct., 1971), the Supreme Court held that, "apparent erroneous application of provisions of law' provided in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure refers to the case where application of certain legal provisions in the rendition of an final and binding judgment is manifestly erroneous under laws or manifestly contrary to any of prevailing Interpretations by the Judicial Yuan or Grand Justices Council or currently valid Precedents of this Yuan but does not include the case of simple failure to apply certain provisions. This can be deduced from a textual interpretation of said Article 496, further supported by reference to Article 468 of said Act in which 'failure to apply legal provisions' and 'improper application of legal provisions' are expressly listed side by side." If the above opinion prevails, a party aggrieved would be barred from pursuing the relief of retrial with respect

解釋理由書：最高法院六十年度台再字第一七〇號判例稱：「民事訴訟法第四百九十六條第一項第一款所謂適用法規顯有錯誤者，係指確定判決所適用之法規顯然不合於法律規定，或與司法院現尚有效及大法官會議之解釋，或本院尚有效之判例顯然違反者而言，並不包括消極的不適用法規之情形在內，此觀該條款文義，並參照同法第四百六十八條將判決不適用法規與適用不當二者並舉之規定自明。」依此見解，當事人對於消極的不適用法規之確定裁判，即無從依再審程序請求救濟。

to a final and binding judgment rendered in relation to a simple failure to apply relevant provisions.

"Apparent erroneous application of provisions of law" shall refer to the case where certain legal provisions which should have been applied were not applied and certain legal provisions which should not have been applied were instead erroneously applied. Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure was amended in reference to the Grounds for Second Appeal prescribed in the Code of Civil Procedure and provisions for Extraordinary Appeal prescribed in the Code of Criminal Procedure, for ensuring due protection of rights and interests under the Constitution, whereas the statutory ground for granting permission to Second Appeal in a civil matter or Extraordinary Appeal in a criminal case is on the basis of a judgment or an irrevocable judgment being rendered contrary to provisions of law. Such judgment rendition contrary to laws shall mean both failure to apply provisions of law and improper application of provisions of law. Therefore,

查判決適用法規顯有錯誤，係指應適用之法規未予適用，不應適用之法規誤予適用者而言，民事訴訟法第四百九十六條第一項第一款，原係參照有關民事訴訟法第三審上訴理由及刑事訴訟法非常上訴之規定所增設，以貫徹憲法保障人民權益之本旨。按民事第三審上訴及刑事非常上訴係以判決或確定判決違背法令為其理由，而違背法令則兼指判決不適用法規及適用不當而言，從而上開條款所定：「適用法規顯有錯誤者」，除適用法規不當外，並應包含消極的不適用法規之情形在內。

"apparent erroneous application of provisions of law" in said Article 496 shall also include within its meaning "simple failure to apply provisions of law," in addition to "improper application of provisions of law."

However, only if a simple failure to apply provisions of law has resulted in apparent impact to the outcome of a judgment may a party aggrieved be permitted to seek the relief of retrial for safeguarding his or her interests. On the other hand, if such a failure had presented no prejudicial effect on the judgment, no protection should then be necessary, and accordingly, no such ground for retrial may be available.

In conclusion, the meaning of "apparent erroneous application of provisions of law" described in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure shall include the case of a simple failure to apply relevant provisions of law in the rendition of an irrevocable judgment, where such failure presents material impact on the outcome of said

惟確定判決消極的不適用法規，須於裁判之結果顯有影響者，當事人為其利益，始得依上開條款請求救濟。倘判決不適用法規而與裁判之結果顯無影響者，即無保護之必要，自不得據為再審理由。

綜上所述，確定判決消極的不適用法規，顯然影響裁判者，自屬民事訴訟法第四百九十六條第一項第一款所定適用法規顯有錯誤之範圍，應許當事人對之提起再審之訴，以貫徹憲法保障人民權益之本旨，最高法院六十年台再字第一七〇號判決，與上述見解未洽部分，應不予援用。惟確定判決消極的不適用法規，對於裁判顯無影響者，不得

judgment. In such instance, protection of the people's rights and interests guaranteed by the Constitution should dictate that the party thus aggrieved be permitted to initiate an action for retrial. The portion of the Supreme Court opinion in its Precedent T.T.T.No.170 (Sup. Ct., 1971), insofar as it is inconsistent with the above view, shall no longer be upheld. On the other hand, where such simple failure to apply relevant provisions presented no prejudicial effect on the outcome of the judgment, no retrial should be permitted. As such, said Supreme Court precedent should not be deemed as contrary to the Constitution.

據為再審理由，就此而言，該判例與憲法並無牴觸。

Furthermore, in case an Interpretation, given in response to a petition, is favorable to the petitioner, pursuant to Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act, permitting the people's petition for Interpretation, said Interpretation shall be applicable to the petitioner's case for which the petition was made; as such, the present petitioner may seek for relief pursuant to statutory procedure.

次查人民聲請解釋，經解釋之結果，於聲請人有利益者，為符合司法院大法官會議法第四條第一項第二款，許可人民聲請解釋之規定，該解釋效力應及於聲請人據以聲請之案件，聲請人得依法定程序請求救濟。

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋姚大法官瑞光、陳大法官世榮分別提出不同意見書。

J. Y. Interpretation No.178（December 31, 1982）*

ISSUE: Does the fact that the judge who did take part in the previous trial of a case rendering a decision thereto constitute such a ground for him to recuse himself from rehearing the same case regardless of whether it is an appeal or retrial?

RELEVANT LAWS:

Article 17, Subparagraph 8 of the Code of Criminal Procedure（刑事訴訟法第十七條第八款）.

KEYWORDS:

recusal by a judge（法官迴避）.**

HOLDING: The exact interpretation of the phrase "the judge participated in the decision at a previous trial", provided in Article 17, Subparagraph 8, of the Code of Criminal Procedure, is that the same judge participated in the same case at a lower trial level.

解釋文：刑事訴訟法第十七條第八款所稱推事曾參與前審之裁判，係指同一推事，就同一案件，曾參與下級審之裁判而言。

REASONING:. The Code of Criminal Procedure is the procedural law on criminal sanctions of the State.

解釋理由書：按刑事訴訟法為確定國家具體刑罰權之程序法，以發現實體真實，俾刑罰權得以正確行使為目

* Translated by J. P. Fa.

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Discovering the substantive truth is the condition for the correct application of criminal sanctions. In order to guarantee the fairness of the trial, the withdrawal clauses were provided for the case where the judge had been suspected of being unfair due to some special circumstance. Article 17, Subparagraph 8, of the Code provides "the judge, who has participated in the decision at a previous trial, shall not handle the case by voluntary recusal." Since the same judge participated in the same case at a lower trial level, the criticism of bias and the loss of a second opportunity to appeal are thus justified. It thus includes all the previous trials. Judges who participated in the case which was later declared a retrial by the final court and was sent back to the lower court, and are now sitting on the same case again in the final court, had not been considered for withdrawal in the past. However, in order to fully implement the system of withdrawal of judges, this case shall be decided by another judge if fact permits.

的，為求裁判之允當，因有特殊原因足致推事執行職務有難期公平之虞時，特設迴避之規定。其第十七條第八款所定：推事曾參與前審之裁判者，應自行迴避，不得執行職務，乃因推事已在下級審法院參與裁判，在上級審法院再行參與同一案件之裁判，當事人難免疑其具有成見，而影響審級之利益。從而該款所稱推事曾參與前審之裁判，係指同一推事，就同一案件，曾參與下級審之裁判而言。惟此不僅以參與當事人所聲明不服之下級審裁判為限，並應包括「前前審」之第一審裁判在內。至曾參與經第三審撤銷發回更審前裁判之推事，在第三審復就同一案件參與裁判，以往雖不認為具有該款迴避原因，但為貫徹推事迴避制度之目的，如無事實上困難，該案件仍應改分其他推事辦理。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.179（February 25, 1983）*

ISSUE: Under Article 9 of the Enforcement Act of the Code of Civil Procedure, if an appellant represented by an attorney as his agent ad litem fails to pay court costs, the court may determine not to order that the defect be amended within a fixed time limit and dismiss an action for retrial on the ground that the action is not brought in the proper form prescribed by law. Does this Act interfere with the exercise of the right of litigation and the equality of legal standing of the people, and is it thus unconstitutional?

RELEVANT LAWS:

Article 7 of the Constitution（憲法第七條）; Article 9 of the Enforcement Act of the Code of Civil Procedure（民事訴訟法施行法第九條）; Supreme Court's Precedent T.S.T. 1128（ Sup. Ct. 1981）（最高法院七十年台上字第一一二八號判例）.

KEYWORDS:

agent ad litem（訴訟代理人）, amendment（補正）, equality of legal standing（法律上地位平等）, applicable mutatis mutandis（準用）, irrevocable judgment（確定判決）, delay of the proceedings（延滯訴訟）, right of instituting legal proceedings（訴訟權）, first appeal（第二審）, final appeal（第三審）.**

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* Translated by Raymond T. Chu.

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

HOLDING: The purpose of Article 9 of the Enforcement Act of the Code of Civil Procedure, which provides that where an appellant represented by an attorney as his agent ad litem fails to pay court costs the court may determine not to order that an amendment be made within a fixed time limit, is to avoid delay of the proceeding. The provision thus does not interfere with the exercise of the right of instituting legal proceedings and the equality of legal standing of the people. Whether the statute should be made applicable mutatis mutandis to an action of retrial brought against an irrevocable judgment delivered by a court of first appeal or of the final appeal is a question of the application of law in adjudication, and for that reason the provision cannot be said to be contrary to the Constitution.

解釋文：民事訴訟法施行法第九條所定上訴人有律師為訴訟代理人，而未繳納裁判費者，法院得不定期間命其補正，乃在避免延滯訴訟，與人民訴訟權之行使及人民在法律上地位之平等，尚無妨礙。對於第三審或第二審確定判決提起再審之訴，應否準用上開規定，係裁判上適用法律之問題，要難認為牴觸憲法。

REASONING: The petitioner in the instant case states in essence that he brought an action for retrial through the representation of an attorney as his agent ad litem against the Supreme Court's Precedent T.S.T. 1128 (Supreme Court, 1981), and that by its ruling T.T.T. 131

解釋理由書：本件聲請意旨略稱：聲請人委任律師為訴訟代理人，對最高法院七十年台上字第一一二八號判決，提起再審之訴，因未繳納裁判費，經最高法院適用民事訴訟法施行法第九條規定，不命補正，逕認其再審之訴為不合法，而以七十年台再字第一三一號

(1981), the Supreme Court, applying Article 9 of the Enforcement Act of the Code of Civil Procedure but without ordering an amendment, dismissed the action on the ground that the action for retrial was not brought in the proper form required by law because the petitioner failed to pay court costs. The petitioner thus applies for interpretation to be made by this Yuan on the ground that said Act invoked by the Supreme Court in the irrevocable final ruling at issue is arguably unconstitutional.

裁定駁回之，聲請人認為該確定終局裁定所適用之上開法條，有牴觸憲法之疑義，聲請解釋。

It must be noted that while the so-called people's right of instituting legal proceedings under Article 16 of the Constitution means that the people shall have the right of instituting legal proceedings when their right has been injured, it also means that the court has the duty to adjudicate in accordance with law. The exercise of the right of instituting legal proceedings, however, must follow the formality prescribed by law. In view of the fact that not all litigants have knowledge of the procedural law, the law allows amendment to be made in case of any

按憲法第十六條所謂人民有訴訟之權，固指人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務而言。惟訴訟權之行使，應循法定程式，而有欠缺者，為顧及當事人未必具備訴訟法上之知識，故設補正之規定，以保障其權益。但當事人如已委任律師為訴訟代理人提起上訴，須繳納裁判費，乃法定程式，應為其訴訟代理人所熟知；為避免延滯訴訟，民事訴訟法施行法第九條授與法院斟酌應否命補正之權，所為得不命補正之規定，於人民訴訟權之行使，尚無妨礙。

defect in formality. If a party has appointed an attorney as his agent ad litem for the institution of an appeal, however, the legal requirement in respect of payment of court costs is a formality with which the attorney should be familiar. Hence, to avoid delay of the proceeding, Article 9 of the Enforcement Act of the Code of Civil Procedure gives the court the power to decide at its discretion whether or not to order an amendment. The provision that the court may decide not to order an amendment does not interfere with the exercise of the people's right of instituting legal proceedings.

Moreover, while the Constitution provides in Article 7 that all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law, it does not prohibit reasonably differential statutory prescriptions based on age, occupation, and economic situations of and the special relations between people. Accordingly, Article 9 of the Enforcement Act of the Code of Civil Procedure does not interfere with the constitutional protection with

次按憲法第七條所稱中華民國人民無分男女、宗教、種族、階級、黨派，在法律上一律平等，並非不許法律基於人民之年齡、職業、經濟狀況及彼此間之特別關係等情事，而為合理之不同規定。故民事訴訟法施行法第九條，亦無礙於憲法對於人民平等權之保障。

respect to the equality of the people.

Finally, whether the provision of Article 9 of the Enforcement Act of the Code of Civil Procedure in respect of the institution of appeals should be made applicable mutatis mutandis to an action of retrial brought against an irrevocable judgment delivered by a court of first appeal or of the final appeal is a question of the application of law in adjudication. Although the provision has a bearing on the protection of the people's rights and interest, and the court, when invoking said article, must employ prudence in the exercise of its discretion, the statute cannot be said to be contrary to the Constitution.

民事訴訟法施行法第九條有關上訴之規定，對於第三審或第二審確定判決，提起再審之訴應否準用，係裁判上適用法律之問題。雖該條規定，關係人民權益之保護，法院引用時，應慎予裁量，要難認為牴觸憲法。

Justice Yi-Po Cheng filed dissenting opinion.

本號解釋鄭大法官玉波提出不同意見書。

J. Y. Interpretation No.180（May 6, 1983）*

ISSUE: Are the relevant provisions of the Equalization of Land Rights Act and the Land Tax Act regarding the collection of land value increment tax and the calculation of the total amount of increased value of land unconstitutional?

RELEVANT LAWS:

Articles 15,19 and 143 of the Constitution （憲法第十五條、第十九條、第一百四十三條）; Article 47 of the Equalization of Land Rights Act（平均地權條例第四十七條）; Article 30 of the Land Tax Act（土地稅法第三十條）.

KEYWORDS:

fair rent taxation（租稅公平原則）, share the increment of land with people in common（漲價歸公）, land value increment tax（土地增值稅）, total calculated incremental value of land（土地漲價總數額之計算）, government-declared current value（公告現值）, actual transfer current value（移轉現值）.**

HOLDING: Article 47, Paragraph 2, of the Equalization of Land Rights Act and Article 30, Paragraph 1, of the Land Tax Act, regarding the rules

解釋文：平均地權條例第四十七條第二項、土地稅法第三十條第一項關於土地增值稅徵收及土地漲價總數額計算之規定，旨在使土地自然漲價之利

* Translated by Louis Chen, Professor of Law.

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

on the expropriation of the land value increment tax and the calculation of the total incremental value of land, state that the objective is to share the natural increment of land value with the people in common, and such purpose does not contravene Articles 15, 19 and 143 of the Constitution. Nevertheless, since it is a matter of tax account, to be consistent with the principle of equality in taxation, the tax should be levied on the person who benefited from the natural increment of land value.

益歸公，與憲法第十五條、第十九條及第一百四十三條並無牴觸。惟是項稅款，應向獲得土地自然漲價之利益者徵收，始合於租稅公平之原則。

REASONING: Article 143, Para-graph 4, of the Constitution clearly states that where the value of land has increased not through the exertion of labor or employment of capital, the State shall levy thereon a land value increment tax, the proceeds of which shall be enjoyed by the people in common. The land value increment tax shall be calculated in accordance with the total natural incremental value, and shall be levied upon the person who obtained the proceeds to be consistent with the basic national policy of sharing increments with the people in

解釋理由書：按土地價值非因施以勞力資本而增加者，應由國家徵收土地增值稅，歸人民共享之，憲法第一百四十三條第三項揭示甚明。是土地增值稅應依照土地自然漲價總數額計算，向獲得其利益者徵收，始符合漲價歸公之基本國策及租稅公平之原則。

common and the principle of equality of taxation.

Article 47, Paragraph 1, of the Equalization of Land Rights Act provides: "Whenever the ownership of any parcel of land is transferred or a right of dien is created over land, the obligee and the obligor shall apply for registration of change in land rights or for registration of the creation of a right of dien, with a copy of the contract and other relevant documents attached to the application, within one month from the day when they have signed the contract. At the same time, they shall declare the current transaction value of the said land. Where there is no obligor, the obligee may solely declare the current transaction value of the said land." Paragraph 2 of the same article also provides: "If the current transaction value declared in the preceding paragraph by the reporter is lower than the government-declared current land value" after examination, the competent authorities may purchase the land at the current transaction value declared by the reporter, or levy the land value increment tax according to "the

平均地權條例第四十七條第一項規定：「土地所有權移轉或設定典權時，權利人及義務人應於訂定契約之日起一個月內，檢同契約及有關文件共同申請土地權利變更或設定典權登記，並同時申報其土地移轉現值，無義務人時，由權利人申報之」，同條第二項規定：「前項申報人所申報之土地移轉現值，經主管機關審核，其低於申報當期之公告土地現值者，得照其申報之移轉現值收買，或照公告土地現值徵收土地增值稅，其不低於申報當期之公告土地現值者，照申報移轉現值徵收土地增值稅」。從而土地所有權人移轉土地所有權或設定典權時，於訂定契約之日起一個月內聲請登記，並申報其土地移轉現值，經主管機關審核，低於當期公告土地現值者，得照價收買或照公告土地現值徵收土地增值稅；其不低於當期公告土地現值者，則照申報移轉現值徵收土地增值稅，與土地之自然漲價，藉課徵土地增值稅以達收歸公用之目的並無違背。又土地稅法第三十條第一項規定：「土地漲價總數額之計算，以納稅義務人及權利人申請移轉或申報設定典權

government-declared current land value" If the current transaction value declared by the reporter is higher than "the government-declared current land value" the current transaction value reported shall be the base for the levy of the land value increment tax. Consequently, a landowner who transfers land ownership or creates a dien shall apply for registration within one month from the day when he or she has signed the contract, and shall declare at the same the current transaction value of the said land, upon the examination of the competent authorities. If the current transaction value is lower than "the government-declared current land value" the competent authorities may purchase the land at the current transaction value, or levy the land value increment tax according to "the government-declared current land value" If the current transaction value is higher than "the government-declared current land value" the current transaction value shall be the base for the levy of the land value increment tax. Such is not contrary to the objective regarding the levy of increment tax on the natural increment value of land to share incre-

時，該土地之公告現值為計算基礎，但申報之土地實際移轉現值超過公告現值者，應以自行申報之移轉現值為計算基礎」。其所謂公告現值，係指在同法第四十九條所定期限內申請移轉或申報設定典權時之土地公告現值而言，核與上述平均地權條例第四十七條規定之意旨亦相符合。至納稅義務人及權利人未於規定期間內申請登記繳納土地增值稅，嗣後再申請登記繳納時，除依法處罰或加計利息外，如土地公告現值有不同者，其因自然漲價所生之差額利益，既非原納稅義務人所獲得，就此差額計算應納之部分土地增值稅，即應於有法定徵收原因時，另向獲得該項利益者徵收，始屬公平。如裁判上適用前開法條之見解有所不同，乃法律見解是否允洽問題，要難謂法律之規定牴觸憲法。

ment with the people in common. Additionally, Article 30, Paragraph 1, of Land Tax Act provides: "The calculation of the total land increment value is based on the government-declared current value of the land at the time the taxpayer and owner apply for transfer or declare the creation of a dien, but if the actual declared current value of the transferred land is higher than the government-declared current value, the self-declared transfer current value shall be the calculation base." The term "government-declared current value" refers to the government-declared current land value within the time period required under Article 49 of the same act when the taxpayer and owner apply for land transfer or declare for creation of a dien, and is said to be consistent with the objective as provided under Article 47 of the above-mentioned the Equalization of Land Rights Act. Applications for registration and payments made after the time period will be subject to penalty or interest added in accordance with law, and in case the government-declared current land value has changed, any benefit of such difference from the natural increment value

shall be levied as the land value increment tax. Since the benefit is not acquired by the original taxpayer, the land value increment tax from such difference shall, under a legal expropriation cause, be levied upon the person who receives such benefit in order to be fair. In case there is a difference of interpretation on the judgment made in accordance with prior articles, this is merely a matter of appropriateness of legal interpretation, and it cannot be said that the provision of the law is contradictory to the Constitution.

In conclusion, the provisions of Article 47, Paragraph 2, of the Equalization of Land Rights Act and Article 30, Paragraph 1, of the Land Tax Act regarding the expropriation of land value increment tax and calculation of the total amount of land price increase, which objective is to share the increment on the benefit of any natural land price increase with the people in common, is not contradictory to Article 143 of the Constitution, and at the same is not contrary to the substance of Articles 15 and 19 of the Constitution. Nonetheless, it is considered a tax account and thus to

綜上所述，平均地權條例第四十七條第二項、土地稅法第三十條第一項關於土地增值稅徵收及土地漲價總數額計算之規定，旨在使土地自然漲價之利益歸公，與憲法第一百四十三條並無牴觸，亦無違反憲法第十五條及第十九條之可言。惟是項稅款，應向獲得土地自然漲價之利益者徵收，始合於租稅公平之原則。

to be consistent with the principle of equality of taxation, tax shall be levied on the person who acquires the benefit of the natural increment of land value.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.181（July 1, 1983）*

ISSUE: Where evidence is not properly investigated during adjudication, thus leading to be clearly erroneous in the application of law, which has an observable impact on the final and binding judgment, should the said judgment be classified as a judgment that is illegal in substance to which Article 447 of the Code of Criminal Procedure governing extraordinary appeals applies?

RELEVANT LAWS:

Article 447 of the Code of Criminal Procedure（刑事訴訟法第四百四十七條）.

KEYWORDS:

Extraordinary appeal（非常上訴）, final judgment（確定判決）, judgment that is illegal in substance（判決違法）, power to criminal punishment（刑罰權）.**

HOLDING: Extraordinary appeals are a means of relief to correct final and binding judgments that have infringed upon the laws. Judges should investigate the evidence, should the law require, during the period of adjudication. If the lack of investigation leads to be clearly errone-

解釋文：非常上訴，乃對於審判違背法令之確定判決所設之救濟方法。依法應於審判期日調查之證據，未予調查，致適用法令違誤，而顯然於判決有影響者，該項確定判決，即屬判決違背法令，應有刑事訴訟法第四百四十七條第一項第一款規定之適用。

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ous in the application of law that has an observable impact on the final and binding judgment, then it is a judgment that is illegal in substance to which Article 447, Paragraph 1, Subparagraph 1, of the Code of Criminal Procedure applies.

REASONING: Criminal proceedings are procedures put in place to ensure the State's specific power to criminal punishment, with the objectives to discover the truth and to safeguard the proper exercise of the power to criminal punishment. Extraordinary appeals are a means of relief to correct final and binding judgments that have infringed upon the laws. Judgments that have infringed upon the laws can be classified into judgments that are illegal in substance and judgments that are reached through illegal procedures, and they are treated differently by the laws of procedure. With regard to the former judgments, the laws of procedure permit, taking into consideration the defendant's interests, redetermination of judgments following revocation of the original judgments and have force in substance. With respect to the latter, the

解釋理由書：按刑事訴訟為確定國家具體刑罰權之程序，以發見真實，使刑罰權得以正確行使為宗旨。非常上訴，乃對審判違背法令之確定判決予以救濟之方法。所謂審判違背法令，可分為判決違法與訴訟程序違法，在訴訟法上各有其處理方式；前者為兼顧被告之利益，得將原判決撤銷另行判決，具有實質上之效力，後者則僅撤銷其程序而已。惟二者理論上雖可分立，實際上時相牽連，故依法應於審判期日調查之證據，未予調查，致適用法令違誤，而顯然於判決之結果有影響者，倘不予以救濟，則無以維持國家刑罰權之正確行使，該項確定之判決即屬判決違背法令，非僅訴訟程序違背法令，應有刑事訴訟法第四百四十七條第一項第一款規定之適用。

laws merely dismiss the procedures. Although the two may be distinguished theoretically, in practice, they are correlative. Therefore, where the evidence that should be investigated during the periods of adjudication is not so investigated thus leading to be clearly erroneous in the application of law, which has an observable impact on the final and binding judgment, then the appropriate exercise of the State's power to criminal punishment cannot be assured if no relief is granted. The said final and binding judgment shall be classified as a judgment that is illegal in substance, not merely illegal in its procedures, to which Article 447, Paragraph 1, Subparagraph 1, of the Code of Criminal Procedure applies.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.182（August 26, 1983）*

ISSUE: The Supreme Court in its precedent held that debtors or other third parties, unless otherwise provided by the law, are not allowed to apply for a withholding of the compulsory enforcement process via the process of preliminary injunction. Is the said precedent constitutional if it is relied upon as a legal basis to deny the mortgagor's request for a withholding of the auction of mortgaged property?

RELEVANT LAWS:

Articles 14 and 18 of the Compulsory Enforcement Act（強制執行法第十四條、第十八條）; Article 16 of the Constitution（憲法第十六條）; Article 11 of the Public Notarization Act（公證法第十一條）; Article 101 of the Non-contentious Matters Act（非訟事件法第一百零一條）.

KEYWORDS:

compulsory enforcement（強制執行）, withholding（停止執行）, mortgaged property（抵押物）, mortgagor（抵押人）, mortgagee（抵押權人）, ruling（裁定）.**

HOLDING: The process of compulsory enforcement, which shall not be withheld once commenced, unless

解釋文：強制執行程序開始後，除法律另有規定外，不停止執行，乃在使債權人之債權早日實現，以保障

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otherwise provided by the law, is to ensure timely recovery of the creditor's credits and to protect the people's rights. The Precedent of the Supreme Court T.K.T. 59 (1974) determined that debtors or third parties may not apply for a withholding via the processes of a preliminary injunction. Its aim is to prevent interruption of the processes of enforcement. In the event mortgagors initiate litigation proceedings against the court's ruling which permits the auction of mortgaged property, and claim there are factors precluding compulsory enforcement, they may apply for withholdings pursuant to the law. Therefore the aforementioned Precedent cannot be said to have infringed upon Article 16 of the Constitution.

人民之權利。最高法院六十三年度台抗字第五十九號判例，認債務人或第三人不得依假處分程序聲請停止執行，係防止執行程序遭受阻礙，抵押人對法院許可拍賣抵押物之裁定，主張有不得強制執行之事由而提起訴訟時，亦得依法聲請停止執行，從而上開判例即不能謂與憲法第十六條有所牴觸。

REASONING: Article 18, Paragraph 1, of the Compulsory Enforcement Act stipulates that: "Once the process of compulsory enforcement commences, it may not be withheld unless otherwise provided by the law." This is to prevent debtors' or third parties' blanket application for withholding, which may obstruct enforcement processes and prevent timely

解釋理由書：強制執行法第十八條第一項規定：「強制執行程序開始後，除法律另有規定外，不停止執行。」乃防止債務人或第三人任意聲請停止執行，致執行程序難於進行，債權人之債權不能早日實現。抵押權人聲請拍賣抵押物，經法院為許可強制執行之裁定而據以聲請強制執行，抵押人對該裁定提起抗告或依同法第十四條提起異

recovery of the creditor's credit. When applying for an auction of mortgaged property, the mortgagee may apply for compulsory enforcement pursuant to the court's affirmative ruling of compulsory enforcement. If the mortgagor appeals against or raises an objection to the said ruling, under Article 14 of the same Act, the court may withhold its ruling of compulsory enforcement in accordance with Article 18, Paragraph 2, of the same Act. In the event the mortgagor institutes proceedings based on reasons in substantive law, existing before the said ruling, and claims that the said ruling may not be enforced, it is a more serious matter than the procedures of ruling. Therefore, according to the legal principle of "balancing test", with reference to Article 11, Paragraph 3, of the Public Notarization Act and Article 101, Paragraph 2, of the Non-contentious Matters Act, and also taking into consideration the mortgagor's interests, the mortgagor may apply for a withholding of the ruling of compulsory enforcement under Article 18, Paragraph 2, of the Compulsory Enforcement Act. As to preliminary injunctions, they are creditors'

議之訴時，法院得依同法第十八條第二項為停止強制執行之裁定，抵押人如以該裁定成立前實體上之事由主張該裁定不得為執行名義而提起訴訟時，其情形較裁定程序為重，依「舉輕明重」之法理，參考公證法第十一條第三項及非訟事件法第一百零一條第二項規定，並兼顧抵押人之利益，則抵押人自得依強制執行法第十八條第二項規定聲請為停止強制執行之裁定。假處分，乃債權人就金錢請求以外之請求欲保全強制執行，或當事人於有爭執之法律關係聲請定暫時狀態之程序，並非停止執行之法定事由，最高法院六十三年度台抗字第五十九號判例，認債務人或第三人不得依假處分程序聲請停止執行，係防止執行程序遭受阻礙，抵押人對法院許可拍賣抵押物之裁定，主張有不得強制執行之事由而提起訴訟時，既得依法聲請停止執行，從而上開判例即不能謂與憲法第十六條有所牴觸。

requests, other than monetary requests, as to compulsory enforcement, or procedures for the maintenance of status quo requested by parties of a dispute in law. They are not legal bases for the withholding of enforcement procedures. The Precedent of the Supreme Court T.K.T. 59 (1974) determined that debtors or third parties may not apply for a withholding via the processes of a preliminary injunction. Its aim is to prevent the interruption of the processes of enforcement. In the event mortgagors initiate litigation proceedings against the court's ruling which permits the auction of mortgaged property, and claim there are factors precluding compulsory enforcement, they may apply for withholdings pursuant to the law. Therefore the aforementioned Precedent cannot be said to have infringed upon Article 16 of the Constitution.

J. Y. Interpretation No.183（October 7, 1983）*

ISSUE: What are the requirements to be satisfied before the people may apply for a constitutional interpretation? And to what extent will the interpretation so rendered be valid?

RELEVANT LAWS:

Article 4 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條）; and J.Y. Interpretation No.177（司法院釋字第一七七號解釋）.

KEYWORDS:

Interpretation（解釋）.**

HOLDING: Reference to "Interpretations by this Yuan rendered upon the people's applications" in Interpretation No.177 means interpretations requested by the people in accordance with Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act. The matter of the force of this Yuan's interpretation given upon request by the central or regional authorities with respect to doubts and disputes that have

解釋文：本院釋字第一七七號解釋文所稱「本院依人民聲請所為之解釋」，係指人民依司法院大法官會議法第四條第一項第二款之規定，聲請所為之解釋而言。至本院就中央或地方機關行使職權適用憲法、法律或命令發生疑義或爭議時，依其聲請所為解釋之效力，係另一問題。

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* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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arisen due to their adoption of the Constitution, statutes or orders is a separate issue.

REASONING: When the people's constitutionally-protected rights are illegally infringed upon, the people may institute proceedings pursuant to legal procedures, and may apply for interpretations of the Constitution when there are doubts concerning the constitutionality of the laws or orders adopted by final court judges. The foregoing is expressly provided in Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act. Pursuant to the said provision, there are three elements to be satisfied when the people apply for an interpretation of the Constitution: 1) the people's constitutionally-protected rights must have been unlawfully infringed upon; 2) proceedings must have been instituted under lawful procedures; and 3) there must be doubts concerning the constitutionality of the laws or orders adopted by the final court judge. Only when all three elements are satisfied can an action stand. Therefore, applications by the peo-

解釋理由書：按人民於其憲法上所保障之權利，遭受不法侵害，經依法定程序，提起訴訟，對於確定終局裁判所適用之法律或命令，發生有牴觸憲法之疑義者，得聲請解釋憲法，司法院大法官會議法第四條第一項第二款定有明文。依此規定，人民聲請解釋憲法之要件有三：(1)須人民於其憲法上所保障之權利，遭受不法侵害。(2)須依法定程序提起訴訟。(3)須對於確定終局裁判所適用之法律或命令，發生有牴觸憲法之疑義。三項要件俱備，始得為之。故人民聲請解釋憲法係以曾受法院之確定終局裁判為必要，從而本院釋字第一七七號解釋之解釋文所稱「本院依人民聲請所為之解釋」，係指人民依司法院大法官會議法第四條第一項第二款之規定，聲請所為之解釋而言，該項解釋之效力，及於該聲請人所據以聲請解釋之案件，俾得依法定程序請求救濟。至本院就中央或地方機關行使職權適用憲法、法律或命令發生疑義或爭議時，依其聲請所為解釋之效力，係另一問題。

ple for an interpretation of the Constitution shall be with respect to a final court judgment. Accordingly, reference to "Interpretations by this Yuan rendered upon the people's applications" in Interpretation No. 177 shall mean interpretations requested by the people in accordance with Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act. The force and effect of the said Interpretation extend to cases based on which applicants may apply for interpretations and for relief pursuant to lawful procedures. The matter of the force of this Yuan's interpretation given upon request by the central or regional authorities with respect to doubts and disputes that have arisen due to their adoption of the Constitution, statutes or orders is a separate issue.

J. Y. Interpretation No.184（December 23, 1983）*

ISSUE: Does the information which may be requested by the local council in deliberating the audit reports submitted by the audit office after its review of the local government's annual audit include original documentations as defined under the Audit Act?

RELEVANT LAWS:

Articles 90 and 104 of the Constitution（憲法第九十條及第一百零四條）;Articles 3, 4, 5, 10, 34, 36 and 71 of the Audit Act（審計法第三條、第四條、第五條、第十條、第三十四條、第三十六條及第七十一條）; Articles 26, 27 and 31 of the Financial Statement Act（決算法第二十六條、第二十七條及第三十一條）; Article 14 of the Organic Act of National Audit Office（審計部組織法第十四條）; Articles 51 and 52 of the Accounting Act（會計法第五十一條及第五十二條）.

KEYWORDS:

audit institutes（審計機關）, review（審核）, assembly（議會）, deliberation（審議）, original evidence（原始憑證）, audit reports（審核報告）.**

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* Translated by THY Taiwan International Law Offices.

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HOLDING: Audit institutes will draft audit reports upon reviewing annual audits prepared by local governments in accordance with Article 34, Paragraph 4, of the Audit Act. When a local government deliberates the said report in its assembly, pursuant to its authority under Article 27 of the Financial Statement Act, it may request information from the relevant audit institute, with the exclusion of original evidence audited by such institute pursuant to Articles 36 and 71 of the Audit Act.

解釋文：地方政府依審計法第三十四條第四項規定編製之年度總決算，經審計機關審核後所提出之審核報告，地方各級議會準用決算法第二十七條對之審議時，固得通知審計機關提供資料，但不包括審計機關依審計法第三十六條及第七十一條審定之原始憑證在內。

REASONING: Article 34, Paragraph 1, of the Audit Act stipulates: "At the end of each financial year, the government shall prepare an annual financial statement and submit it to the audit institute for review." Article 26 of the Financial Statement Act provides: "The Auditor-General shall, within three months after delivery of the annual financial statement prepared by the central government, complete the review process, draft the final audited financial statement, and furnish its report to the Legislative Yuan." Article 27, Paragraph 2, of the

解釋理由書：審計法第三十四條第一項規定：「政府於會計年度結束後，應編製總決算，送審計機關審核。」決算法第二十六條規定：「審計長於中央政府總決算送達後三個月內，完成其審核，編造最終審定數額表，並提出其審核報告於立法院。」同法第二十七條第二項規定：「立法院審議時，審計長應答復質詢，並提供資料。對原編造決算之機關，於必要時，亦得通知其列席備詢，或提供資料」。至地方政府年度總決算之編造、審核、審議，依審計法第三十四條第四項、決算法第三十一條第二項，則準用上開各規定。

same Act states: "During deliberation by the Legislative Yuan, the Auditor-General shall answer questions and provide information. When requested, a representative of the institute responsible for drafting the annual financial statement shall be notified to attend the meeting and answer questions, or to provide information." With respect to the preparation, review and deliberation of the local government's annual financial statement, Article 34, Paragraph 4, of the Audit Act and Article 31, Paragraph 2, of the Financial Statement Act stipulate that the abovementioned provisions shall be equally applicable.

Reference to "provide information" in Article 27 of the Financial Statement Act means information required for the deliberation of the report on annual audits, with the exclusion of original evidence audited by the audit institutes pursuant to the law. The Control Yuan has the power to audit (Article 90 of the Constitution), to appoint the Auditor-General (Article 104 of the Constitution), to set up audit institutes throughout the nation, and to permit

決算法第二十七條所稱「提供資料」，係指為審議總決算審核報告之需要而提供有關審核報告之資料而言，自不包括審計機關依法已審定之原始憑證在內。蓋審計權屬於監察院（憲法第九十條），於監察院設審計長（憲法第一百零四條），並於全國各地方設審計機關，由審計人員依法獨立行使之（審計部組織法第十四條、審計法第三條至第五條及第十條）。各機關應照會計法及會計制度之規定，編製會計報告，連同

independent conduct by audit personnel pursuant to the law (Article 14 of the Organic Act of National Audit Office, and Articles 3 to 5, and 10 of the Audit Act). Each institute shall prepare accounting reports in accordance with the provisions of the Accounting Act and the accounting system, and submit them, with the original evidence, for review by the relevant audit institute (Article 36 of the Audit Act). The so-called "original evidence" refers to "evidence which proves any matter and based on which entries are recorded" (Article 51, Paragraph 1, and Article 52 of the Accounting Act). Responsibilities imposed upon personnel with regard to finance shall be terminated once auditing is complete (Article 71 of the Audit Act). The information requested from audit institutes by the local assembly, for its deliberation of the report on the local government's annual audit, are limited to matters relevant to the administering of the budget, execution of policies, and review and relief of special matters; they are not directly related to the original evidence which is the basis of the audit institutes' audit report.

原始憑證，依限送該管審計機關審核（審計法第三十六條），其所謂「原始憑證」，乃指「證明事項經過，而為造具記帳憑證所根據之憑證」（會計法第五十一條第一款及第五十二條），各機關人員對於財務上行為應負之責任，經審定後，亦即解除（審計法第七十一條）。地方議會準用決算法第二十七條審議地方政府年度總決算之審核報告時，通知審計機關提供之資料，係以審核報告中有關預算之執行、政策之實施及特別事件之審核、救濟等事項為限，與審計機關於審核會計報告時所根據之原始憑證，並無直接關係。

In conclusion, audit institutes will furnish audit reports upon reviewing annual financial statements prepared by local governments in accordance with Article 34, Paragraph 4, of the Audit Act. When a local government deliberates the said report in its assembly, pursuant to its authority under Article 27 of the Financial Statement Act, it may request information from the relevant audit institute, with the exclusion of original evidence audited by such institute pursuant to Articles 36 and 71 of the Audit Act.

基上所述，地方政府依審計法第三十四條第四項規定編製之年度總決算，經審計機關審核後所提出之審核報告，地方各級議會準用決算法第二十七條對之審議時，固得通知審計機關提供資料，但不包括審計機關依審計法第三十六條及第七十一條審定之原始憑證在內。

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。

J. Y. Interpretation No.185（January 27, 1984）*

ISSUE: Concerning the statute or ordinance upon which a final and irrevocable judgment relies or the opinion expressed on such statute or ordinance wherein is held unconstitutional by the Grand Justices Council upon a petition by the interested person for interpretation, is the party against whom such final and irrevocable judgment is entered entitled to file for a retrial or an extraordinary appeal on the basis of said interpretation?

RELEVANT LAWS:

Articles 78, 171, Paragraph 1 and 172 of the Constitution（憲法第七十八條、第一百七十一條第一項及第一百七十二條）; Code of Civil Procedure（民事訴訟法）; Code of Criminal Procedure（刑事訴訟法）; Administrative Proceedings act（行政訴訟法）.

KEYWORDS:

retrial（再審）, extraordinary appeal（非常上訴）, mere differences in legal interpretations（法律見解歧異）, erroneous application of law（適用法律錯誤）.**

HOLDING: Pursuant to Article 78 of the Constitution, the Judicial Yuan is vested with the power to interpret the

解釋文：司法院解釋憲法，並有統一解釋法律及命令之權，為憲法第七十八條所明定，其所為之解釋，自有

* Translated by WELLINGTON L. KOO, and Formosa Transnational Attorneys at Law.

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Constitution, and to provide uniform interpretations with respect to statutes and ordinances. The interpretations of the Judicial Yuan shall be binding upon every institution and person in the country, and each institution shall abide by the meaning of these interpretations in handling relevant matters. Prior precedents which are contrary to these interpretations shall automatically be nullified. In the case of a final and irrevocable judgment where the statute or ordinance or the interpretation of such statute or ordinance applied in rendering such judgment is deemed contrary to the Constitution pursuant to an interpretation rendered by this Judicial Yuan upon an application by the interested person for such an interpretation, the party against whom such final and irrevocable judgment is entered shall be entitled to file for a retrial or an extraordinary appeal on the basis of said interpretation, and this should not be construed as mere differences in legal interpretations. As such, any part of Precedent P.T. No.610 (Ad. Ct., 1973) contrary to this Interpretation shall cease to apply.

拘束全國各機關及人民之效力各機關處理有關事項，應依解釋意旨為之，違背解釋之判例，當然失其效力。確定終局裁判所適用之法律或命令，或其適用法律、命令所表示之見解，經本院依人民聲請解釋認為與憲法意旨不符，其受不利確定終局裁判者，得以該解釋為再審或非常上訴之理由，已非法律見解歧異問題。行政法院六十二年判字第六一〇號判例，與此不合部分應不予援用。

REASONING: Pursuant to Article 78 of the Constitution, the Judicial Yuan is vested with the power to interpret the Constitution, and to provide uniform interpretations with respect to statutes and ordinances. The intent is to have the Judicial Yuan assume the responsibility of clarifying and enunciating the correct meaning of the Constitution and statutes and ordinances. The interpretations thus rendered shall be binding upon every institution and person in the country, and each institution shall abide by the meaning of these interpretations in handling relevant matters. Prior precedents which are contrary to these interpretations shall automatically be nullified.

解釋理由書：憲法第七十八條規定，司法院解釋憲法，並有統一解釋法律及命令之權，旨在使司法院負闡明憲法及法令正確意義之責，其所為之解釋，自有拘束全國各機關及人民之效力，各機關處理有關事項時，應依解釋意旨為之，違背解釋之判例，當然失其效力。

According to Article 171, Paragraph 1, and Article 172 of the Constitution, a statute is nullified if it is contrary to the Constitution and an ordinance is nullified if it is contrary to the Constitution or a statute. In the case of a final and irrevocable judgment where the statute or ordinance or the interpretation of such statute or ordinance applied in rendering such judgment is suspected of being contrary

法律與憲法牴觸者無效，命令與憲法或法律牴觸者無效，為憲法第一百七十一條第一項及第一百七十二條所明定。確定終局裁判所適用之法律或命令，或其適用法律、命令所表示之見解發生有牴觸憲法之疑義，經本院依人民聲請解釋認為確與憲法意旨不符時，是項確定終局裁判即有再審或非常上訴之理由。蓋確定終局裁判如適用法規顯有錯誤或違背法令，得分別依再審、非常

to the Constitution, and then confirmed to be indeed contrary to the Constitution pursuant to an interpretation rendered by this Judicial Yuan upon an application by the interested person for such an interpretation, a ground for filing a retrial or an extraordinary appeal with respect to such final and irrevocable judgment then arises. It is expressly stipulated in the Code of Civil Procedure, the Code of Criminal Procedure and the Administrative Proceedings act and further interpreted by Interpretations No. 135 and 177 of this Judicial Yuan that if the application of laws in rendering a final and irrevocable judgment is manifestly erroneous or unlawful, the aggrieved party is entitled to file for retrial, extraordinary appeal or other legally prescribed remedy. Therefore, based upon the Interpretation by this Judicial Yuan, the party aggrieved by a judgment is entitled to seek retrial or other legally prescribed remedy after the publication of said Interpretation.

上訴及其他法定程序辦理，為民、刑事訴訟法及行政訴訟法所明定，並經本院釋字第一三五號及第一七七號解釋在案。故業經本院解釋之事項，其受不利裁判者，得於解釋公布後，依再審或其他法定程序請求救濟。

Precedent P.T. No.610 (Ad. Ct., 1973) states that, “Article 24 of the Administrative Proceedings act provides

行政法院六十二年判字第六一〇號判例稱：「行政訴訟法第二十四條規定，有民事訴訟法第四百九十六條所

that a party is entitled to file for a trial with respect to the judgment rendered by this Yuan if any of the circumstances listed under Items of Article 496 of the Code of Civil Procedure exists. However, the so-called 'clearly erroneous in the application of law as referred to in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure refers to the situation where the laws applied in the rendition of the judgment in question are contrary to the prevailing laws which should have been applied to the instant case or contrary to the interpretations or prior precedents. As for differences in legal interpretations, even if the plaintiff for retrial presents argument thereto, it still cannot be regarded as a case of being clearly erroneous in the application of law based on which a trial should be granted." If the laws or prior precedents applied in rendering a final and irrevocable judgment are found to be contrary to the Constitution pursuant to an interpretation by this Judicial Yuan upon an application for such an interpretation, then following from the discussion above, there automatically arises ground for a retrial or an

列各款情形之一者，當事人對於本院判決，固得提起再審之訴，惟民事訴訟法第四百九十六條第一項第一款所謂適用法規顯有錯誤，係指原判決所適用之法規與該案應適用之現行法規相違背或與解釋、判例有所牴觸者而言。至於法律上見解之歧異，再審原告對之縱有爭執，要難謂為適用法規錯誤，而據為再審之理由。」按確定終局裁判於裁判時所適用之法規或判例，經本院依人民聲請解釋認為與憲法意旨不符時，依上所述，是項確定終局裁判，即有再審或非常上訴之理由，其受不利確定終局裁判者，如以該解釋為理由而請求再審，受訴法院自應受其拘束，不得再以其係法律見解之歧異，認非適用法規錯誤，而不適用該解釋。行政法院上開判例，與此不合部分應不予援用。

extraordinary appeal with respect to such final and irrevocable judgment. The party aggrieved by such final and irrevocable judgment is entitled to file for a retrial on the ground of such interpretation. And the court may no longer argue that such interpretation amounts to differences in legal interpretations only and is not a case of being clearly erroneous in the application of law and thus proceed without applying the interpretation. As such, any part of the said Precedent of the Administrative Court contrary to this Interpretation shall cease to apply.

J. Y. Interpretation No.186（March 9, 1984）*

ISSUE: Is a person who has suffered injury as a result of his right to corporate stocks being invalidated by a court judgment entitled to make a claim for damages sustained or for restitution on the ground of unjust enrichment if his right cannot be restored despite the revocation of such judgment?

RELEVANT LAWS:

Article 564, Paragraph 1 and Article 565, Paragraphs 1 and 2 of the Code of Civil Procedure（民事訴訟法第五百六十四條第一項、第五百六十五條第一項、第二項）; J.Y. Interpretation Yuan-tze No. 2811（司法院院字第二八一一號解釋）.

KEYWORDS:

bona fide assignee（善意受讓人）, security（證券）.**

HOLDING: Where an invalidating judgment declaring a stock certificate null and void is revoked, the effect of the original stock certificate shall be restored. If, however, a new certificate has been issued by the issuing corporation to replace the certificate nullified, and the stockholder's interest in such stock has been legally acquired by a bona fide as-

解釋文：宣告股票無效之除權判決經撤銷後，原股票應回復其效力。但發行公司如已補發新股票，並經善意受讓人依法取得股東權時，原股票之效力，即難回復。其因上述各情形喪失權利而受損害者，得依法請求損害賠償或為不當得利之返還。本院院字第二八一一號解釋，應予補充。

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* Translated by Raymond T. Chu.

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

signee, it would be no longer possible for him to restore the effects of such stock. In such a circumstance, the person who has suffered injury as a result of his right being invalidated is entitled to make a claim under law for damages sustained or for restitution on the ground of unjust enrichment. This is to supplement Interpretation Yuan-tze No. 2811.

REASONING: Where a security is declared null and void by an invalidating judgment, the party filing the petition for such judgment is entitled to claim against the party bound to perform obligations under the security for all rights in connection with such security. Consequently, the bearer of the security is not entitled to exercise his rights appertaining to such security (Code of Civil Procedure, Article 564, Paragraph 1, and Article 565, Paragraph 1). In the case where the invalidating judgment declaring nullification of the security is revoked, the effect of such judgment is extinguished retroactively, and the original security must of course resume its effect. A stock certificate is a type of security. Where an in-

解釋理由書：除權判決宣告證券無效後，其聲請人對於依證券負義務之人，得主張證券上之權利，持有證券人即不得本於原證券行使權利（民事訴訟法第五百六十四條第一項、第五百六十五條第一項）。而宣告證券無效之除權判決經撤銷後，除權判決之效力溯及消滅，原證券自應回復有效。股票為證券之一種，宣告股票無效之除權判決經撤銷後，原股票應回復其效力；但發行公司如已補發新股票，並經善意受讓人依法取得股東權時，為維護證券交易之安全，符合民事訴訟法第五百六十五條第二項規定之意旨，原股票之持有人既不能行使股票上之權利，其股票之效力，即難回復。其因上述各情形喪失權利而受損害者，得依法請求損害賠償或為不當得利之返還。本院院字第二八一

validating judgment declaring a stock certificate null and void is revoked, the effect of the original stock certificate shall be restored. If, however, a new certificate has been issued by the issuing corporation to replace the certificate nullified, and the stockholder's interest in such stock has been legally acquired by a bona fide assignee, and the bearer of the original stock certificate has become unable to exercise his right on the stock for reason of maintaining the safety in security transactions as contemplated in the provision of the Code of Civil Procedure, Article 565, Paragraph 2, it would therefore no longer be possible to restore the effects of such stock. In such a circumstance, the person who has suffered injury as a result of his right being invalidated is entitled to make a claim under law for damages sustained or for restitution on the ground of unjust enrichment. This is to supplement Interpretation Yuan-tze No. 2811.

一號解釋，應予補充。

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.187（May 18, 1984）*

ISSUE: Are civil servants' rights to retirement and pension guaranteed by the Constitution and protected through the administrative appeal process?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; J.Y. Interpretation Yuan-tze Nos.311, 339 and 1285（司法院院字第三一一號、第三三九號及第一二八五號解釋）; Judgment P.T. No.98（Ad. Ct. 1961）（行政法院五十年判字第九八號判例）; Article 4 of the Grand Justices Council Adjudication Act（司法院大法官會議法第四條）; J.Y. Interpretation No.154（司法院釋字第一五四號解釋）; Articles 1 and 2 of the Public Functionary Service Act（公務員服務法第一條及第二條）.

KEYWORDS:

civil servants（公務人員）, retirement annuity（退休金）, administrative litigation（行政訴訟）.**

HOLDING: Applications for retirement and pension by civil servants pursuant to the law are an exercise of a legally granted right founded on the Con-

解釋文：公務人員依法辦理退休請領退休金，乃行使法律基於憲法規定所賦予之權利，應受保障。其向原服務機關請求核發服務年資或未領退休

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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

stitution, and should be protected. In the event requests for certifications of working period and non-receipt of pension are refused, they may be used as grounds for an appeal or administrative litigation. The relevant sections of Interpretation Yuan-tze Nos. 338 and 1285 shall be amended accordingly. The parts in Judgment P.T. No.98 (Ad. Ct., 1961) that are incompatible with this Interpretation shall no longer be applicable.

金之證明，未獲發給者，在程序上非不得依法提起訴願或行政訴訟。本院院字第三三九號及院字第一二八五號解釋有關部分，應予變更。行政法院五十年判字第九十八號判例，與此意旨不合部分，應不再援用。

REASONING: Reference to laws or orders applicable in final and binding judgments in Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act means laws, orders or their equivalents based on which the final court judge makes the judgment. The foregoing has been interpreted in this Yuan's Interpretation No. 154. We are of the view that this case should be determined by this Yuan.

解釋理由書：司法院大法官會議法第四條第一項第二款所稱確定終局裁判所適用之法律或命令，乃指確定終局裁判作為裁判依據之法律或命令或相當於法律或命令者而言，業經本院釋字第一五四號解釋於其解釋理由書內明示在案。本件聲請應予受理，合先說明。

According to Article 16 of the Constitution, the people have rights of appeal and of instituting legal proceedings. This means that when the people's rights are

按憲法第十六條所謂人民有訴願及訴訟之權，乃指人民於其權利受侵害時，有提起訴願或訴訟之權利，受理訴願機關或受理訴訟法院亦有依法審查決

infringed upon, they shall have a right to appeal or to sue, and the governing appeal institutes or courts are under obligation to view, determine or judge the case in accordance with the law. With respect to civil servants, their right to appeal or sue is treated differently. For an illustration, civil servants are under the obligation to abide by the law and orders of the authority that are within the scope of their duty, unless the said orders are obviously against the law or exceed the authority's scope of supervision. Subordinate civil servants may only put forward their views in disagreement, but may not appeal under the Administrative Appeal Act (See Articles 1 and 2 of the Public Functionary Service Act and Interpretation Yuan-tze No. 311). Other than the aforementioned exceptional circumstance, civil servants are not barred from seeking administrative or legal relief when their constitutionally- or legally-guaranteed rights are abridged due to the relevant authority's illegal or improper administrative acts. Applications for retirement and pension by civil servants pursuant to the law are an exercise of a legally granted right founded on the

定或裁判之義務而言。此項權利，間因其具有公務員身分而有所差別，如公務員關於其職務之執行，有遵守法律，服從長官所發命令之義務，除長官所發命令顯然違背法令或超出其監督範圍外，下屬公務員縱有不服，亦僅得向該長官陳述意見，要無援引訴願法提起訴願之餘地（參照公務員服務法第一條、第二條及本院院字第三一一號解釋）。從而除有此類特殊情形外，憲法或法律所保障之公務員權利，因主管機關之違法或不當之行政處分，致受損害時，尚非均不得循行政或司法程序尋求救濟。公務人員依法辦理退休請領退休金，乃行使法律基於憲法規定所賦予之權利，應受保障。其向原服務機關請求核發服務年資或未領退休金、退職金之證明，未獲發給者，在程序上非不得依法提起訴願或行政訴訟。本院院字第三三九號及院字第一二八五號解釋有關部分，應予變更；行政法院五十年判字第九十八號判例，與此意旨不合部分，應不再援用。又本件解釋，僅認公務員非均不得依法定程序提起訴願或行政訴訟，至原服務機關應否核發上開證明，乃實體上問題，仍應由各該機關依法辦理，不在本件解釋範圍之內。

Constitution, and should be protected. In the event requests for certifications of working period and non-receipt of pension are refused, they may be used as grounds for an appeal or administrative litigation. The relevant sections of Interpretation Yuan-tze Nos. 338 and 1285 shall be amended accordingly. The parts in Judgment P.T. No.98 (Ad. Ct., 1961) that are incompatible with this Interpretation shall no longer be applicable. This Interpretation merely affirms that civil servants may institute appeals or administrative litigation pursuant to the law. The question as to whether the relevant authority shall grant the aforementioned certification is one of substance which shall be handled by the various authorities in accordance with the law, and is beyond the scope of this Interpretation.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。

J. Y. Interpretation No.188（August 3, 1984）*

ISSUE: (1) On which date shall a uniform interpretation of this Yuan become effective? On the date of its declaration or the date as specifically indicated in the interpretation?

(2) How far may the validity of a Constitutional Court interpretation extend? Shall it be binding on all government agencies in dealing with cases of the same or similar nature or be invoked as a ground for a motion for a new trial if the opinions expressed by the court on the law or regulation in an irrevocable final judgment are held to be inconsistent with the purpose of the said law or regulation?

RELEVANT LAWS:

Article 78 of the Constitution（憲法第七十八條）; Article 7 of the Grand Justices Council Adjudication Act（司法院大法官審理案件法第七條）.

KEYWORDS:

unified interpretation（統一解釋）.**

HOLDING: A unified interpretation made by this Yuan in respect of any statute or regulation upon petition by a central or local government agency by

解釋文：中央或地方機關就其職權上適用同一法律或命令發生見解歧異，本院依其聲請所為之統一解釋，除解釋文內另有明定者外，應自公布當日

* Translated by Raymond T. Chu.

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reason of any difference in opinions of such agency on the application of such statute or regulation while performing its duties or functions shall become effective as of the date of delivery of the interpretation, unless otherwise expressly stated therein. Such interpretation shall be applicable where cases giving rise to such difference in opinions and other similar cases are being dealt with by all other government agencies. But if an irrevocable final adjudication has been made in respect of the case giving rise to such difference in opinions and the view expressed by the court on the application of any law or regulation is held by our interpretation to be inconsistent with the intention of such law or regulation, our interpretation may of course be invoked to support a motion for a new trial or an extraordinary appeal.

起發生效力。各機關處理引起歧見之案件及其同類案件，適用是項法令時，亦有其適用。惟引起歧見之該案件，如經確定終局裁判，而其適用法令所表示之見解，經本院解釋為違背法令之本旨時，是項解釋自得據為再審或非常上訴之理由。

REASONING: Article 7 of the Grand Justices Council Adjudication Act[1], which provides that a central or local government agency may file a petition for

解釋理由書：司法院大法官會議法第七條中央或地方機關就其職權上適用同一法律或命所發生之歧見得聲請統一解釋之規定，係基於憲法第七十八

[1] Translator's Note: Puruant to amendment made on February 3, 1993, this act is now titled Act of Constitutional Interpretation Procedure or, as may also be translated, Act of Interpretation Procedure for Grand Justices.

the unified interpretation of a statute or of the same agency on such statute or regulation while carrying out its duty or function, is based on Article 78 of the Constitution, which grants the Judiciary the power to give unified interpretation of all laws and orders, thus making the Judiciary responsible for interpreting the true and precise meaning of laws with binding force upon all government agencies in their application of such laws. An interpretation given by the Judiciary upon such application must therefore become effective as of the date of its delivery unless it is otherwise expressly stated therein.

條司法院有統一解釋法律及命令之權，使本院負責闡釋法律及命令之正確意義，俾為各機關適用該項法令之準據而設。本院依其聲請所為之解釋，除解釋文內另有明定者外，應自公布當日起發生效力。

Since a unified interpretation made by this Yuan in respect of a statute or regulation lays down a ground rule for government agencies in their application of law. The interpretation must therefore be made applicable where such law or regulation is being applied by such agencies in handling cases giving rise to such difference in opinions and other similar cases. If, however, an irrevocable final adjudication has been made in respect of the case giving rise to such difference in

本院就法律或命令所為之統一解釋，既為各機關適用法令之準據，於其處理引起歧見之案件及同類案件，適用是項法令時，自亦應有其適用。惟引起歧見之該案件，如經確定終局裁判，而其適用法令所表示之見解，經本院解釋為違背法令之本旨時，即屬適用法規顯有錯誤或違背法令，為保護人民之權益，應許當事人據該解釋為再審或非常上訴之理由，依法定程序請求救濟。

opinions and the view expressed by the court on the application of any law or regulation is held by our interpretation to be inconsistent with the intention of such law or regulation, and such adjudication constitutes an apparent error in application of law or a violation of law, the party must be allowed to seek remedies in pursuance of legal procedures by invoking our interpretation as a ground to support his motion for a new trial or for extraordinary appeal so that his right and interest may be protected.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋陳大法官世榮提出不同意見書。

J. Y. Interpretation No.189（October 5, 1984）*

ISSUE: Is the Regulation Governing the Retirement of the Factory Workers of Taiwan Province enacted by the provincial government without specific authorization of a law unconstitutional?

RELEVANT LAWS:

Article 153, paragraph 1, and Article 154 of the Constitution（憲法第一百五十三條第一項及第一百五十四條）; the Regulation Governing the Retirement of the Factory Workers of Taiwan Province（台灣省工廠工人退休規則）.

KEYWORDS:

voluntary retirement（自願退休）.**

HOLDING: The voluntary retirement provided in the Regulation Governing the Retirement of the Factory Workers of Taiwan Province is constitutional.

解釋文：臺灣省工廠工人退休規則關於工人自願退休之規定，與憲法尚無牴觸。

REASONING: Article 153, Paragraph 1, of the Constitution provides: "The state, in order to improve the lively-

解釋理由書：按憲法第一百五十三條第一項規定：「國家為改良勞工及農民之生活，增進其生產技能，應制

* Translated by J. P. Fa.

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hood of laborers and farmers and to improve their productive skill, shall enact laws and carry out policies for their protection." Article154 of the Constitution further provides: "Capital and labor shall, in accordance with the principles of harmony and cooperation, promote productive enterprises. Conciliation and arbitration of disputes between capital and labor shall be prescribed by law." Under the above stated constitutional principles, the provincial government may enact necessary regulations to supplement the inadequacy of the statutes and regulations of the central government. The Enforcement Rules of the Factory Act are authorized by Article 76 of the Factory Act. Article 36, Paragraph 12, of the Enforcement Rules provides clearly that retirement, pension, dismissal with severance pay, and other welfare shall be included. Since the voluntary retirement provisions provided in the Regulation Governing the Retirement of the Factory Workers of Taiwan Province are to provide protection for workers after retirement, they are consistent with the constitutional policy of labor protection. They also promote the replacement

定保護勞工及農民之法律，實施保護勞工及農民之政策」。第一百五十四條規定：「勞資雙方應本協調合作原則，發展生產事業。勞資糾紛之調解與仲裁，以法律定之」。省政府為保護勞工、促進勞資協調合作，於執行有關之中央法令時，如因其未臻周全，於不牴觸之範圍內，尚非不得訂定單行法規。內政部依工廠法第七十六條訂定之工廠法施行細則，於第三十六條第十二款，已規定工廠依工廠法第七十五條訂定工廠規則時，應載明有關退休、撫卹、資遣、福利事項。臺灣省政府所訂定之台灣省工廠工人退休規則關於工人自願退休之規定，既在維持工人退休後之生活，而與首述憲法規定實施保護勞工之政策無違，同時亦在促進工廠工人新陳代謝，提高生產效率及鼓勵工人專業服務，有利於工廠之經營，而符合憲法有關勞資雙方應本協調合作原則發展生產事業規定之精神，故與憲法尚無牴觸。

of retiring workers, raise productivity, and encourage professional service, all of which benefit the management of the factory. This development conforms to the constitutional spirit of harmony and cooperation between capital and labor in order to promote productive enterprises. Accordingly, there is no problem of constitutional validity.

J. Y. Interpretation No.190（November 2, 1984）*

ISSUE: Is the Equalization of Land Rights Act constitutional in providing that the competent authority may levy land tax based upon the government-assessed (or publicly notified) value if the parties concerned failed to declare the transfer value within the specified period or the declared value is lower than the assessed value?

RELEVANT LAWS:

Articles 15, 19 and 143 of the Constitution（憲法第十五條,第十九條及第一百四十三條）; Article 48 of the Equalization of Land Rights Act（平均地權條例第四十八條）; J.Y. Interpretation No.180（司法院釋字第一八〇號解釋）.

KEYWORDS:

declaration（申報）, land value tax（土地增值稅）, taxpayer（納稅義務人）, sharing increments with the people in common（漲價歸公）.**

HOLDING: Article 48, Paragraph 2, of the Equalization of Land Rights Act seeks to ensure timely payment of tax by taxpayers and to prevent false declaration, so as to achieve the aim

解釋文：平均地權條例第四十八條第二款之規定，旨在促使納稅義務人按期納稅，防止不實之申報，以達漲價歸公之目的，與憲法第十五條、第十九條及第一百四十三條第三項各規定，

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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of sharing the increment with the people in common. This does not contravene provisions in Articles 15 and 19 and 143, Paragraph 3, of the Constitution.

均無牴觸。

REASONING: Article 48 of the Equalization of Land Rights Act stipulates: "Upon a transfer of land title, the following shall become applicable if, within a specified period, no application is filed for a change of registration and no declaration of the land value at the time of transfer is submitted: 1) the competent authority shall notify the landowner and taxpayer, in writing, to submit such application and declaration within ten days; and 2) if the landowner and taxpayer fail to comply with the foregoing paragraph, or if their declared land value at the time of transfer is lower than the government assessed land value at that time, the competent authority shall notify the parties to adopt the government assessed land value as the land value at the time of transfer, and to levy land value tax." The aforementioned provision seeks to ensure timely payment of tax by taxpayers and to prevent false declaration, so as to achieve

解釋理由書：平均地權條例第四十八條「土地所有權移轉時，未於規定期限內申請權利變更登記並申報土地移轉現值者，依左列規定處理：一、由主管機關以書面通知權利人及義務人，限於十日內補行申請申報。二、權利人及義務人不依前款之規定辦理，或其申報之土地移轉現值，低於當期之公告土地現值者，主管機關應通知當事人以公告土地現值為其土地移轉現值，徵收土地增值稅」之規定，乃在促使納稅義務人按期納稅，防止不實之申報，以達漲價歸公之目的，與憲法第一百四十三條第三項所定「土地價值非因施以勞力資本而增加者，應由國家徵收土地增值稅，歸人民共享之」之本旨相符，亦無牴觸憲法第十五條、第十九條可言。至未依規定期限報稅，經主管機關核課土地增值稅，其因自然漲價所生之差額利益，應向獲得該項利益者徵收，業經本院釋字第一八〇號解釋有案，併予說明。

the aim of sharing the increment with the people in common. This is consistent with the objective in Article 143, Paragraph 3, of the Constitution which provides: "If the value of a piece of land has increased, but not through the exertion of labor or employment of capital, the State shall levy thereon an increment tax, the proceeds of which shall be enjoyed by the people in common," and does not contravene Articles 15 and 19 of the Constitution. If no declaration of tax is made within the specified period, the land value tax, being a profit resulting from the natural increase of land value, assessed by the governing authority should be levied upon the beneficiaries of the said profit. The foregoing has been explained in this Yuan's Interpretation No.180.

J. Y. Interpretation No.191（November 30, 1984）*

ISSUE: Does the directive issued by the Department of Health requiring a pharmacist who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine to apply for a druggist registration and a business license violate the right to work as guaranteed by Article 15 of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）, Article 23, Paragraph 1 of the Drugs and Pharmacists Management Act（藥物藥商管理法第二十三條）, Article 15 of the Pharmacist Act（藥師法第十五條）, Article 7 of the Business Tax Act（營業稅法第七條）.

KEYWORDS:

pharmacist（藥師）, pharmacy（藥局）, prescription drugs（處方用藥）, over-the-counter medicine（成藥）, druggist（藥商）, business license（營業執照）.**

HOLDING: Directive No 286403 issued by the Department of Health in the Executive Yuan on July 18, 1980, requires a pharmacist who opens a

解釋文：行政院衛生署於六十九年七月十八日所發衛署藥字第二八六四〇三號函，關於藥師開設藥局從事調劑外，並經營藥品之販賣業務者，應辦

* Translated by Li-Chih Lin, Esq., J.D.

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pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine, to submit a druggist registration application and to apply for a business license. The purpose of this Directive is to regulate the services of the druggist and to improve the pharmaceutics. This requirement has no adverse effect on the right of work of a pharmacist and is consistent with Article 15 of the Constitution.

理藥商登記及營利事業登記之命令，旨在管理藥商、健全藥政，對於藥師之工作權尚無影響，與憲法第十五條並無牴觸。

REASONING: To regulate the services of the druggist and to improve the pharmaceutics, Article 23, Paragraph 1, of the Drugs and Pharmacists Management Act provides that an applicant for the position of druggist should submit an application of approval to the competent authority and register his/her name and pay for the license fee after obtaining approval from the competent authority. The applicant should not open a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine without obtaining the druggist license. In addition, Article 7 of the Business Tax Act provides that no one should

解釋理由書：按政府為管理藥商、健全藥政，對於經營藥商業務者，於藥物藥商管理法第二十三條第一項規定：「凡申請為藥商者，應申請省（市）衛生主管機關核准登記，繳納執照費，領有許可執照後，方准營業……」，並於營業稅法第七條規定：「營利事業應於開始營業前，向該管稽徵機關申請營業登記……」，故凡從事藥商業務者，均須辦理藥商登記與營業登記，始符立法本意。

operate a business without obtaining a business license from the competent authority. Therefore, anyone who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine must submit a druggist registration application and apply for a business license in compliance with the legislative intent of the law.

Furthermore, Article 15 of the Pharmacist Act states: "Services provided by pharmacists are: (1) sales or administration of pharmaceutical products, (2) prescription and preparation of pharmaceutical products, (3) appraisal of pharmaceutical products, (4) supervision of the manufacturing of pharmaceutical products, (5) supervision of the storage, supply, and packaging of pharmaceutical products, (6) supervision of the manufacturing of cosmetics containing medicine, and (7) to be performed by pharmacists under the law." If the pharmacist is only engaged in the preparation of prescription drugs within the scope of his specialty, the pharmacist is required by the Pharmacist Act to submit a pharmacist registration

又藥師法第十五條第一項規定之藥師業務，計有藥品販賣、調劑、鑑定、藥品製造之監製等七種，如藥師僅從事藥品調劑工作，事屬專門職業範圍，僅須辦理藥師登記即可；倘藥師專營或兼營藥品販賣，則係經營藥商業務，具有營利性質，縱屬藥師之業務範圍，已為藥師之登記，仍難排除藥物藥商管理法及營業稅法之適用，應辦理藥商登記與營業登記，方符管理藥商之本旨。

application. However, if the pharmacist is also engaged in the sales of over-the-counter medicine, the pharmacist is considered to be operating a pharmaceutical business under the law. While engaging in the sales of over-the-counter medicine is also within the scope of his specialty, the pharmacist is nevertheless required by the applicable provisions of the Drugs and Pharmacists Management Act and the Business Tax Act to submit a druggist registration application and to apply for a business license in compliance with the purpose of regulating the services of the druggist.

In sum, it is evident that Directive No 286403 issued by the Department of Health in the Executive Yuan on July 18, 1980, requiring a pharmacist who opens a pharmacy to engage in the preparation of prescription drugs and sales of over-the-counter medicine to submit a druggist registration application and to apply for a business license, is to regulate the services of the druggist and to improve the pharmaceutics. The requirement that the pharmacist who is engaged in the sales of

綜上說明，足見行政院衛生署於六十九年七月十八日發布之衛署藥字第二八六四〇三號函所稱：「藥師開設藥局從事調劑外，依現行法規仍得經營藥品之零售、批發、及輸入、輸出等業務，其經營之業務，如與藥物藥商管理法所稱藥品販賣業務無殊，自應辦理藥商登記及營利事業登記」之命令，旨在依法管理藥商、健全藥政。藥師從事藥品販賣業務，只須申報有關登記，即可開業，對其工作權尚無影響，與憲法第十五條並無牴觸。

over-the-counter medicine must submit an application of approval to the competent authority and register his/her name and pay for the license fee after obtaining the approval from the competent authority, has no adverse effect on the right of work of a pharmacist and is consistent with Article 15 of the Constitution.

J. Y. Interpretation No.192（December 14, 1984）*

ISSUE: Is a court ruling to order payment of costs non-appealable under the Code of Civil Procedure and does it thus constitute a hindrance to the exercise of the people's right of litigation as protected by the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Articles 438 and 483 of the Code of Civil Procedure（民事訴訟法第四百三十八條、第四百八十三條）; Supreme Court's Precedent K. T. No.127 (Sup. Ct.1940)（最高法院二十九年抗字第一二七號判例）.

KEYWORDS:

non-appealable（不得抗告）, court costs（裁判費）.**

HOLDING: A ruling of the court to require a party to make good the payment of the court costs is an order given in the course of proceedings, and is non-appealable as provided by Article 483 of the Code of Civil Procedure. The provision is intended to prevent delay in the process of the litigation and constitutes no

解釋文：法院命補繳裁判費，係訴訟程序進行中所為之裁定，依民事訴訟法第四百八十三條規定不得抗告之判例，乃在避免訴訟程序進行之延滯，無礙人民訴訟權之適當行使，與憲法第十六條並無牴觸。

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* Translated by Raymond T. Chu.

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hindrance to the exercise of the people's right of instituting legal proceedings, and is therefore not in conflict with Article 16 of the Constitution.

REASONING: Every citizen shall have the right of instituting legal proceedings if his right has been injured, and the court shall have the duty to try by process of law. This has been clearly expounded in our Interpretations Yuan-tze Nos. 154 and 160. And the right of instituting legal proceedings must of course be exercised in such a way that the procedure prescribed by law is followed. Article 483 of the Code of Civil Procedure, in providing that "unless otherwise prescribed by law, a ruling given in the course of a proceeding is not appealable," is intended to simplify the procedure and to prevent delay in the process of the litigation. Such a ruling, insofar as it affects the judgment disposing of the case, and if a motion of objection thereto has been filed, is, by making reference to Article 438 of the Act, subject to the adjudication of the court of appeal. While a ruling to order that the party make good the payment of

解釋理由書：按人民於其權利受侵害時，有提起訴訟之權利，法院亦有依法審判之義務，前經本院大法官會議釋字第一五四號、第一六〇號解釋理由書釋明在案。訴訟權之行使，必須循法定程序為之，民事訴訟法第四百八十三條規定：「訴訟程序進行中所為之裁定，除別有規定外，不得抗告」，乃在簡化程序，避免延滯。此種裁定，如牽涉終結本案之裁判者，於對該裁判聲明不服時，參照民事訴訟法第四百三十八條規定，可並受上級法院之裁判，法院命補繳裁判費之裁定，最高法院二十九年抗字第一二七號判例，雖認為不得抗告，但法院如以未繳裁判費，認原告起訴不合法，為駁回其訴之裁定，原告以裁判費數額有爭執為抗告理由時，抗告法院仍須就該項事實及命補繳裁判費之裁定當否一併審究，於人民訴訟權之行使並無影響。從而法院命補繳裁判費，係訴訟程序進行中所為之裁定，依民事訴訟法第四百八十三條規定不得抗告之上開判例，乃在避免訴訟程序進行之延

the court costs is held to be non-appealable by Precedent of the Supreme Court K.T. No. 127 (1940), the plaintiff may, where the case was dismissed by a ruling of the court on the ground that the institution of the action was not in accordance with law because the plaintiff failed to pay the court costs, file an appeal on the ground of disagreement on the amount of court costs. In such a case, the court of appeal will have to consider and determine the question of facts involved as well as whether the ruling to require payment of the court costs is reasonable. Thus, the right of the people to sue is by no means affected. We conclude that a ruling of the court to require making good the payment of the court costs is an order given in the course of proceedings, and is non-appealable as provided by Article 483 of the Code of Civil Procedure, and that the provision is intended to prevent delay in the process of the litigation and constitutes no hindrance to the exercise of the people's right of instituting legal proceedings, and is therefore not in conflict with Article 16 of the Constitution.

滯，無礙人民訴訟權之適當行使，與憲法第十六條並無牴觸。

J. Y. Interpretation No.193（February 8, 1985）*

ISSUE: Shall Interpretations delivered by this Yuan upon the people's petitions be applied to all the cases involving the same petitioners, and the same law or regulation on which the petitions are made therefor?

RELEVANT LAWS:

Articles 171 and 172 of the Constitution（憲法第一百七十一條及第一百七十二條）; Supreme Administrative Court's Precedent P.T. No.610（Supreme Administrative Court 1973）（行政法院六十二年判字第六一〇號判例）; J.Y. Interpretations No.177 and 185（司法院釋字第一七七號及第一八五號解釋）; Administrative Proceedings Act（行政訴訟法）.

KEYWORDS:

Judgment（判決）, precedents（判例）, conflict or contravention（牴觸）, misapplication of law（適用法規錯誤）, petition（聲請）.**

HOLDING: Judgment P.T. No. 610 (Ad. Ct., 1963), with the exclusion of the portions that had been determined as inapplicable by this Yuan's Interpretation

解釋文：行政法院六十二年判字第六一〇號判例，除一部分業經本院釋字第一八五號解釋為不應再予援用外，其餘部分與憲法第七條並無牴觸；

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No. 185, is not in contravention with Article 7 of the Constitution. This Yuan's Interpretation No.177, which states: "Interpretations delivered by this Yuan upon the people's petition shall be equally applicable to the case regarding which the applicant files a petition," may be applied to cases, involving the applicant, which concern the same law and are contended to have infringed upon the Constitution.

至本院釋字第一七七號解釋所稱：「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力」，於聲請人以同一法令牴觸憲法疑義而已聲請解釋之各案件，亦可適用。

REASONING: According to Article 171, Paragraph 2, and Article 172 of the Constitution, laws that are in conflict with the Constitution, and orders that are in conflict with the Constitution or laws, shall be null and void. They refer to the content of the laws that are in contravention with the Constitution and the content of the orders that are in contravention with the Constitution or laws. In the event either of the above applies to any of the laws or orders cited by a final court judge, it shall be regarded as to be clearly erroneous in the application of law or a judgment against the law. Should a question of constitutionality arise, the people may seek relief through lawful procedures,

解釋理由書：按憲法第一百七十一條第二項及第一百七十二條規定，法律與憲法牴觸者無效，命令與憲法或法律牴觸者無效，乃指法律之內容與憲法牴觸，命令之內容與憲法或法律牴觸者而言。確定終局裁判所適用之法律或命令，具有上述情事者，即屬適用法規錯誤或審判違背法令，如發生牴觸憲法之疑義，經人民聲請本院解釋認與憲法意旨不符，其受不利裁判者，得於解釋公布後，依法定程序請求救濟，經本院釋字第一七七號及第一八五號解釋在案。

after proclamation of this Yuan's Interpretation, if the said final court judgment has been determined by this Yuan, upon the people's petition, to be in breach of the Constitution, and the parties affected are aggrieved by it. The foregoing has been explained by this Yuan's Interpretation Nos.177 and 185.

Judgment P.T. No.610 (Ad. Ct., 1963) states: "Article 24 of the Administrative Proceedings Act stipulates that if any provision in Article 496 of the Code of Civil Procedure applies, the relevant parties may appeal against this Court's judgment. Reference to "clearly erroneous in the application of law" in Article 496, Paragraph 1, Subparagraph 1, of the Code of Civil Procedure means the laws cited in the original judgment are in conflict with the existing laws that are applicable to the said case, or with Interpretations or Precedents. Differing views on the law, even if the appellant finds them arguable, cannot be regarded as misapplication of law or used as a reason for retrial." The foregoing explains that laws cited in the original judgment will only satisfy the

行政法院六十二年判字第六一〇號判例謂：「行政訴訟法第二十四條規定，有民事訴訟法第四百九十六條所列各款情形之一者，當事人對於本院判決，固得提起再審之訴，惟民事訴訟法第四百九十六條第一項第一款所謂適用法規顯有錯誤，係指原判決所適用之法規與該案應適用之現行法規相違背，或與解釋、判例有所牴觸者而言。至於法律上見解之歧異，再審原告對之縱有爭執，要難謂為適用法規錯誤，而據為再審之理由。」係在說明原判決所適用之法規，與判決當時該案應適用之有效法規、解釋、判例有所牴觸，始為具備「適用法規顯有錯誤」之再審要件，以兼顧人民權益之保障及法律秩序之安定。該項判例，除業經本院釋字第一八五號解釋認為：「確定終局裁判所適用之法律或命令，或其適用法律、命令所

element of appeal, being "clearly erroneous in the application of law" if they are in conflict with the applicable laws, interpretations and precedents existing at the time. This ensures the protection of the people's rights and maintenance of social welfare. Except for the section which opines: "If laws or orders cited in final and binding judgments or the interpretations of such laws or orders are determined as being in conflict with the Constitution by this Yuan upon the people's petition for an interpretation, the person aggrieved by such final and binding judgment may apply for a retrial or extraordinary appeal pursuant to the said interpretation. That is no longer a matter of differing views as to the law. The incongruent segments in Judgment P.T. No. 610 (Ad.Ct., 1963) shall forthwith cease to be applicable", the remaining parts of the said Judgment are not in contravention with Article 7 of the Constitution.

表示之見解，經本院依人民聲請解釋認為與憲法意旨不符，其受不利確定終局裁判者，得以該解釋為再審或非常上訴之理由，已非法律見解歧異問題。行政法院六十二年判字第六一〇號判例，與此不合部分應不予援用」部分外，其餘部分，與憲法第七條並無牴觸。

With respect to this Yuan's Interpretation No.177 and its statement that: "Interpretations delivered by this Yuan upon the people's petition shall be equally ap-

至本院釋字第一七七號解釋文所稱：「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力。」旨在使聲請人聲請解釋憲法之結果，於

plicable to the case regarding which the applicant files a petition", it permits the applicant to seek relief according to lawful procedures if the results of an interpretation of the Constitution petition by the applicant are advantageous to such applicant. If the applicant is involved in several cases concerning the same law which is contended to have infringed upon the Constitution, these cases should be joined in the petition; those that are not joined but have met the legal requirements set forth in the interpretation, around the time of its proclamation, may also be applicable. The abovementioned Interpretation refers to an Interpretation delivered by this Yuan upon the people's petition. Thus, it may apply to cases, involving the applicant, which concern the same law and are contended to have infringed upon the Constitution. The foregoing is not in contravention with Article 7 of the Constitution.

聲請人有利者，得依法定程序請求救濟，聲請人如有數案發生同一法令牴觸憲法疑義，應合併聲請解釋；其於解釋公布前先後提出符合法定要件而未合併辦理者，當一併適用。上開解釋，係指本院依人民聲請所為之解釋，於聲請人以同一法令牴觸憲法疑義而已聲請解釋之各案件，亦可適用，與憲法第七條規定，自無不合。

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋陳大法官世榮提出不同意見書。

J. Y. Interpretation No.194（March 22 , 1985）*

ISSUE: Does the mandatory death penalty according to Article 5, Paragraph 1, of the Drug Control Act during the Period for Suppression of the Communist Rebellion violate the Constitution?

RELEVANT LAWS:

Articles 7 and 23 of the Constitution（憲法第七條、第二十三條）; Article 5 , Paragraph 1 of the Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion（戡亂時期肅清煙毒條例第五條第一項）.

KEYWORDS:

death penalty（死刑）, drug（毒品）, constitutional interpretation（解釋憲法）.**

HOLDING: Article 5, Paragraph 1, of the Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion reads: “The death penalty will be imposed on those who traffic in illegal drugs,” which is indeed rigorous. However, this provision was enacted to eliminate drug trafficking in order to

解釋文：戡亂時期肅清煙毒條例第五條第一項規定：販賣毒品者，處死刑，立法固嚴，惟係於戡亂時期，為肅清煙毒，以維護國家安全及社會秩序之必要而制定，與憲法第二十三條並無牴觸，亦無牴觸憲法第七條之可言。

* Translated by Dr. R.T.Liao.

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maintain national security and social order during the period for suppression of the communist rebellion. It is not contrary to either Article 7 or 23 of the Constitution.

REASONING: The Narcotics Elimination Act during the Period for Suppression of the Communist Rebellion is a special criminal law of which Article 5, Paragraph 1, provides: "The death penalty will be imposed on those who traffic in illegal drugs." It is indeed a rigorous rule. However, if the drug traffic had not been outlawed during the period for suppression of the communist rebellion, public health, national security and social order would have been endangered. This provision is therefore not contrary to Article 23 of the Constitution. Furthermore, the application of Article 5, Paragraph 1, of the Act does not discriminate by gender, religion, race, class or political party. Thus, this provision is not contrary to Article 7 of the Constitution. It should also be noted that the applicant's claim that the final and binding judgment T. F. T. No. 23 (Sup. Ct., 1983) bases its evidence solely on the words of the applicant and other

解釋理由書：戡亂時期肅清煙毒條例為特別刑法，其第五條第一項：「販賣、運輸、製造毒品或鴉片者，處死刑」之規定，立法固嚴，惟因戡亂時期，倘不澈底禁絕煙毒，勢必危害民族健康、國家安全及社會秩序，故該項規定與憲法第二十三條並無牴觸。又該條例第五條第一項規定，並不因男女、宗教、種族、階級、黨派之不同而異其適用，亦無牴觸憲法第七條之可言。至聲請人指摘最高法院七十二年度台覆字第二三號確定終局判決，係以聲請人之自白及共同被告之不利自白，作為有罪判決之唯一證據等情，不在解釋憲法範圍以內，併予敘明。

defendants is not within the ambit of constitutional interpretation.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋姚大法官瑞光提出不同意見書。

J. Y. Interpretation No.195（May 31, 1985）*

ISSUE: Is the provision of Paragraph 2 of Article 25 of the Enforcement Rules of the Act of Encouragement of Investment in conflict with the Constitution?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 17, Paragraph 1, Subparagraphs 1 and 2 of the Act of Encouragement of Investment（獎勵投資條例第十七條第一項第一款、第二款）; Articles 7 and 15 of the Income Tax Act（所得稅法第七條、第十五條）; Article 25, Paragraph 2, of the Enforcement Rules of the Act of Encouragement of Investment（獎勵投資條例施行細則第二十五條第二項）.

KEYWORDS:

income tax（所得稅）, encouragement of investment（獎勵投資）, distribution of earnings（盈餘所得分配）.**

HOLDING: The provision of Paragraph 2 of Article 25 of the Enforcement Rules of the Act of Encouragement of Investment promulgated in 1978 is not clear enough and may cause misapplication of Article 15 of the Income Tax Act,

解釋文：中華民國六十七年之獎勵投資條例施行細則第二十五條第二項之規定，有欠明晰，易滋所得稅法第十五條之誤用，致與獎勵投資條例之立法精神有所不符，惟尚不發生牴觸憲法第十九條之問題。

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* Translated by Dr. C.Y. Huang of Tsar & Tsai Law Firm.

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which is inconsistent with the legislative intent of the Act of Encouragement of Investment. However, there is no contradiction with Article 19 of the Constitution.

REASONING: Article 19 of the Constitution provides: "The people shall have the duty of paying taxes in accordance with law." Under Article 17, Paragraph 1, Subparagraphs 1 and 2 of the Act of Encouragement of Investment promulgated on July 26, 1977, a non-resident individual who obtains earnings distributed to shareholders by a company within the territory of the R.O.C. is permitted to withhold and pay income tax from the source in accordance therewith, and the provision of filing a tax return under the Income Tax Act does not apply. The legislative purpose of the said provision of law is to attract foreign capital by lessening the tax burdens of investors and enhancing the willingness of overseas Chinese and foreign nationals to make investments. Therefore, the portion of income tax under the Act of Encouragement of Investment is a special law of the Income

解釋理由書：憲法第十九條規定：「人民有依法律納稅之義務」，中華民國六十六年七月二十六日公布之獎勵投資條例第十七條第一項第一、二兩款，對於非中華民國境內居住之個人而有由中華民國境內之公司分配與股東之盈餘所得者，准其依同條項各該款之規定，就源扣繳所得稅，不適用所得稅法結算申報之規定，原在藉減輕投資人之稅負，提高華僑及外人投資之意願，以達成吸引國外資本之立法目的。是獎勵投資條例有關所得稅部分，乃所得稅法之特別法，其因投資而受獎勵之人民之納稅義務，自應以上開獎勵投資條例為主要根據。

Tax Act. The tax payment duty of the people who are encouraged to make investments should be mainly based on the above-mentioned Act of Encouragement of Investment.

If both husband and wife reside in a foreign country, and they respectively apply and are approved for investment, and their investment meets the provisions of Subparagraph 1 of Paragraph 1 of Article 17 of the above-mentioned Act for the Encouragement of Investment, even though one of them acts as a director, supervisor or manager of the enterprise in which he or she invests and stays in the R.O.C. for 183 days in a taxable year to manage and operate such enterprise so that he or she should be regarded as an individual residing in the R.O.C. and file annual consolidated income tax in accordance with Subparagraph 2 of Paragraph 2 of Article 7 of the Income Tax Act, as his or her spouse meets the provision of Subparagraph 1 of Paragraph 1 of Article 17 of the Act of Encouragement of Investment, such spouse is entitled to the encouragement. The tax on the income

夫妻雙方如居留國外，分別依法申請投資，並經核准，而均合於上開獎勵投資條例第十七條第一項第一款之規定，雖夫妻之一方因擔任投資事業之董事、監察人或經理人，為經營管理其投資事業，於一課稅年度內在中華民國境內居留一百八十三天，認為應依所得稅法第七條第二項第二款之規定，視同中華民國境內居住之個人而辦理結算申報綜合所得稅，但他方既合獎勵投資條例第十七條第一項第一款規定，即應有單獨享受此項獎勵之權利，其分配之盈餘所得，自應就源扣繳所得稅，不適用結算申報之規定，始合國家獎勵投資之目的。

derived from the distribution of the earnings should be withheld and paid at the source, and the provision regarding filing an annual income tax return should not apply so as to meet the purpose of encouragement of investment of the nation.

Paragraph 2 of Article 25 of the 1978 Enforcement Rules of the Act of Encouragement of Investment provides: "The provision regarding exemption from filing an annual income tax return shall not apply to the income derived from earnings distributed by a company or distributable to a partner under Article 17 of the Act which should be filed by the individual residing in the R.O.C." The meaning of this provision is not clear, and the application of this provision may cause the misapplication of Article 15 of the Income Tax Act, which provides: "Where the spouse of a taxpayer…has any of the income under the preceding Article, the taxpayer shall include such income in his income return for taxation." As a result, the husband and wife who respectively apply and are approved for investment have to include in the tax return the

中華民國六十七年之獎勵投資條例施行細則第二十五條第二項規定：「本條例第十七條所稱公司分配之盈餘或合夥人應分配之盈餘所得，依法應由在中華民國境內之個人申報者，不適用免辦結算申報之規定」，意義有欠明晰，致適用此項施行細則，易於導致所得稅法第十五條「納稅義務人之配偶……有前條各類所得者，應由納稅義務人合併申報課稅」規定之誤用；使分別依法請准投資之夫妻，必須就其投資事業分配之盈餘所得，合併申報所得稅，增加投資人之稅負，與上開獎勵投資條例之立法精神有所不符，惟尚不發生牴觸憲法第十九條之問題。

income from distribution of earnings by the invested enterprise so that the investor's tax burden increases, which is inconsistent with the legislative intent of the above-mentioned Act for the Encouragement of Investment. However, Article 19 of the Constitution is not contradicted.

J. Y. Interpretation No.196（June 14, 1985）*

ISSUE: Are the relevant provisions of the Enforcement Rules of the Land Tax Act regarding the calculation of the total amount of increased value of land unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Articles 28,32,34,49 and 58 of the Land Tax Act（土地稅法第二十八條、第三十二條、第三十四條、四十九條及第五十八條）.

KEYWORDS:

legalism on taxation（租稅法律主義）, fair rent taxation（租稅公平原則）, land value increment tax（土地增值稅）, total incremental value of land calculated（土地漲價總數額之計算）.**

HOLDING: Article 34 of the Enforcement Rules of the Land Tax Act stipulates: "Where the total incremental value of land is calculated based on Article 32 of this act, the base shall be the original provided land price adjusted in accordance with the latest monthly publicly announced general wholesale price

解釋文：土地稅法施行細則第三十四條規定：「依本法第三十二條規定計算土地漲價總數額時，應按土地權利人及義務人向當地地政事務所申報移轉現值收件當時最近一個月已公告之一般躉售物價指數調整原規定地價及前次移轉時核計土地增值稅之現值」，旨在使土地漲價總數額之計算，臻於公平

* Translated by Louis Chen, Professor of Law.

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index during the time of acceptance by the competent land administration office in which the landowner and obligor declared their current transfer value and the current value of the land value increment tax assessed during previous transfer". The objective is to ensure the fair and reasonable calculation of the total incremental value of land and thus there is no contradiction to Article 19 of the Constitution.

合理，與憲法第十九條並無牴觸。

REASONING：When a seller sells an unsorted and unsubdivided parcel of land, there are no limitation rules to follow concerning the application of rights modification registration and declaration of current transfer value for payment of the land value increment tax where the land has been handed over to the buyer for use. If after the land is sorted and subdivided by the competent land administration authority, and before the buyer files for modification of rights registration, the government-declared current value of the land has increased, then the proceeds arising from the natural incremental value shall neither be the proceeds acquired by the seller nor by the original

解釋理由書：土地出賣人出賣未經整理劃分之土地，無從依限申請權利變更登記及申報移轉現值，繳納土地增值稅，而已將土地交付買受人使用，俟地政機開整理劃分完畢，可辦土地權利變更登記時，土地公告現值提高，其因自然漲價所生之利益，既非出賣人即原納稅義務人所獲得，而為買受人所享有。該部分之土地增值稅，依本院大法官會議釋字第一八〇號解釋，應於其後有法定徵收原因時，向獲得該項利益者徵收，始合於租稅公平之原則。

taxpayer, but those enjoyed by the buyer. Such portion of the land value increment tax shall, according to the explanation of the High Court Conference of our Yuan Interpretation No.180, be levied on the beneficiary only when there is a subsequent legal expropriation reasoning to conform with the principle of fair rent taxation.

After the land ownership is transferred, the land value increment tax shall be levied based on the total incremental value of land (See Article 28 of the Land Tax Act). Where there is a change in the general whole price index, the total incremental value of land in accordance with the provision of Article 32 of the Land Tax Act, the original provided land price and the current value of the land value increment tax determined during the previous transfer shall be calculated based on the adjusted wholesale price index announced by the government. This is done to lessen the land increment value which has only been formally increased due to inflation, and to make the total incremental value of land consistent with the

土地所有權移轉時，土地增值稅應按其土地漲價總數額徵收之（土地稅法第二十八條），遇一般物價有變動時，土地漲價總數額，依土地稅法第三十二條規定，原規定地價及前次移轉時核計土地增值稅之現值，均應按政府發布之物價指數調整後計算之，期在消除因通貨膨脹所虛增之土地增值，使土地漲價總數額，能與實情相符合。而土地稅法施行細則，係依土地稅法第五十八條所訂定，其第三十四條規定：「依本法第三十二條規定計算土地漲價總數額時，應按土地權利人及義務人向當地地政事務所申報移轉現值收件當時最近一個月已公告之一般躉售物價指數調整原規定地價及前次移轉時核計土地增值稅之現值」，所稱收件當時，係指土地稅法第四十九條所規定之時期而言，旨在

actual matter. Article 34 of the Enforcement Rules of the Land Tax Act, which is in accordance with Article 58 of the Land Tax Act, states: "Where the total incremental value of land is calculated based on Article 32 of this act, the base shall be the original provided land price adjusted in accordance with the latest monthly publicly announced general wholesale price index during the time of acceptance by the competent land administration office in which the landowner and obligor declared their current transfer value and the current value of the land value increment tax assessed during previous transfer". The term "during the time of acceptance" refers to the time period as provided for in Article 49 of the Land Tax Act, the objective of which is to ensure the fair and reasonable calculation of the total incremental value of land. Thus, there is no contradiction to Article 19 of the Constitution.

使土地漲價總數額之計算，臻於公平合理，與憲法第十九條並無牴觸。

J. Y. Interpretation No.197（July 26, 1985）*

ISSUE: Is the Supreme Administrative Court precedent constitutional in holding that a motion for retrial on the ground of errors in the original judgment must be filed within two months from the time of receipt of the issuance of such judgment?

RELEVANT LAWS:

Articles 29 and 30, of the Administrative Proceedings Act（行政訴訟法第二十九條、第三十條）; Supreme Administrative Court precedent T. T. 23 (Supreme Administrative Court, 1972)（行政法院六十一年度裁字第二十三號判例）; Supreme Administrative Court order T. T. 27 (Supreme Administrative Court, 1983)（行政法院七十二年度裁字第二十七號裁定）.

KEYWORDS:

error in law（適用法規錯誤）, service of judgment（判決之送達）, statutory cause for a retrial（法定再審事由）.**

HOLDING: The Supreme Administrative Court held in its precedent T. T. 23 (Supreme Administrative Court, 1972) to the effect that whether there was any error in law in the judgment of the lower court was known to the party at the

解釋文：行政法院六十一年裁字第二十三號判例略以：原判決適用法規有無錯誤，當事人於收受判決之送達時，即已知悉，不生知悉在後之問題。此項判例，並未涉及本院就確定終局裁判適用之法規依人民聲請而為解釋後，

* Translated by Raymond T. Chu.

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time of receipt of the issuance of such judgment and it thus gave rise to no issue of whether the party knew of such error afterwards. The precedent is irrelevant in regard to counting the period wherein the party may legally file a motion for a new trial on the ground of and after an interpretation delivered by this Yuan upon a petition filed by the people with respect to the application of law in an irrevocable final decision, and it gives rise to no issue of constitutionality.

該聲請人據以依法請求再審期間之計算，尚不發生牴觸憲法問題。

REASONING: The Administrative Proceedings Act clearly provides in Articles 29 and 30 that a party may file a motion for a new trial if there exists in the judgment delivered by an administrative court any circumstance giving rise to a statutory cause for a new trial, provided that the motion is filed within a period of two months as of the time of issuance of such judgment, unless such circumstance occurs or is known afterwards, in which case the period shall be counted from the time of occurrence of the circumstance or the same is known. Whether the circumstance alleged by the party as a legal

解釋理由書：行政法院之裁判，具有法定再審事由者，當事人得請求再審，但應於裁判送達時起二個月內為之，其事由發生在後或知悉在後者，前項期間自發生或知悉時起算，行政訴訟法第二十九條及第三十條規定甚明。當事人主張再審之事由，發生在後或知悉在後者，應由法院依職權調查認定之。行政法院七十二年度裁字第二十七號裁定所依據之同院六十一年度裁字第二十三號判例略以：原判決適用法規有無錯誤，其事由於判決效力發生之時，即已存在，而當事人於收受判決之送達時，即已知悉，不生知悉在後之問題。此項判例，並未涉及本院就確定終局裁

ground for a new trial occurs or is known afterwards is subject to investigation to be carried out by the court ex officio. The Supreme Administrative Court Precedent T. T. 23 (Supreme Administrative Court, 1972), on which the Supreme Administrative Court order T. T. 27 (Supreme Administrative Court, 1983) was based, held to the effect that the circumstance involving the question whether there was any error in law in the original judgment existed at the time when the judgment became effective and was known to the party at the time of receipt of the issuance of such judgment, and thus it gave rise to no question of whether the party knew of such error afterwards. The Precedent is irrelevant in regard to counting the period wherein the party may legally file a motion for a new trial on the ground of and after an interpretation delivered by this Yuan upon a petition filed by the people with respect to the application of law in an irrevocable final decision, and it gives rise to no issue of constitutionality.

判適用之法規依人民聲請而為解釋後，該聲請人據以依法請求再審期間之計算，尚不發生牴觸憲法問題。

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋陳大法官世榮提出不同意見書。

J. Y. Interpretation No.198（August 30, 1985）*

ISSUE: Is the Income Tax Act constitutional in defining, under Article 7, Paragraph 2, that a person who has a domicile and regularly resides in the Republic of China is an "individual residing within the republic of China" for the purpose of filing final tax return?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 2, Paragraph 1; Article 7, Paragraph 2; and Article 71 of the Income Tax Act（所得稅法第二條第一項、第七條第二項、第七十一條）.

KEYWORDS:

total annual consolidated income（全年綜合所得）, domicile（住所）, taxable year（課稅年度）.**

HOLDING: Paragraph 2 of Article 7 of the Income Tax Act is intended to define the term "an individual residing within the Republic of China" used in said Act to make it easy for taxpayers to file final tax return as required by law, and is in agreement with the principle of taxation

解釋文：所得稅法第七條第二項，係明定同法所稱「中華民國境內居住之個人」之意義，以便利納稅義務人依法自行辦理結算申報，符合租稅法律主義，與憲法第十九條並無牴觸。

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by law. It is hence not contradictory to Article 19 of the Constitution.

REASONING: The Constitution provides in Article 19 that "the people shall have the duty to pay tax in pursuance of law," whereby the principle of "the principle of taxation by law" is enunciated. The Income Tax Act is a legislation by which the state levies upon the people tax on their income. Under Article 2, Paragraph 1, and Article 71 of the Act, every individual residing within the Republic of China is required to file final tax return for his total annual consolidated income or business income. Article 7, Paragraph 2, of the same Act provides: " The term 'individual residing within the Republic of China' used in this Law denotes: (1) a person who has a domicile within the Republic of China and regularly resides within the Republic of China; and (2) a person who has no domicile within the Republic of China but has resided within the Republic of China for a total of 183 days or more during a particular taxable year." The standard for determining which one of the two categories an

解釋理由書：按憲法第十九條規定「人民有依法律納稅之義務」，乃揭示「租稅法律主義」之原則。所得稅法係規定國家對於人民課徵所得稅之法律，依同法第二條第一項及第七十一條規定，凡中華民國境內居住之個人，均應就其全年綜合所得或營利事業所得，辦理結算申報。又同法第七條第二項規定：「本法稱中華民國境內居住之個人，指左列二種：一、在中華民國境內有住所，並經常居住中華民國境內者。二、在中華民國境內無住所，而於一課稅年度內在中華民國境內居留合計滿一百八十三天者」，乃以納稅義務人在中華民國境內有無住所為標準，分別就「中華民國境內居住之個人」乙詞所設定義，兩款情形不同，不容彼此混淆。故依第一款規定，祇須納稅義務人在中華民國境內有住所，並有經常居住之事實，縱於一課稅年度內未居住屆滿一百八十三天，亦應認其為「中華民國境內居住之個人」，從而該項規定與租稅法律主義並無違背。

"individual residing within the Republic of China" belongs in under such definition is whether he or she has a domicile within the Republic of China. The conditions under the two subparagraphs cited above are different and should not be confused. Thus, under Paragraph 1 (1), insofar as a taxpayer has a domicile within the Republic of China, and there exists the fact of his regularly residing therein, he is deemed to be an "individual residing within the Republic of China" although he may not have lived in this country for 183 days. This provision is not contrary to the principle of taxation by law.

In conclusion, we hold that Paragraph 2 of Article 7 of the Income Tax Act is intended to define the term "individual residing within the Republic of China" used in said Act to make it easy for taxpayers to file final tax return as required by law, and is in agreement with the fundamentals of the principle of taxation by law. It is hence not contradictory to Article 19 of the Constitution.

綜上所述，所得稅法第七條第二項係明定同法所稱「中華民國境內居住之個人」之意義，以便利納稅義務人依法自行辦理結算申報，符合租稅法律主義本旨，與憲法第十九條並無牴觸。

J. Y. Interpretation No.199（September 27, 1985）*

ISSUE: Should the persons who are elected to the National Assembly pursuant to the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion take an oath under the Organic Act of National Assembly or under the of Oath Act like other original Assemblymen?

RELEVANT LAWS:

Article 4 of the Organic Act of the National Assembly（國民大會組織法第四條）; Article 3 of the Oath Act（宣誓條例第三條）; Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion（動員戡亂時期臨時條款）.

KEYWORDS:

National Assembly（國民大會）, members of the National Assembly（國民大會代表）, public officials（公職人員）.**

HOLDING: The provision for an oath in Article 4 of the Organic Act of National Assembly is an oath to the exercise of duty. Additional members of the

解釋文：國民大會組織法第四條規定之宣誓，係行使職權之宣誓，依動員司法院大法官解釋彙編戡亂時期臨時條款增加名額選出之國民大會代表，

* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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National Assembly who are elected pursuant to the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion are to exercise their authority together with the original members, thus they should swear an oath in accordance with the aforementioned provision.

既與國民大會原有代表依法共同行使職權，自應依上開規定宣誓。

REASONING: The objective of requiring public officials to be sworn into office is to make a public manifestation of the officials' self discipline and determination in the exercise of their authority, which shall conform to the Constitution, and that they will be loyal to their office.

解釋理由書：查公職人員之宣誓，旨在使宣誓人就其行使職權，應恪遵憲法、盡忠職務及自我約束之事項及決心，予以公開表示，俾昭信守。

Article 4, Paragraph 1, of the Organic Act of National Assembly provides: "Delegates to the National Assembly shall swear an oath at the commencement of the meetings of the National Assembly in the following words: I solemnly swear that I will abide by the Constitution and will follow the law when exercising my authority in representation of the people of the Republic of China." The aforementioned provision refers to the oath that the

國民大會組織法第四條第一項規定：「國民大會代表，於國民大會舉行開會式時，應行宣誓，其誓詞如左：某某謹以至誠，恪遵憲法，代表中華民國人民依法行使職權，謹誓」，係指國民大會代表於開會行使職權時，應行宣誓而言，惟該條與宣誓條例第三條具有特別法與普通法之關係，此就宣誓條例第三條第一項對國民大會代表之宣誓，設有除外規定，甚為明瞭，基於特別法優於普通法之原則，國民大會代表之宣

Delegates to the National Assembly should make before exercising their authority during meetings. Its relationship with Article 3 of the Oath Act is that of a special law and an ordinary law. Although Article 3, Paragraph 1, of the Oath Act has an exclusionary provision with regard to the oath taken by the Delegates to the National Assembly, Article 4 of the Organic Act of National Assembly applies in the circumstance because it is a special law, which prevails over ordinary laws. Thus, the Delegates to the National Assembly need not swear under the Oath Act.

誓，自應適用國民大會組織法第四條之規定，毋庸另依宣誓條例之規定宣誓。

The Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion is enacted through lawful procedures prescribed by the Constitution. Additional Delegates to the National Assembly elected under the said Act are to exercise their authority together with the original Delegates, thus they should swear an oath in accordance with Article 4 of the Organic Act of National Assembly.

動員戡亂時期臨時條款乃依憲法所定程序而制定，依該條款增加名額選出之國民大會代表，既與國民大會原有代表依法共同行使職權，自應依國民大會組織法第四條規定宣誓。

J. Y. Interpretation No.200（November 1, 1985）*

ISSUE: Is the provision of the Act of the Supervision of Temples, prescribing that the competent authority may replace an abbot of a temple if the temple delayed in registering the fundraising and/or construction of the temple, in violation of the Constitution?

RELEVANT LAWS:

Articles 5, 6 and 11 of the Act of the Supervision of Temples（監督寺廟條例第五條、第六條、第十一條）.

KEYWORDS:

change of temple administrator（寺廟管理人之撤換）, property rights（財產權）.**

HOLDING: The legal purpose of the rules of Article 11 of the Act of the Supervision of Temples, regarding the replacement of the temple administrator where the raising of funds for construction of a temple is concerned, is consistent with the Act of the Supervision of Temples, which is to protect the temple property and to promote relevant public inter-

解釋文：寺廟登記規則第十一條撤換寺廟管理人之規定，就募建之寺廟言，與監督寺廟條例第十一條立法意旨相符，乃為保護寺廟財產，增進公共利益所必要，與憲法保障人民財產權之本旨，並無牴觸。

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* Translated by Louis Chen, Professor of Law.

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est. Therefore, such objective is not in contravention with the purpose of the Constitution to protect the property rights of the people.

REASONING: As provided under Article 5 of the Act of the Supervision of Temples: "A record of the assets and property of a temple should be filed with the government for registration" Article 6 of the same statute also provides: "The assets and property of a temple belong to the temple, and shall be administered by the headmaster or administrator of the temple. Any monk in the temple who has the administrative authority, no matter what title he is using, shall be considered a headmaster or an administrator. However, a non-citizen of the Republic of China cannot be a headmaster or administrator." Any person who violates the preceding provision shall be subject to the preceding section of Article 11 of the same act, "The government authority in charge may replace the headmaster or administrator". Even if the person who administers the temple is not a monk, and his title is not that of headmaster, if such

解釋理由書：按監督寺廟條例第五條規定：「寺廟財產及法物，應向該管地方官署呈請登記」。同條例第六條規定：「寺廟財產及法物為寺廟所有，由住持管理之。寺廟有管理權之僧道，不論用何名稱，認為住持。但非中華民國人民，不得為住持」。違反上述規定者，依同條例第十一條前段規定，「該管官署得革除其住持之職」。寺廟管理者雖非僧道，亦未用住持名稱，如實係對寺廟有管理權之人，依上述第六條立法意旨，自仍有上述第十一條之適用。

person has actual administrative power, the legal objective of the preceding Article 6 shall follow, and the above provision of Article 11 shall still apply.

The Ministry of the Interior stipulated the Regulation Governing the Registration of Temples based on its legal authority and Article 11 of said Regulation states, "Where a temple has been given notice for late filing of registration, and a newly established temple has not yet filed for registration, the temple authority shall be required to register; and if there is no special reason for such delay, the authority in charge may replace the headmaster or administrator" For fundraising of temple construction, the legal objective is consistent with the legal purpose of the aforementioned Act of the Supervision of Temples, which is to protect the property and assets of the temple, and to enhance the necessary public interest. Thus, it is not contradictory to the core objective of the Constitution which is to protect the property rights of the people. With regards to the replacement of the dismissed headmaster or administrator, who has been in

內政部依法定職權訂定寺廟登記規則，其第十一條規定：「寺廟於通告後逾期延不登記及新成立寺廟不聲請登記者，應強制執行登記，如無特殊理由，並得撤換其住持或管理人」，就募建之寺廟言，與前開監督寺廟條例之立法意旨相符，乃為保護寺廟財產，增進公共利益所必要，與憲法保障人民財產權之本旨，並無牴觸。至募建寺廟之住持或管理人經革除後更換問題，業經本院院字第一七八八號解釋在案。

charge of fundraising for temple construction, this issue is explained in our Yuan's Interpretation No. 1788.

This interpretation is mainly intended to address the issue of fundraising for temple construction. Any other issues regarding temples are beyond the scope of this interpretation.

本件解釋，係就募建寺廟而為，其他寺廟不在解釋範圍，併此說明。

J. Y. Interpretation No.201（January 3, 1986）*

ISSUE: The Administrative Court in its precedent held that the imposition of administrative sanctions on public functionaries, incommensurable with the damages incurred by civilians, is not subject to administrative appeals or litigations. Does the said precedent contravene the people's rights of litigation protected by the Constitution?

RELEVANT LAWS:

J.Y. Interpretation No.187（司法院釋字第一八七號解釋）; Interpretation Yuan-Tze No. 339 and 1285（司法院院字第三三九號及第一二八五號解釋）; Supreme Administrative Court's Precedent P.T. No.98 (Supreme Administrative Court 1961)（行政法院五十年判字第九八號判例）; Supreme Administrative Court's Precedent P.T. No.229 (Supreme Administrative Court 1964)（行政法院五十三年判字第二二九號判例）.

KEYWORDS:

public functionaries（公務人員）, retirement pension（退休金）, appeal（訴願）, administrative litigations（行政訴訟）.**

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* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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HOLDING: It has already been explained in this Yuan's Interpretation No. 187 that public functionaries may initiate appeals or administrative litigations when making applications for retirement and pensions pursuant to the law. The assertion in the first paragraph of Precedent P.T. No.229 (Ad. Ct., 1964) that "the imposition of administrative acts on public functionaries is within the scope of administration, and is incommensurable with the losses incurred by civilians upon the imposition of punishment by the relevant authority" is too broad. Anything contained in the foregoing Precedent that is irreconcilable with the said Interpretation shall be forthwith invalidated upon declaration of the said Interpretation. References to applications for termination of service or retirement by soldiers in the said Precedent do not concern public functionaries' applications for retirement and pensions pursuant to the law -- they are irrelevant to the objective of application for this Interpretation and are beyond the scope of interpretation hereof.

解釋文：公務人員依法辦理退休請領退休金，非不得提起訴願或行政訴訟，經本院釋字第一八七號解釋予以闡釋在案。行政法院五十三年判字第二二九號判例前段所稱：「公務員以公務員身分受行政處分，純屬行政範圍，非以人民身分因官署處分受損害者可比，不能按照訴願程序提起訴願」等語，涵義過廣，與上開解釋意旨不符部分，於該解釋公布後，當然失其效力。至上開判例，有關軍人申請停役退伍事件部分，並未涉及公務人員依法辦理退休請領退休金，與本件聲請意旨無關，不在解釋範圍。

REASONING: Applications by

解釋理由書：按公務人員依法

public functionaries for retirement and pensions pursuant to the law are an exercise of legal rights in accordance with the law. Such rights shall be protected, and public functionaries may initiate appeals or administrative litigations where there is any dispute arising therefrom. The relevant parts in this Yuan's Interpretation Yuan-tze Nos. 339 and 1285 shall be amended accordingly; this Yuan's Interpretation No.187 has already stated that the sections in Precedent P.T. No.98 (Ad.Ct., 1961) that are inconsistent with the present Interpretation are no longer applicable. The assertion in the first paragraph of Precedent P. T. No.229 (Ad. Ct., 1964) that "the imposition of administrative acts on public functionaries is within the scope of administration, and is incommensurable with the losses incurred by civilians upon the imposition of punishment by the relevant authority" does not differentiate between the nature of administrative acts imposed on public functionaries. The assertion is too broad, thus anything contained in the foregoing Precedent that is irreconcilable with the said Interpretation shall be forthwith invalidated

辦理退休請領退休金，乃行使法律基於憲法規定所賦予之權利，應受保障，如有爭議，在程序上非不得依法提起訴願或行政訴訟。本院院字第三三九號及院字第一二八五號解釋有關部分，應予變更；行政法院五十年判字第九十八號判例，與此意旨不合部分，應不再援用等事項，經本院釋字第一八七號解釋予以闡釋在案。行政法院五十三年判字第二二九號判例前段所稱：「公務員以公務員身分受行政處分，純屬行政範圍，非以人民身分因官署處分受損害者可比，不能按照訴願程序提起訴願」等語，未就因公務人員身分所受行政處分之內容分別論斷，涵義過廣，與上開解釋意旨不符部分，於該解釋公布後，依本院釋字第一八五號解釋，當然失其效力。至上開判例，有關軍人申請停役退伍事件部分，並未涉及公務人員依法辦理退休請領退休金，與本件聲請意旨無關，不在解釋範圍。

upon declaration of and in accordance with this Yuan's Interpretation No.185. References to applications for termination of service or retirement by soldiers in the said Precedent do not concern public functionaries' applications for retirement and pensions pursuant to the law — they are irrelevant to the objective of application for this Interpretation and are beyond the scope of interpretation hereof.

J. Y. Interpretation No.202（February 14, 1986）*

ISSUE: Should imprisonment terms imposed for offences committed after a final and binding judgment run concurrently with the sentences for multiple offences meted out by the said final and binding judgment and be subject to the twenty-year limitation on imprisonment terms?

RELEVANT LAWS:

Articles 33, 50, and 51 of the Criminal Code（刑法第三十三條、第五十條及第五十一條）; J.Y. Interpretation No.98（司法院釋字第九八號解釋）; J. Y. Interpretation Yuan-Tze No.626（司法院院字第六二六號解釋）.

KEYWORDS:

Imprisonment（有期徒刑）, life imprisonment（無期徒刑）, combination of sentences for multiple offence（數罪併罰）, final court decision（裁判確定）.**

HOLDING: Offences committed after a final and binding judgment are not to be included in the combination of sentences for multiple offences provisions. The foregoing has been explained in this Yuan's Interpretation No. 98. Thus, if a

解釋文：裁判確定後另犯他罪，不在數罪併罰規定之列，業經本院釋字第九十八號解釋闡釋在案，故裁判確定後，復受有期徒刑之宣告者，前後之有期徒刑，應予合併執行，不受刑法第五十一條第五款但書關於有期徒刑

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defendant has been sentenced to imprisonment for offences committed after a final court decision, both sentences shall run concurrently, and shall not be subject to the proviso of a twenty-year maximum imprisonment term in Article 51, Paragraph 5, of the Criminal Code. As for the proviso under Article 33, Subparagraph 3, of the Criminal Code, it places a limit of twenty years' imprisonment for the aggravation of one conviction, whether in substance or by procedure. However, such limit is inapplicable to imprisonment terms imposed on offences that are committed after a final court decision, and they are to run concurrently with the initial conviction. Thus Part 5 of this Yuan's Interpretation Yuan-tze No. 626 is no longer applicable.

不得逾二十年之限制。至刑法第三十三條第三款但書乃係就實質上或處斷上一罪之法定刑加重所為不得逾二十年之規定，與裁判確定後另犯他罪應合併執行之刑期無關，本院院字第六二六號解釋有關第五部分，已無從適用。

Defendants who show real signs of remorse and exhibit good behavior during their services of the said combined execution of imprisonment terms are subject to a more lenient parole condition than those convicted of life imprisonment. This should be expressly regulated by laws.

受前項有期徒刑之合併執行而有悛悔實據者，其假釋條件不應較無期徒刑為嚴，宜以法律明定之。

REASONING: According to Article 51, Paragraph 5, of the Criminal Code: "Where the conviction of a defendant would be punishable by multiple imprisonment terms, then the sentence of imprisonment shall be more than the longest imprisonment term of which the defendant is convicted, and less than the combination of the total imprisonment terms of which the defendant is convicted, but shall not exceed twenty years." The foregoing seeks to explain that, when determining the sentences for combination of sentences for multiple offences, it must comply with Article 50 of the same Code, that is, a defendant's commission of multiple offences must have occurred prior to a final court decision. As to the scope of combination of concurrent sentences for multiple offences, some limit the scope to offences committed prior to any court decision, some limit it to offences committed prior to final court decisions, and others limit it to offences committed prior to the end of prison terms. Article 69 of the former Criminal Code (1928) adopts the first limitation while the present Criminal Code in its Article 50 adopts the second

解釋理由書：按刑法第五十一條第五款規定：「宣告多數有期徒刑者，於各刑中之最長期以上，各刑合併之刑期以下，定其刑期，但不得逾二十年。」此乃指數罪併罰，定其應執行之刑，必以合於同法第五十條之規定為前提，亦即須以一人所犯數罪均在裁判確定前者為條件。關於數罪併合處罰之範圍，有以裁判宣告前所犯之罪為限者，有以裁判確定前所犯之罪為限者，有以執行未完畢前所犯之罪為限者等立法例。民國十七年舊刑法第六十九條係採第一例，現行刑法第五十條改採第二例，既已擯棄第三例不予採用，自不能資為解釋法律之依據。

limitation. Since the third limitation has been abandoned for non-use, it cannot form the basis of statutory interpretation.

Offences committed after the rendering of final court decisions fall outside the scope of the combination of sentences for multiple offence provisions. The foregoing has been explained in this Yuan's Interpretation No.98. Thus, in the event a defendant, after being convicted by a final court decision, is sentenced to another term of imprisonment, since this cannot be reconciled with the said sentencing provisions, this imprisonment term shall run concurrently with sentences imposed under the aforementioned final and binding judgment and shall not be subject to the above-mentioned twenty-year maximum imprisonment term restriction. Otherwise, defendants will be exonerated from repeated criminal offences, punishable by imprisonment terms, committed after final court decisions which impose a twenty-year imprisonment term. This is contrary to the principle of one sentence per offence, does not serve to protect public and private interests or preserve the

裁判確定後另犯他罪，不在數罪併罰之列，業經本院釋字第九十八號解釋闡釋在案，若於裁判確定後，復因犯罪受有期徒刑之宣告者，既與前述定執行刑之規定不合，即應與前一確定裁判之刑，合併執行，自不受首開不得逾二十年之限制。否則，凡經裁判確定應執行徒刑二十年者，即令一再觸犯法定本刑為有期徒刑之罪，而猶得享無庸執行之寬典，有違一罪一刑之原則，對於公私法益之保障及社會秩序之維護，顯有未週，且與公平正義之旨相違背，殊非妥適。

social order, and is inconsistent with the objectives of fairness and justice.

The definition of imprisonment under Article 33, Subparagraph 3, of the Criminal Code is: "a period more than two months and less than fifteen years which may be shortened to less than two months or lengthened to a maximum of twenty years." The foregoing places a twenty-year limitation on the aggravation of one conviction, in substance or by procedure, and is inapplicable to sentences imposed on offences that are committed after a final and binding judgment and shall be executed in combination concurrently with the initial conviction.

至刑法第三十三條第三款規定有期徒刑為「二月以上，十五年以下。但遇有加減時，得減至二月未滿，或加至二十年。」乃係對於實質上或處斷上一罪之法定刑加重所為不得逾二十年之限制，與裁判確定後另犯他罪應合併執行之刑期無關。

In summary, Part 5 of this Yuan's Interpretation Yuan-tze No.626 is no longer applicable. Since imprisonment term is more lenient than life imprisonment, defendants who show real signs of remorse and exhibit good behavior during their services of combined imprisonment terms shall be subject to a more lenient parole condition, for rehabilitative purposes, than those convicted of life imprisonment.

綜上所述，本院院字第六二六號解釋有關第五部分，已無從適用。惟有期徒刑，本較無期徒刑為輕，受有期徒刑之合併執行而有悛悔實據者，為貫徹教育刑之目的，其假釋條件，自不應較無期徒刑為嚴，宜以法律明定之。

This should be expressly regulated by laws.

Justice Chung-Sheng Lee filed dissenting opinion, in which Justice Cheng-Tao Chang joined.

本號解釋李大法官鐘聲與張大法官承韜共同提出不同意見書。

J. Y. Interpretation No.203（February 28, 1986）*

ISSUE: Does the process regarding not rehiring a teacher whose employment contract has ended contradict Articles 15 and 165 of the Constitution?

RELEVANT LAWS:

Regulation Governing the Selection of the Teachers and Staff for Provincial, County and Municipal Level Schools in Taiwan Province（臺灣省省縣市立各級學校教職員遴用辦法）.

KEYWORDS:

people's right to life（人民生存權）, educator（教育人員）, employment contract（聘僱契約）.**

HOLDING: Article 52 of the Regulation Governing the Selection of the Teachers and Staff for Provincial, County and Municipal Level Schools in Taiwan Province, as amended and promulgated by the Taiwan Provincial Government on August 24, 1978, prescribes that each school shall make a list of the names of teachers who will not be rehired after their employment contracts have expired, state

解釋文：台灣省政府於中華民國六十七年八月二十四日修正發布之臺灣省省縣市立各級學校教職員遴用辦法，其第五十二條關於各學校對於聘約期限屆滿不續聘之教員，應開具名冊，敘明原由，報請主管教育行政機關備查之規定，旨在督促學校對教員之不續聘，應審慎辦理，與憲法並無牴觸。

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* Translated by Ching P. Shih.

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

the reason for not offering reemployment, and make a report to the competent educational authorities to be used as a reference. The purpose of this provision is to urge schools to deal carefully with the matter of not rehiring teachers. This provision does not contradict the Constitution.

REASONING: Article 52 of the Regulation Governing the Selection of the Teachers and Staff for Provincial, County and Municipal Level Schools in Taiwan Province, as amended and promulgated by the Taiwan Provincial Government on August 24, 1978, prescribes: "Junior colleges and the above, elementary schools, junior high, and high schools shall make a list of the names of teachers who will not be rehired after their employment contracts have expired, state the reason for not offering reemployment, and make a report to the competent educational authorities to be used as a reference." This is the process regarding not rehiring a teacher whose employment contract has ended. The purpose of its clearly stating that the school shall make a list of names, explain the reason for not offering reem-

解釋理由書：台灣省政府於中華民國六十七年八月二十四日修正發布之台灣省省縣市立各級學校教職員遴用辦法，其第五十二條規定：「專科以上學校及中小學對於聘約期滿之教員不予續聘者，應開具名冊，敘明原由，報請主管教育行政機關備查」，此乃學校對於聘約期限屆滿之教員不予續聘之程序，其明示應列冊並敘述如何不為續聘之原由，向主管上級機關報備者，旨在督促學校對教員之不續聘，應審慎辦理，與憲法第十五條及第一百六十五條保障人民生存權及教育工作者生活之意旨並無牴觸。至台灣省政府教育廳六十六年五月九日教四字第三〇九七八號及同年七月十五日教四字第四一四一〇號函，並非原確定判決所依據之法令，核與人民聲請解釋之規定不合，不生解釋憲法問題，併此敘明。

ployment, and make a report to the competent supervising authority to be used as a reference is to urge schools to deal carefully with the matter of not rehiring teachers. This provision is not in contradiction with the intention of protecting the people's right to life and the educator's livelihood under Articles 15 and 165 of the Constitution. Since Ordinances J.4.T. No. 30978 issued on May 9, 1977, and J.4.T. No. 41410 issued on July 15, 1977, by the Office of Education of the Taiwan Provincial Government are not bases for the final judgment, the requirements for Interpretation cases petitioned by the people will not be satisfied. Thus, there is no question of the involvement of an interpretation of the Constitution.

J. Y. Interpretation No.204（April 11, 1986）*

ISSUE: Does the imposition of criminal punishment under Article 142, Paragraph 2, of the Act of Negotiable Instruments on people who overdraw their checks contravene Articles 15 and 22 of the Constitution?

RELEVANT LAWS:

Articles 15 and 22 of the Constitution（憲法第十五條及第二十二條）; Articles 126, 128 and Article 141, Paragraph 2 of the Act of Negotiable Instruments（票據法第一百二十六條、第一百二十八條及第一百四十一條第二項）.

KEYWORDS:

Checks（支票）, drawer（發票人）, bearer（執票人）, criminal punishment（刑罰）, fine（罰金）, negotiability（流通功能）, overdraw（濫行簽發）.**

HOLDING: The criminal punishment provision of Article 141, Paragraph 2, in the Act of Negotiable Instruments aims to prevent the overdrawing of checks by drawers, and to ensure the negotiability and payability of checks. Since the commencement of its operation, it has been used to improperly extend credit.

解釋文：票據法第一百四十一條第二項有關刑罰之規定，旨在防止發票人濫行簽發支票，確保支票之流通與支付功能，施行以來，已有被利用以不當擴張信用之缺失，唯僅係該項規定是否妥善問題，仍未逾立法裁量之範圍，與憲法第十五條及第二十二條尚無牴觸。

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* Translated by Wei-Feng Huang of THY Taiwan International Law Offices.

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

However, the question lies in the appropriateness of the provision, and is within the legislature's authority to determine. It does not contravene Articles 15 and 22 of the Constitution.

REASONING: Article 128, Paragraph 1, of the Act of Negotiable Instruments stipulates that checks must be payable upon presentment, and any statements to the contrary shall be void. Therefore, checks are promises for payment with the important attribute of actual payment in the place of cash, and are vital instruments in transactions. Therefore Article 126 of the same Act expressly states that: "The drawer of a check shall guarantee payment of the sum of money specified on the check." In order to prevent the drawing of checks by drawers when there are insufficient funds, Article 141, Paragraph 2, of the same Act provides: "Where a person intentionally draws a check in an amount in excess of the funds remaining in the drawer's account or to the drawer's allowable credit with the drawee, and such check cannot be paid upon presentment by the bearer, the

解釋理由書：按支票限於見票即付，有相反之記載者，其記載無效，票據法第一百二十八條第一項定有明文。故支票為支付證券，貴在現實支付，有代替現金之功用，為交易上之重要工具，因此同法第一百二十六條明定：「發票人應照支票文義擔保支票之支付。」為防止發票人於資金不足時濫行簽發支票，同法第一百四十一條第二項復明定：「發票人簽發支票時，故意將金額超過其存數或超過付款人允許墊借之金額，經執票人提示不獲支付者，處三年以下有期徒刑、拘役或科或併科該不足金額以下之罰金。」予以刑罰制裁，以確保支票之流通與現實支付之功能，維持交易之安全。

drawer is liable to imprisonment for a term of less than three years and detention and/or a fine not exceeding the unpaid amount of said check." This criminal punishment seeks to ensure negotiability of checks and their actual payability and to maintain secure transactions.

For checks which bear a date after the date of issue, Article 128, Paragraph 2, of the Act of Negotiable Instruments stipulates that: "A bearer of a check shall not present the check for payment prior to its stated date." The issuing of a check prior to its stated date does not prohibit its negotiability. This is the nature of a check which is not entirely comparable with "payment upon presentment" under Paragraph 1 of the same Article. But for the purposes of securing the said check's payability, if there are not sufficient funds in the account to cover a post-dated check on the stated date for payment, criminal punishment under Article 141, Paragraph 2, of the same Act shall be equally applicable. However, the adoption of criminal punishment as a means to ensure a check's negotiability can easily lead the bearer to

至記載實際發票日後之日期為發票日之支票，票據法第一百二十八條第二項明定：「支票在票載發票日前，執票人不得為付款之提示」，惟在票載發票日前簽發之支票，並未禁止其流通轉讓，是項支票之性質，與同條第一項見票即付之支票，固非完全相同，為加強其功能，於是項支票到票載日期因資金不足，不獲支付時，亦適用同法第一百四十一條第二項科處刑罰。然以刑罰制裁確保支票之流通，易使執票人在收受支票時，忽視發票人之信用。施行以來，已有被利用以不當擴張信用之缺失，唯僅係該項規定是否妥善問題，仍未逾立法裁量之範圍，與憲法第十五條及第二十二條尚無牴觸。

overlook the drawer's credibility when receiving the check. Since the commencement of its operation, it has been used to improperly extend credit. However, the question lies in the appropriateness of the provision, and is within the legislature's authority to determine. It does not contravene Articles 15 and 22 of the Constitution.

In addition, although a check is an unconditional instrument, its drawer may still use it as evidence against the bearer when there is a dispute between the parties. Should a drawer allege the existence of a fact in dispute which causes non-payment of a check and the criminal court, without investigating the existence of criminal intention in relation to the fact in dispute as required by Article 141, Paragraph 2, of the Act of Negotiable Instruments, imposes criminal punishment under the said provision, the question is one concerning the appropriateness of the judgment and is irrelevant to the constitutionality of the said provision.

又支票雖為無因證券，發票人仍得以其與執票人間所存抗辯之事由，對抗執票人。支票發票人認有對抗執票人之事由，而使該項支票未獲兌現時，該項對抗之事由，是否涉及票據法第一百四十一條第二項所定犯罪故意有無之認定，刑事法院如未調查，遽依該項規定科處刑罰，亦係裁判妥適與否問題，與該項規定是否牴觸憲法無關，併此敘明。

Justice Yu-Ling Yang filed dissenting opinion, in which Justice Teh-Sheng Chang and Justice Chien-Tsai Cheng joined.

本號解釋楊大法官與齡、張大法官特生與鄭大法官健才共同提出不同意見書。

J. Y. Interpretation No.205（May 23, 1986）*

ISSUE: Do the terms of the Guidelines for Examinees stating that the assignment of persons who passed the Rank B examination is limited to military officers and the persons who have recently been replaced and resettled and will not be reassigned contradict the Constitution?

RELEVANT LAWS:

Articles 3 and 4 of the Act Governing the Replacement and Resettlement of Veterans（國軍退除役官兵就業安置辦法第三條及第四條）; Article 15 of the Examination Act（考試法第十五條）; Article 2 of the Regulation Governing the Assignment of Persons Passing the Civil Tests（考試及格人員分發辦法第二條）; Article 9 of the Regulation Governing the 1983 Specific Examination for the Replacement of Veterans as Public Functionaries（七十二年特種考試退除役軍人轉任公務人員考試規則第九條）.

KEYWORDS:

Equal rights of the people（人民平等權）, right to take examinations（應考試權）, right to assume public service（服公職權）.**

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* Translated by Ching P. Shih.

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

HOLDING: The 1983 Specific Examination for the Replacement of Veterans as Public Functionaries is designed for a specific purpose in fact. Its specific purpose is the orderly replacement and resettlement of veterans. The terms of the Guidelines for Examinees stating that the assignment of persons who passed the rank B examination is limited to military officers and the persons who have recently been replaced and resettled and will not be reassigned are promulgated by the competent authority based on legislations relating to the assistance of the replacement and resettlement of veterans. The purposes of these terms are to allow the persons passing the examination to obtain employment or acquire qualifications for assuming public service, respectively, in accordance with the original plan of assumption. These terms do not contradict provisions relating to the protection of the equal rights of the people and the right to take examinations and hold public offices under the Constitution. Although it is not proper that the examinees of the rank B examination mentioned above include military sergeants while the assignment of

解釋文：七十二年特種考試退除役軍人轉任公務人員考試，原係因應事實上之特殊需要，有其依序安置退除役官兵就業之特定目的。其應考須知內所載乙等考試及格人員之分發以軍官為限，前經安置就業之現職人員不予重新分發之規定，係主管機關依有關輔導退除役官兵就業法令而為，旨在使考試及格者依原定任用計畫分別得以就業或取得任用資格，與憲法保障人民平等權及應考試服公職之權之規定尚無牴觸。至該項考試中乙等考試之應考人，既包括士官在內，而分發則以軍官為限，不以考試成績之順序為原則，雖未盡妥洽，亦不生牴觸憲法問題。

persons who pass the examination is exclusive to military officers, there is no question of any contradiction of the Constitution.

REASONING: Article 7 of the Constitution clearly states that the people of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law. The right to take examinations and hold public offices prescribed in Article 18 of the Constitution shall also be deemed equal. However, the so-called equality mentioned here means substantial equality. In respect to related matters, a restriction was properly imposed under law for the needs in fact and the purposes of taking examinations, and there should definitely be no contradiction in the above principle of equality.

解釋理由書：按中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等，為憲法第七條所明定。其依同法第十八條應考試服公職之權，在法律上自亦應一律平等。惟此所謂平等，係指實質上之平等而言，其為因應事實上之需要，及舉辦考試之目的，就有關事項，依法酌為適當之限制，要難謂與上述平等原則有何違背。

According to Article 12 of the Veterans Assistance Act, the Specific Examination for the Replacement of Veterans as Public Functionaries is designed for veterans to acquire the qualifications to hold public offices. The assignment for deter

特種考試退除役軍人轉任公務人員考試，依國軍退除役官兵輔導條例第十二條規定，在使退除役官兵取得擔任公職之資格，其須分發任用者，則依當時適用之考試法第十五條規定，應與任用計畫相配合，由行政院國軍退除役官

mining the veterans who need to be so designated shall be carried out by the Veterans Affairs Commission under Article 15 of the then-applicable Examination Act and coordinated with the plan of assumption. Therefore, Article 9 of the Regulation Governing the 1983 Specific Examination for the Replacement of Veterans as Public Functionaries states: The assignment for the persons who passed this examination shall be carried out by the Central Personnel Administration and together with the Veterans Affairs Commission under the Regulation Governing the Assignment of Persons Passing the Civil Tests and other regulations regarding the assistance for those obtaining employment. As regards the persons who passed the specific examination, Article 2 of the Regulation Governing the Assignment of Persons Passing the Civil Tests restricts the assignment to "those who needed to be so designated." The so-called related provisions of the assistance for those obtaining employment should include the related provisions of Article 2, Paragraph 2, of the Enforcement Rules of the Veterans Assistance Act and Articles 3 and 4 of

兵輔導委員會（以下簡稱輔導會）依其職掌辦理。故七十二年特種考試退除役軍人轉任公務人員考試規則第九條規定：本考試及格人員之分發，由行政院人事行政局會同輔導會，依考試及格人員分發辦法及有關輔導就業之規定辦理。其中考試及格人員分發辦法第二條對於公務人員特種考試及格人員即以「需要分發任用」者為限。至其所謂有關輔導就業之規定，則包括國軍退除役官兵輔導條例施行細則第二條第二項及國軍退除役官兵就業安置辦法第三條、第四條等有關規定在內。依其規定，輔導會為適應國軍待退員額之需求，配合安置能量，得視實際情形，訂定安置順序。是輔導會本此職權，洽請舉辦此次特種考試，原係因應事實上之特殊需要，有其依序安置退除役官兵就業之特定目的。其應考須知內所載乙等考試及格人員之分發，以軍官為限，前經安置就業之現職人員不予重新分發之規定，係主管機關依有關輔導退除役官兵就業法令而為，旨在使此次考試及格之退除役官兵，在原任用計畫範圍內者得以分發就業；其不在原任用計畫範圍內者亦取得擔任公職之任用資格，遇機得以任用或升遷，依首開說明，與憲法保障人民平等權及應考試服公職之權之規定尚

the Act Governing the Replacement and Resettlement of Veterans. According to their provisions, to accommodate the need for stand-by discharging military personnel and to coordinate with the capacity of replacement and resettlement, the Veterans Affairs Commission may consider the actual situations by setting up an order for replacement and resettlement. Thus, based on its duty, the Veterans Affairs Commission's asking to hold this specific examination is for specific needs in fact and has as a special purpose the orderly replacement and resettlement of veterans assuming employment. The terms of the Guidelines for Examinees stating that the assignment of persons who pass the rank B examination is limited to military officers and the persons who have currently been replaced and resettled and will not be reassigned are promulgated by the competent authority based on legislations relating to the assistance in the replacement and resettlement of veterans. The purposes of these terms are to render the veterans passing this examination designated for employment within the scope of the original plan of assumption. Those who

無牴觸。

obtain qualifications for assuming public service outside the scope of the original plan of assumption may, if willing to wait for opportunities, be retained or promoted. According to the statements made above, these terms do not contradict provisions relating to the protection of the equal rights of the people and the right to take examinations and hold public offices under the Constitution.

Although it is not proper that the examinees of the rank B examination mentioned above include military sergeants while the assignment of persons who pass the examination is exclusive to military officers and is not on the basis of the order of the test results, there is no question of a contradiction of the Constitution incurred.

至該項考試中乙等考試之應考人，既包括士官在內，而分發則以軍官為限，不以考試成績之順序為原則，雖未盡妥洽，亦不生牴觸憲法問題。

J. Y. Interpretation No.206（June 20, 1986）*

ISSUE: Is the provision of the Physician Act, prescribing to the effect that a non-physician placing an advertisement regarding medical treatment shall be subject to fines, in violation of the Constitutional?

RELEVANT LAWS:

Articles 6 and 7 of the Regulation Governing the Supervision of the Practitioners of Odontrypy（鑲牙生管理規則第六條、第七條）; Articles 18 and 28-1 of the Physicians Act（醫師法第十八條及第二十八條之一）; Articles 15, 22, 23 and 152 of the Constitution（憲法第十五條、第二十二條、第二十三條、第一百五十二條）.

KEYWORDS:

dental technician（鑲牙生）, odontrypy（鑲補牙）, false or improper advertising（不正當之廣告）, advertising of medical treatment（醫療廣告）, certified doctor（合法資格醫師）.**

HOLDING： Article 28-1 of the Physician Act provides: "The competent public health authority may impose a fine between NT$5000 and NT$50,000 on a

解釋文： 醫師法第二十八條之一規定：「未取得合法醫師資格為醫療廣告者，由衛生主管機關處以五千元以上五萬元以下罰鍰」，旨在禁止未取得

* Translated by Li-Chih Lin, Esq., J.D.

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

person who is not a certified doctor but runs an advertisement stating that he or she provides medical treatment." The provisions set forth in Article 28-1 of the Physician Act prohibit a person who is not a certified doctor from advertising such service, which is a part of a physician's medical practice. The provisions set forth in Article 28-1 of the Physician Act do not prohibit a dental technician from erecting a signboard advertising his or her practice. Thus, the provisions set forth in Article 28-1 of the Physician Act do not deprive a dental technician of the opportunity to work and are in compliance with the provisions set forth in Articles 15, 22, 23 and 152 of the Constitution of the Republic of China.

合法醫師資格者為屬於醫師業務之醫療廣告，既未限制鑲牙生懸掛鑲補牙業務之市招，自不致影響其工作機會，與憲法第十五條、第二十二條、第二十三條及第一百五十二條之規定，尚無牴觸。

REASONING：According to the provisions set forth in Articles 6 and 7 of the Regulation Governing the Supervision of the Practitioners of Odontrypy, a dental technician can only perform odontrypy (make bridges, dentures, etc.). Such dental technician may not perform any oral surgery or dental treatment. The prevention and treatment of periodontal

解釋理由書：依鑲牙生管理規則第六條、第七條之規定，鑲牙生應以鑲補牙為其業務，不得施行口腔外科及治療牙病。至牙周病之防治，屬於牙醫師之業務，鑲牙生自不得為之。如鑲牙生懸掛齒科或牙科市招，標明牙周病或齲齒之防治，即係逾越鑲補牙之業務範圍，而屬於牙醫師業務之醫療廣告。

disease shall be performed only by a certified dentist, not a dental technician. If such dental technician erects a dental clinic signboard indicating that he or she provides the prevention and treatment of periodontal disease, his or her action exceeds the scope of a dental technician authorized by law because such practitioner has advertised that he or she provides such service, which is part of a dentist's medical practice.

To safeguard the health of the nationals and to prevent undue delay of medical treatment, Article 18 of the Physician Act prohibits false or improper advertising. In addition, Article 28-1 of the Physician Act provides: "The competent public health authority may impose a fine between NT$ 5000 and NT$ 50,000 on a person who is not a certified doctor but runs an advertisement stating that he or she provides medical treatment." The provisions in Article 28-1 of the Physician Act are set forth to prohibit a person who is not a certified doctor from advertising such service, which is a part of the physician's medical practice. The provisions do

按國家為維護國民健康，避免貽誤病人就醫機會，於醫師法第十八條禁止醫師為不正當之廣告，並於同法第二十八條之一規定：「未取得合法醫師資格為醫療廣告者，由衛生主管機關處以本五千元以上五萬元以下罰鍰」，後一規定旨在禁止未取得合法醫師資格者為屬於醫師業務之醫療廣告，既未限制鑲牙生懸掛鑲補牙業務之市招，自不致影響其工作機會，與憲法第十五條、第二十二條、第二十三條及第一百五十二條之規定，尚無牴觸。

not prohibit a dental technician from erecting a dental technician signboard. Thus, the provisions set forth in Article 28-1 of the Physician Act do not deprive a dental technician of the opportunity to work and are in compliance with the provisions set forth in Articles 15, 22, 23 and 152 of the Constitution of the Republic of China.

J. Y. Interpretation No.207（July 18, 1986）*

ISSUE: Shall council members or the Speaker of the Provincial or City Councils concurrently hold the position of a private school principal?

RELEVANT LAWS:

Article 51 of the Private School Act（私立學校法第五十一條）; J.Y. Interpretations No.30 and No.75（司法院釋字第三十號、第七十五號解釋）.

KEYWORDS:

elected representatives（民意代表）, authority（職權）, principal（校長）, Speaker（議長）, compatible（相容）.**

HOLDING: Whether elected representatives may hold concurrent jobs depends on whether there are prohibitory provisions in the Constitution or laws that do not infringe upon the Constitution, and on whether the nature of such jobs is compatible with the duties of elected representatives. Principals of private schools and colleges bear great responsibilities

解釋文：民意代表可否兼任他職，須視憲法或與憲法不相牴觸之法規有無禁止規定，或該項職務之性質與民意代表之職權是否相容而定。私立學校校（院）長責重事繁，私立學校法第五十一條第三項規定：「校（院）長應專任，除擔任本校（院）教課外，不得兼任他職」，旨在健全校務以謀教育事業之發展；省及院轄市議會議員、議長自

* Translated by THY Taiwan International Law Offices.

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

and have numerous duties. Thus Article 51, Paragraph 3, of the Private School Act stipulates: "Principals shall be exclusive employees and may not engage in other jobs, except to teach in schools or colleges." The purpose of the foregoing Article is to ensure the all-round handling of administrative matters and development of the educational system; therefore, the members of, or the Speaker of, the Provincial or Yuan-governed City Councils shall not assume the position of school principals. Those who have assumed both positions prior to the proclamation of this Interpretation shall resign from one of the two positions.

不得兼任之。其在本解釋公布前已兼任者，應於兩項職務中辭去一項職務。

REASONING: Whether elected representatives may hold concurrent jobs depends on whether there are prohibitory provisions in the Constitution or laws that do not infringe upon the Constitution, and on whether the nature of such jobs is compatible with the duties of elected representatives. According to this Yuan's Interpretation No.15, members of the Control Yuan shall not concurrently hold offices as members of the National

解釋理由書：民意代表可否兼任他職，須視憲法或與憲法不相牴觸之法規有無禁止規定，或該項職務之性質與民意代表之職權是否相容而定。本院釋字第十五號解釋：監察委員不得兼任國民大會代表；釋字第七十五號解釋：國民大會代表非不得兼任官吏；釋字第三十號解釋：立法委員不得兼任官吏，但非謂官吏以外任何職務即得兼任，仍須視其職務之性質與立法委員職務是否相容，性質不相容之職務，立法委員不

Assembly. Interpretation No.75 provides that Delegates to the National Assembly shall not concurrently assume the office of government officials. Interpretation No.30 stipulates that members of the Legislative Yuan shall not work as government officials at the same time. However, it does not mean that they may assume positions other than those of government officials; therefore, one needs to consider whether the nature of such positions is compatible with the duties of the members of the Legislative Yuan. The said members shall not hold positions which are incompatible with their duties.

得兼任，均係本於斯旨。

Private schools and colleges are responsible for the important task of educating students. In accordance with Article 51, Paragraph 1, of the Private School Act, principals shall handle administrative matters pursuant to the laws, execute the resolutions of the directors, and be subject to supervision by the relevant executive educational bodies. Principals hold great responsibilities and have numerous duties, and, unless they devote all their efforts to their position, may not be able to fulfill all

私立學校（院）負有作育人才之重任，其校（院）長依私立學校法第五十一條第一項規定，依據法令綜理校（院）務，執行董事會之決議，並受主管教育行政機關之監督，責重事繁，非專心從事，難以克盡厥職，為防止兼任其他職務，有礙本身職務之執行，同條第三項遂明定：「校（院）長應專任，除擔任本校（院）教課外，不得兼任他職」，旨在健全校務以謀教育事業之正常發展。

of their duties. In order to prohibit them from holding other positions which could impede their efforts, Paragraph 3 of the same Article expressly provides: "Principals shall be exclusive employees and may not engage in other jobs, except to teach in schools or colleges." The purpose of the foregoing is to ensure the all-round handling of administrative matters and development of the educational system.

Members of the Provincial or City Councils are elected representatives according to this Yuan's Interpretation No.14. Their duties are numerous and burdensome. They not only have to determine provincial or municipal legislations, budgets and the allocation of assets, to review the provincial or municipal annual audits, and to hear and review the provincial or municipal government's legislative reports, but also have to handle administrative matters and chair meetings. If they assume the position of private school or college principals, they will not only be distracted from handling the school or college's administrative matters, but will also intermix the authority and

省（市）議會議員，參照本院釋字第十四號解釋之意旨，均為民意代表，其職權除議決省（市）單行法規、省（市）預算、省（市）財產之處分及審議省（市）決算等事項外，並須聽取省（市）政府之施政報告及提出質詢，其擔任議長者，尚須綜理會務及主持會議，職責尤為繁重，若再兼任私立學校校（院）長，不僅分心旁騖，影響校務，且易致權責混淆，二者有其不相容之處，故省（市）議會議員、議長，自不得兼任之。

duties pertaining to both positions, which are incompatible. Therefore members of, or the Speaker of, the Provincial or City Council shall not concurrently hold the positions of private school or college principals.

Those who have assumed both positions prior to the proclamation of this Interpretation shall resign from one of the two positions.

其在本解釋公布前已兼任者，應於兩項職務中辭去其一項職務。

J. Y. Interpretation No.208（August 15, 1986）*

ISSUE: What does the lessee of tillage mean under the Equalization of Land Rights Act?

RELEVANT LAWS:

Articles 11, 76, and 77 of the Equalization of Land Rights Act（平均地權條例第十一條、第七十六條、第七十七條）.

KEYWORDS:

taking（徵收）, tillage（耕地）, cause for retrial（再審理由）.**

HOLDING: For the thorough fulfillment of the fundamental state policy that assists self-employed farmers and self-managing land users and protects farmers' right to seek compensation from the state, Article 11 of the Equalization of Land Rights Act states that if the land taken and allotted by law is leased tillage, the related persons or authorities shall compensate the lessee 1/3 of the remainder of the price of the land after subtracting the land value increment tax. The

解釋文：為貫徹扶植自耕農與自行使用土地人及保障農民生活，以謀國計民生均足之基本國策，平均地權條例第十一條規定，依法徵收及撥用之土地為出租耕地時，應就扣除土地增值稅後，補償地價餘款之三分之一補償耕地承租人，其所稱耕地承租人指承租耕地實際自任耕作之自然人及合作農場而言。惟在本解釋公布前，法院就該法條文義所持裁判上之見解，尚難認係適用法規顯有錯誤，不得據為再審理由，併予說明。

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* Translated by Ching P. Shih.

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

lessee of the tillage mentioned above means a person or a cooperative farm leasing the tillage and engaged in the cultivation in fact. However, before the promulgation of this Interpretation, the opinion relating to the meaning of the above provision made by the court in judgments will not be deemed an application of regulations in error. It cannot be claimed as a cause for retrial.

REASONING: For the thorough fulfillment of the fundamental state policy that assists self-employed farmers and self-managing land users and protects farmers' right to seek compensation from the state, Articles 11, 76, and 77 of the Equalization of Land Rights Act state that when taking leased private-owned tillage, allotting public-owned tillage, or terminating a leasing agreement and recovering leased tillage for the uses of buildings, the owners of privately-owned lands, the original supervising authorities of the publicly-owned tillage, or the authorities which need lands shall compensate the lessee at 1/3 of the remainder of the price of the land after subtracting the land value

解釋理由書：為貫徹憲法上扶植自耕農與自行使用土地人及保障農民生活，以謀國計民生均足之基本國策，平均地權條例第十一條、第七十六條及第七十七條規定，徵收私有出租耕地，撥用公有出租耕地，或終止租約收回出租耕地作為建築使用時，私有土地所有權人、公有耕地原管理機關或需地機關應就扣除土地增值稅後補償地價餘款之三分之一，補償耕地承租人，以避免佃農因耕地喪失不能從事農作物之種植而生活失據，並使合作經營農場者之權益同受保障。故上開平均地權條例第十一條所稱應受地價補償之耕地承租人，係指承租耕地，實際自任耕作之自然人及合作農場而言，不包括非耕地租用而從事耕作，或耕地租用而未自任耕作者在

increment tax. The purposes of this provision are to prevent the tenant farmer from losing his or her means of living incurred by the inability to engage in the cultivation of crops because of his or her loss of tillage and to protect the rights and interests of persons who cooperatively manage farms as well. The lessee of the tillage who should receive compensation as mentioned in Article 11 of the above Equalization of Land Rights Act means a person or a cooperative farm leasing the tillage and engaged in the cultivation in fact. Those who engage in cultivation on non-leased tillage or lease tillage but do not engage in the cultivation in fact shall not be included.

內。

Based on its duty, the Executive Yuan petitioned this uniform Interpretation case. According to the legislative intent of Article 11 of the Equalization of Land Rights Act, this Yuan, on the basis of the above reasoning, recognizes that the so-called lessee means a person or a cooperative farm leasing the tillage and engaging in the cultivation in fact. However, before the promulgation of this

本件行政院依職權聲請統一解釋，本院雖據前開理由，依平均地權條例第十一條之立法意旨，認其所稱承租人，係指實際自任耕作之自然人及合作農場而言，惟在本解釋公布前，法院就該法條文義所持裁判上之見解，尚難認係適用法規顯有錯誤，不得據為再審理由，併予說明。

Interpretation, the opinion relating to the meaning of the above provision made by the court in judgments will not be deemed an application of regulations in error. It cannot be claimed as a cause for retrial.

J. Y. Interpretation No.209（September 12, 1986）*

ISSUE: Where a party in a civil action institutes a proceeding of new retrial or files a motion for new trial on the ground that the court has erred in the application of a law or regulation in its irrevocable final adjudication, or the opinion expressed by the court on the said law or regulation in its irrevocable final judgment had been interpreted by this Court as contrary to the intent of the said law or regulation, is the institution of such proceeding or the filing of such motion subject to the statutory peremptory period of limitation?

RELEVANT LAWS:

Article 78 of the Constitution（憲法第七十八條）; Article 496, Paragraph1, Subparagraph 1 and Article 500, proviso to Paragraph 2, and Paragraph 3 of the Code of Civil Procedure（民事訴訟法第四百九十六條第一項第一款，第五百條第二項但書、第三項）; J. Y. Interpretations No. 188 and 208（司法院釋字第一八八號、第二〇八號解釋）.

KEYWORDS:

motion for retrial（聲請再審）, statutory peremptory period（法定不變期間）.**

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* Translated by Raymond T. Chu.

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

HOLDING: Where the application of a law or regulation in an irrevocable final adjudication or the opinion given in a court order is held by our interpretation to be inconsistent with the intention of a law or regulation, with the result that a proceeding of retrial is instituted or a motion for retrial is filed by the party pursuant to civil procedural law by invoking such interpretation as an authority, the statutory peremptory period for instituting a proceeding of retrial or filing a motion for retrial shall, by making reference to the proviso to the second paragraph of Article 500 of the Code of Civil Procedure, commence from the date such interpretation is issued. In the event that a civil adjudication has become irrevocable for exceeding five years or more, however, no proceeding of or motion for retrial may be instituted under Paragraph 3 of the aforesaid Article on the ground that the court has erred in application of a law or regulation. This is to supplement our previous Interpretation No. 188.

解釋文：確定終局裁判適用法律或命令所持見解，經本院解釋認為違背法令之本旨時，當事人如據以為民事訴訟再審之理由者，其提起再審之訴或聲請再審之法定不變期間，參照民事訴訟法第五百條第二項但書規定，應自該解釋公布當日起算，惟民事裁判確定已逾五年者，依同條第三項規定，仍不得以其適用法規顯有錯誤而提起再審之訴或聲請再審，本院釋字第一八八號解釋應予補充。

REASONING: Article 78 of the Constitution provides that the Judiciary

解釋理由書：司法院有解釋憲法並有統一解釋法律及命令之權，為憲

shall have the power to interpret the Constitution and to unify the interpretation of laws and orders. By this provision, the Judiciary branch of the government is vested with the power and authority to resolve any doubts and controversies as may arise out of, or in connection with, the Constitution and to explicate the true meaning of any statute and order. Where a unified interpretation has been given by this Yuan upon application by reason of a difference in opinions between central or local agencies on the application of any statute or order in connection with their duties and functions, but the view expressed in respect of the application of a law or order in an irrevocable final adjudication of the case giving rise to such difference in opinions is held by our interpretation to be inconsistent with the intention of the law or order, the interpretation may of course be invoked to support retrial or an extraordinary appeal. If it is held by an interpretation of this Court, however, that it was a matter of judicial opinion of the court on the literal meaning of the text of a statute and that there was no obvious error in the application of law

法第七十八條所明定。此項規定，乃賦與本院解決憲法上之疑義或爭議，並闡釋法律及命令正確意義之職權。中央或地方機關就其職權上適用同一法律或命令發生見解歧異，本院依其聲請所為之統一解釋，就引起歧見之該案件，如經確定終局裁判，而其適用法令所表示之見解，經本院解釋為違背法令之本旨時，是項解釋自得據為再審或非常上訴之理由。但如經本院解釋，認法院就法條文義所持裁判上見解，非屬適用法規顯有錯誤者，仍不得據為再審理由，經本院釋字第一八八號及釋字第二〇八號解釋末段釋明在案。

or order, the interpretation may not be invoked as a ground for retrial. This has been clearly expounded in our Interpretation No. 188 and in the last paragraph of our Interpretation No. 208.

Where the application of law in an irrevocable final adjudication or the opinion given in a court order is held by our interpretation to be inconsistent with the intention of a law or regulation, with the result that a proceeding of retrial is instituted or a motion for retrial is filed by the party under the Code of Civil Procedure, Article 496, Paragraph 1, Subparagraph 1, the statutory peremptory period for instituting such proceeding of retrial or for filing a motion for retrial shall, by making reference to the proviso to the second paragraph of Article 500 of the of Code of Civil Procedure, commence from the date such interpretation is issued, so that the right of the people may be adequately protected. An error in the application of law or regulation in the irrevocable final adjudication, however, is a defect in the original adjudication. Therefore, in the event that such a civil adjudication has become

確定終局裁判適用法律或命令所持見解，經本院解釋為違背法令之本旨時，當事人如認有民事訴訟法第四百九十六條第一項第一款之再審理由，提起再審之訴或聲請再審者，其起訴或聲請之法定不變期間，參照同法第五百條第二項但書規定，應自該解釋公布當日起算，始足保障人民之權利。惟確定終局裁判適用法規錯誤，係原確定裁判所生之瑕疵，故民事裁判確定已逾五年者，依同法第五百條第三項規定，仍不得以其適用法規顯有錯誤而提起再審之訴或聲請再審，俾兼顧法律秩序之安定性，本院釋字第一八八號解釋應予補充。

irrevocable for exceeding five years or more, no action of, or motion for, retrial may be instituted under Paragraph 3 of the aforesaid Article on the ground that the court has erred in the application of law or regulation. This is to supplement our Interpretation No. 188.

J. Y. Interpretation No.210（October 17, 1986）*

ISSUE: Does Article 23, Paragraph 3, of the Act of Encouragement of Investment amended on December 30, 1984, regarding certain types of interest exempted from income tax include interest on loans raised among private persons?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 23, Paragraph 3, Subparagraph 1 of the Act of Encouragement of Investment（獎勵投資條例第二十三條第三項第一款）; Article 27 of the Enforcement Rules of the Act of Encouragement of Investment（獎勵投資條例施行細則第二十七條）.

KEYWORDS:

interests（利益）, loans（借款）, exemption（免稅額）, income tax（所得稅）, principle of taxation by law（租稅法律主義）.**

HOLDING: Article 23, Paragraph 3, Subparagraph 1 of the Act of Encouragement of Investment, as amended and promulgated on December 30, 1980, regarding certain types of interests exempt from income tax refers to a variety of

解釋文：中華民國六十九年十二月三十日修正公布之獎勵投資條例第二十三條第三項第一款，關於限額免納所得稅之利息，係規定「除郵政存薄儲金及短期票券以外之各種利息」，並未排除私人間無投資性之借款利息，而中

* Translated by Ching P. Shih.

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

interests other than those of postal service savings accounts and short-term securities. It does not exclude the interests on non-investment loans raised among private persons. However, Article 27 of the Enforcement Rules of the Act of Encouragement of Investment promulgated on August 31, 1981, describes the above subparagraph as "the so-called variety of interests include the interests on government bonds, incorporation debts, financial debentures, savings in financial institutions and loans raised by industrial and commercial enterprises." Ordinance T.C.S.T. No. 37930 issued by the Ministry of Finance in 1981 also considers that "the interests on loans raised among private persons are not included." Although the above observation is in accordance with the purpose of the encouragement of investment, it is decreed only by an administrative regulation and is in contradiction to the then-valid provision regarding "a variety of interests" mentioned above, and therefore violates the basic intention of the principle of taxation by law under Article 19 of the Constitution.

華民國七十年八月三十一日發布之獎勵投資條例施行細則第二十七條認該款「所稱各種利息，包括公債、公司債、金融債券、金融機構之存款及工商企業借入款之利息」，財政部（七〇）台財稅字第三七九三〇號函並認「不包括私人間借款之利息。」縱符獎勵投資之目的，惟逕以命令訂定，仍與當時有效之首述法條「各種利息」之明文規定不合，有違憲法第十九條租稅法律主義之本旨。

REASONING: Article 19 of the Constitution clearly states that the people have the duty by law to pay tax. The so-called "paying tax by law" means that paying tax and being exempt from tax as well shall be in accordance with the terms prescribed by law. The enforcement rule enacted by a competent supervising authority can only regulate the matters regarding the implementation of their mother law. To comply with the basic intention of the principle of taxation by law mentioned above under the Constitution, the enforcement rules should still be in accordance with the provisions of law if matters of paying tax and being exempt from tax are involved.

解釋理由書：按人民有依法律納稅之義務，為憲法第十九條所明定，所謂依法律納稅，兼指納稅及免稅之範圍，均應依法律之明文。至主管機關訂定之施行細則，僅能就實施母法有關事項而為規定，如涉及納稅及免稅之範圍，仍當依法律之規定，方符上開憲法所示租稅法律主義之本旨。

Article 23, Paragraph 3, Subparagraph 1 of the Act of Encouragement of Investment, as amended and promulgated on December 30, 1980, regarding certain types of interests exempt from income tax refers to a variety of interests other than those of postal service saving accounts and short-term securities. It does not exclude the interests on non-investment loans raised among private persons. How

中華民國六十九年十二月三十日修正公布之獎勵投資條例第二十三條第三項第一款，關於限額免納所得稅之利息，係規定「除郵政存簿儲金及短期票券以外之各種利息」，並未排除私人間無投資性之借款利息，而中華民國七十年八月三十一日發布之獎勵投資條例施行細則第二十七條認該款「所稱各種利息，包括公債、公司債、金融債券、金融機構之存款及工商企業借入款之利

ever, Article 27 of the Enforcement Rules of the Act of Encouragement of Investment promulgated on August 31, 1981, describes the above subparagraph as "the so-called variety of interests that include the interests on government bonds, incorporation debts, financial debentures, savings in financial institutions and loans raised by industrial and commercial enterprises." Ordinance T.C.S.T. No. 37930 issued by the Ministry of Finance in 1981 also considers that "the interests on loans raised among private persons are not included." Although the above observation is in accordance with the purpose of encouragement of investment, it is decreed only by an administrative regulation and is in contradiction to the then-valid provision regarding "a variety of interests" mentioned above, and therefore violates the basic intention of the principle of taxation by law under Article 19 of the Constitution. After Article 23, Paragraph 3, of the Act of Encouragement of Investment amended on December 30, 1984, regarding certain types of interests exempt from income tax adopted the type of enumerative provision, the interests on loans raised

息」，財政部（七〇）財稅字第三七九三〇號函並認「不包括私人間借款之利息。」縱符獎勵投資之目的，惟逕以命令訂定，仍與當時有效之前述法條「各種利息」之明文規定不合，有違憲法第十九條租稅法律主義之本旨。至獎勵投資條例第二十三條第三項，於中華民國七十三年十二月三十日修正，關於限額免納所得稅之利息，改採列舉規定後，已不包括私人間其他借款之利息，上述施行細則第二十七條關於免稅利息範圍之規定，亦已修正刪除，該財政部函自不再適用，由於本院釋字第一七七號解釋文第二項明示「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力」，本件聲請人據以聲請之行政訴訟確定終局裁判所適用之法令，雖已失效，仍有解釋之必要，併此說明。

among private persons were not included in its terms. Article 27 of the Enforcement Rules mentioned above regarding the scope of interests exempt from tax has also been eliminated. Thus, the Ordinance issued by the Ministry of Finance shall no longer be applicable. In addition, since the Holding of Interpretation No. 177 promulgated by this Yuan clearly states that "The Interpretation decided by this Yuan based on a petition of the people is effective in the case for which the petition is made by the petitioner," the regulation applied by the final judgment in the administrative proceeding for which the petition is made by the petitioner has already been invalidated, though it still needs to be interpreted.

J. Y. Interpretation No.211（December 5, 1986）*

ISSUE: Does Article 49 of the Customs Smuggling Control Act violate Articles 7 and 16 of the Constitution?

RELEVANT LAWS:

Articles 7 and 16 of the Constitution（憲法第七條、第十六條）; Article 49 of the Customs Smuggling Control Act（海關緝私條例第四十九條）.

KEYWORDS:

right of equality（平等權）, protest（聲明異議）, administrative litigation（行政訴訟）.**

HOLDING: The right of equality provided in Article 7 of the Constitution is to protect the substantial equality of the legal position of the people. It does not restrict the competent authority, with due authorization by the law, from rendering reasonably different treatments by reference to the differences de facto of any particular case and the purposes of legislation. The purpose protest of Article 49 of the Customs Smuggling Control Control

解釋文：憲法第七條所定之平等權，係為保障人民在法律上地位之實質平等，並不限制法律授權主管機關，斟酌具體案件事實上之差異及立法之目的，而為合理之不同處置。海關緝私條例第四十九條：「聲明異議案件，如無扣押物或扣押物不足抵付罰鍰或追繳稅款者，海關得限期於十四日內繳納原處分或不足金額二分之一保證金或提供同額擔保，逾期不為繳納或提供擔保者，其異議不予受理」之規定，旨在授權

* Translated by Assistant Professor Y. K. Huang.

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

Act, which provides that "For any cases, and in case no goods were seized or the goods seized were not sufficient to pay for the fine or the short-paid duty, the Customs may order the person to pay in deposit, within 14 days, half of the original fine or insufficient amount or furnish an adequate security equal to the same amount. In case no payment was made or no security was furnished within the prescribed time limit, that protest will not be accepted", is to authorize the Customs, after examination, and subject to the particular facts, to render appropriate punishment. This is to prevent the person subjected to administrative punishment, by submitting a protest, from delaying or evading the execution of duty payment and punishment, and is also to fulfill the Customs policy of preventing smuggling, which is necessary to promote the public interest and not contrary to Articles 7 and 16 of the Constitution. In addition, some of the wording in the section on administrative litigation procedure stipulated in the Act is imprecise and should be examined and amended in order to concur with the preservation of administrative execu-

海關審酌具體案情，為適當之處分，以防止受處分人藉故聲明異議，拖延或逃避稅款及罰鍰之執行，為貫徹海關緝私政策、增進公共利益所必要與憲法第七條及第十六條尚無牴觸。又同條例所定行政爭訟程序，猶有未盡週詳之處，宜予檢討修正，以兼顧執行之保全與人民訴願及訴訟權之適當行使。

tion and the adequate exercise of the rights of administrative appeal and litigation of the people.

REASONING: Article 7 of the Constitution, which provides "All citizens of the Republic of China, irrespective of sex, religion, race, class or party affiliation shall be equal before the law," is to protect the substantial equality of the legal position of the people. It does not restrict the competent authority, with due authorization by the law, from rendering reasonably different treatments by reference to the differences de facto of any particular case and the purposes of legislation. Article 49 of the Customs Smuggling Control Act provides that "For any protest cases, and in case no goods were seized or the goods seized were not sufficient to pay for the fine or the short-paid duty, the Customs may order the person to pay in deposit, within 14 days, half of the original fine or insufficient amount or furnish an adequate security equal to the same amount. In case no payment was made or no security was furnished within the prescribed time limit, that protest will not be

解釋理由書：按憲法第七條規定：「中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等。」係為保障人民在法律上地位之實質平等，並不限制立法機關在此原則下，為增進公共利益，以法律授權主管機關，斟酌具體案件事實上之差異及立法之目的，而為合理之不同處置。海關緝私條例第四十九條：「聲明異議案件，如無扣押物或扣押物不足抵付罰鍰或追繳稅款者，海關得限期於十四日內繳納原處分或不足金額二分之一保證金或提供同額擔保，逾期不為繳納或提供擔保者，其異議不予受理」之規定，其中「得」字以下部分，旨在授權海關妥慎斟酌聲明異議案件之具體案情，而為應否限期命受處分人提供擔保之裁量，以防止受處分人藉故聲明異議，拖延或逃避稅款及罰鍰之執行。非謂不問有無必要海關均得命受處分人繳納保證金或提供擔保。此項規定雖使受處分人之救濟機會，受有限制，但既係針對無扣押物或扣押物不足抵付罰鍰或追繳稅款之受處分人，在原處分並無顯屬違法或不

accepted." The wording that follows the word "may" is meant to authorize the Customs, after examination, and subject to the particular facts, to render appropriate punishment. This is to prevent the person subjected to administrative punishment, by submitting a protest, from delaying or evading the execution of duty payment and punishment. It is not that Customs shall whatsoever order the person subjected to administrative punishment to pay a deposit or furnish the security needed. Though this provision limits the opportunity for relief of the person subjected to administrative punishment, it aims to prevent the person subjected to administrative punishment, who have no goods seized or whose goods seized were not sufficient to pay for the fine or the short-paid duty, from submitting a protest deliberately under the circumstance that the original administrative punishment was not obviously contrary to law or did not constitute undue punishment. It aims to fulfill the Customs policy of preventing smuggling, which is necessary to promote the public interest and is not contrary to Articles 7 and 16 of the Constitution. As

當之情形下，藉故聲明異議者而設，乃為貫徹海關緝私政策、增進公共利益所必要，與憲法第七條及第十六條尚無牴觸。至受處分人對於海關先命繳納保證金或提供擔保之處分提起訴願及行政訴訟時，受理訴願之機關或行政法院應依前開說明，審酌該處分是否合法適當，於此情形，如海關追徵或處罰之原處分顯屬違法或不當者，上級行政機關得本於行政監督權為適當之處置，乃屬當然。又海關緝私條例所定行政爭訟程序，有未盡週詳之處，致執行上易生偏差，宜予檢討修正，以兼顧執行之保全與人民訴願及訴訟權之適當行使，併此指明。

to the person subjected to administrative punishment submitting administrative appeal or litigation against the administrative punishment on paying a deposit or furnishing the security, the administrative authority accepting the administrative appeal or the administrative court shall, subject to the above-mentioned, examine and determine whether that administrative punishment was illegal or improper. Under this circumstance, in case it is found that the Customs' original administrative punishment on supplementary levying or punishment was illegal or undue, the higher administrative authority may put it to proper disposition, subject to its power of supervision over the relevant administrative authority. In addition, it is to be noted here that some of the wording in the section on administrative litigation procedure stipulated in the Customs Smuggling Control Act is imprecise and may cause deviation in the administrative execution; thus, such wording should be examined and amended in order to concur with the preservation of administrative execution and the adequate exercise of the rights of administrative appeal and litigation of the people.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。

J. Y. Interpretation No.212（January 16, 1987）*

ISSUE: Shall the community development fees be levied if that public work satisfies the requirements for a levy under Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects?

RELEVANT LAWS:

Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects（工程受益費徵收條例第二條）; Articles 2 and 22, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures（財政收支劃分法第二條及第二十二條第一項）.

KEYWORDS:

Community development fees（工程受益費）, levy（徵收）, revenue（歲入）.**

HOLDING: It is in accordance with the principle of fairness that the expenditure of public works constructed by governments at every level is proportionally undertaken by the direct benefit-receivers. Based on this intention, Article 2 of the Act Governing the Collection of

解釋文：各級政府興辦公共工程，由直接受益者分擔費用，始符公平之原則，工程受益費徵收條例本此意旨，於第二條就符合徵收工程受益費要件之工程，明定其工程受益費為應徵收，並規定其徵收之最低限額，自係應徵收。惟各級地方民意機關依同條例

* Translated by Ching P. Shih.

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Community Development Fees by Construction Projects prescribes that the community development fees shall be levied if that public works satisfies the requirements for a levy. It also defines the minimum amount of the levy which shall be imposed. However, when local representative institutions at every level examine levying proposals of community development fees by construction projects (hereinafter ""community development fees"") under Article 5 of the same Act mentioned above, they could also review whether the levies of those community development fees satisfy the requirements for a levy. Article 22, Paragraph 1, of the Act Governing the Allocation of Government Revenues and Expenditures prescribes that the public works benefit may be regarded as one of financial revenues; thus, the government can enact relating legislations for levying community development fees. However, it cannot be interpreted that the Act Governing the Collection of Community Development Fees by Construction Projects prescribes that community development fees may, but not shall, be levied.

第五條審定工程受益費徵收計畫書時，就該項工程受益費之徵收，是否符合徵收要件，得併予審查。至財政收支劃分法第二十二條第一項係指得以工程受益費作為一種財政收入，而為徵收工程受益費之相關立法，不能因此而解為上開條例規定之工程受益費係得徵收而非應徵收。

REASONING: It is in accordance with the principle of fairness that the expenditure of public works constructed by governments at every level is proportionally undertaken by the direct benefit-receivers. Based on this intention, Article 2 of the Act Governing the Collection of Community Development Fees by Construction Projects clearly prescribes that the community development fees by construction projects shall be levied. This provision regards directly receiving benefits from the government buildings or the improvements of specific public works as a requisite, and also clearly states the minimum amount of the levy. Therefore, if public works satisfy the requirements for a levy, its public works benefit shall be levied. However, local government at every level levying the public works benefit shall, under Article 5, Paragraph 1, of the same Act mentioned above, draft a levying proposal which includes a work plan, an expenditure budget, an overview of receiving benefit, and the amount of levy, submit it to the representative institution at every level for a resolution, and make a report to the higher level of

解釋理由書：各級政府興辦公共工程，由直接受益者分擔費用，始符公平之原則。工程受益費徵收條例本此意旨，於第二條就工程受益費明定為應徵收。此項規定，係以政府建築或改善特定公共工程而有直接受益者為要件，並明定其徵收之最低限額。則符合徵收工程受益費要件之工程，其工程受益費自係應徵收。惟各級地方政府徵收工程受益費，應依同條例第五條第一項規定，擬具徵收計畫書，包括工程計畫、經費預算、受益範圍及徵收費率等，送經各該級民意機關決議後，報請上級政府備案。各級地方民意機關依同條第二項規定，審定該項工程受益費徵收計畫書時，就該項工程受益費之徵收，是否符合徵收要件，得併予審查。將工程受益費徵收案予以延擱或否決，該工程經費收支預算應併同延緩或註銷之。至財政收支劃分法乃關於各級政府財政收支如何劃分、調劑及分類之立法。其第二十二條第一項規定得徵收工程受益費，係指得以工程受益者費作為一種財政收入，而為徵收工程受益費之相關立法。不能因此而解為上開條例規定之工程受益費係得徵收，而非應徵收。

government for a reference. When the local representative institution at every level examines the levying proposal of the public works benefit as stated under Paragraph 2 of the same Article mentioned above, it could also review whether the levy of that public works benefit satisfies the requirements for a levy. If the levy of the public works benefit has been postponed or rejected, the budget for work expenditure shall also be postponed or withdrawn. The Act Governing the Allocation of Government Revenues and Expenditures is an enactment regarding how to allocate, adjust, and classify the financial expenditure of the government at every level. Article 22, Paragraph 1, of the above Act states that the work profit may be levied. It means that the public works benefit may be regarded as one of financial revenue; thus, the government can enact relating legislations for levying community development fees. However, it cannot be interpreted that the Act Governing the Collection of Community Development Fees by Construction Projects prescribes that community development fees may, but not shall, be levied.

Justice Geng Wu filed dissenting opinion.

本號解釋吳大法官庚提出不同意見書。

J. Y. Interpretation No.213（March 20, 1987）*

ISSUE: Do the provisions in Article 101 of the Patent Act with respect to the opposition proceeding and Article 110 of the same Act with application *mutatis mutandis* of the first paragraph of Article 26 concerning loss of validity if application for patent rights and any other proceedings made were delayed beyond the statutory peremptory period violate the people's litigation and property rights? The Administrative Court in its precedents ruled that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to an appeal for retrial against a judgment rendered in an administrative procedure. Do the said precedents violate the people's right of litigation? Are the Administrative Court precedents constitutional in ruling that there is no need to institute the litigation or continue the process of litigation if in fact the original administrative act ceases to exist at the commencement of litigation or in the course of action, or if the administrative act ceases to be effective due to lapse of a specified period or other reasons and the party concerned has recoverable interests under law?

RELEVANT LAWS:

Article 15 and 16 of the Constitution（憲法第十五條、第十

* Translated by Chung Jen Cheng.

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六條）; Article 26,101 and 110 of the Patent Act（專利法第二十六條、第一百零一條、第一百十條）; Article 28 of the Administrative Proceedings Act（行政訴訟法第二十八條）; Article 497 of the Code of Civil Procedure（民事訴訟法第四百九十七條）.

KEYWORDS:

appeal for retrial（再審）, administrative act（行政處分）.**

HOLDING: 1. The provisions in Article 101 of the Patent Act amended and promulgated on May 12, 1960, with respect to the object proceeding, and the provisions in the first paragraph of Article 26 that apply mutatis mutandis to Article 110 of the same Act with respect to the invalidation of procedures in connection with patent rights that have been delayed beyond the statutory peremptory or any specified period, are intended for the prudent granting of patent rights and the prevention of a person from delaying the prompt, irrevocable decision of a patent application, and should not be construed as an infringement of the people's litigation and property rights or as contradictory to our Constitution.

解釋文：一、中華民國四十九年五月十二日修正公布之專利法第一百零一條有關新型專利異議程序之規定，及同法第一百十條準用同法第二十六條第一項關於專利之申請及其他程序延誤法定期間者，其行為為無效之規定，旨在審慎專利權之給予，並防止他人藉故阻礙，使專利申請案件早日確定，不能認係侵害人民之訴訟權及財產權，與憲法尚無牴觸。

2. Article 28 of the Administrative Proceedings Act does not include "an irrevocable judgment may also be objected to by an action for retrial, provided that some important evidence which might affect the judgment was not taken into consideration" as prescribed in Article 497 of the Code of Civil Procedure as one of the reasons for filing an appeal. When an administrative court accepts an appeal for administrative relief, it is natural for the court to determine if there are reasons for the action as stated in Article 28 of the Administrative Proceedings act and if there was some important evidence not taken into consideration in the irrevocable judgment. Precedents of the Administrative Court in Case (49) Tsai-Tze No. 54, Case (50) Tsai-Tze No.8 and Case (54) Tsai- Tze No.95, maintaining that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to appeal for retrial against a judgment rendered in an administrative procedure, are not contradictory to the aforementioned intents and cannot be construed as contradictory to the people's litigation right as protected by the

二、行政訴訟法第二十八條未將民事訴訟法第四百九十七條所稱「確定之判決，如就足影響於判決之重要證物，漏未斟酌」之情形列為再審原因，雖有欠週全，惟行政法院受理再審之訴，審查其有無前揭第二十八條所列各款之再審原因時，對於與該條再審原因有關而確定判決漏未斟酌之重要證物，仍應同時併予審酌，乃屬當然。行政法院四十九年裁字第五十四號、五十年裁字第八號、五十四年裁字第九十五號等判例，認民事訴訟法第四百九十七條（修正前第四百九十三條）所定再審之原因，不得援以對於行政訴訟判決提起再審之訴，與上述意旨無違，尚難認與憲法保障人民訴訟權之規定牴觸。

Constitution.

3.Precedents of the Administrative Court Case (27) Pan-Tze No.28 and Case (20) Pan-Tze No.16 were rendered in light of the fact that a suit for the purpose of revoking an administrative sanction is predicated upon the existence of an administrative sanction, provided that there is no need to initiate or continue the action when the sanction no longer exists at the time of the initiation of an action or ceases to exist during the course of a suit. The rulings falling within such an extent do not contradict provisions provided in the Constitution for the protection of the people's litigation rights. However, if an administrative act becomes invalid due to the passage of time or other reasons, while the legal effects produced before its invalidation do not disappear along with the invalidation of the original sanction, the party concerned should be allowed to initiate or continue the suit, provided the revocation of said act can restore his legal interest. In such event, the aforesaid Precedents are no longer applicable.

三、行政法院二十七年判字第二十八號及三十年判字第十六號判例，係因撤銷行政處分為目的之訴訟，乃以行政處分之存在為前提，如在起訴時或訴訟進行中，該處分事實上已不存在時，自無提起或續行訴訟之必要；首開判例，於此範圍內，與憲法保障人民訴訟權之規定，自無牴觸。惟行政處分因期間之經過或其他事由而失效者，如當事人因該處分之撤銷而有可回復之法律上利益時，仍應許其提起或續行訴訟，前開判例於此情形，應不再援用。

REASONING: 1. To promote industrial development, most countries make laws to grant patents for new inventions having industrial applicability or new models or improvements in the design, construction or fitting of an object having practicality so as to encourage inventiveness and creativity. The granting of patent rights concerns the interests of the applicant and interested parties. It also has a bearing on the interest of the public. To ensure that the patent examination process is fair and thorough, and the granting of patent rights prudent, the ROC government amended and promulgated the Patent Act on May 12, 1960, stipulating that an invention or creation that is deemed patentable following examination should first be published. Article 101 of the same Act also provides: "Any person who deems an approved new utility model, during its publication period, as having violated the provisions of Articles 95 through 97 of this Act, or any interested party who deems that the approved model is in contravention of the provisions of Article 12 of this Act, may, within six months from the date of publication, file

解釋理由書：一、國家為促進產業之發達，對於新發明具有產業上利用價值者或對於物品之形狀構造或裝置首先創作合於實用之新型者，均依法給予專利權，以鼓勵發明與創作。專利權之給予，關係專利申請權人及利害關係人之權益，對公眾之利益亦有影響。為期專利之審查公正周全，審慎專利權之給予，中華民國四十九年五月十二日修正公布之專利法規定，經審查認為可予專利之發明或創作，應先行公告，並於第一百零一條規定：「公告中之新型，任何人認為有違反本法第九十五條至第九十七條之規定，或利害關係人認為違反本法第十二條之規定者，得自公告之日起六個月內，備具聲請書，附具證件，向專利局提起異議，請求再審查」，旨在使公眾或利害關係人得依異議程序，對於公告中之新型專利，請求再予審查，防止對不應給予專利權之案件給予專利。然因此項異議程序易被利用以阻礙專利申請案之確定，謀取不法利益，故為兼顧專利申請權人之權益，於同法第一百十條規定，準用第二十六條第一項，關於專利之申請及其他程序，延誤法定或指定之期間者，其行為無效。此項規定，對聲明故障經專利局認為有正當理由者，既有同條項但書排

an objection with the Patent Office by submitting a written application, together with supporting evidence, requesting re-examination." The intent of the aforesaid clause is to allow the public or an interested party to request re-examination of a new model following an established objection procedure to prevent the granting of an application for patent rights for a model that should not be patented. Nevertheless, this objection procedure is predisposed to abuse in the hands of people who want to block the irrevocable decision of a patent application in order to make unlawful gain. Thus, in consideration of the interest of the patent applicant, the first paragraph of Article 26 of the Patent Act also applies mutatis mutandis to Article 110 of the same Act, prescribing that "when a patent application or any other procedure in connection with patent rights has been delayed beyond the statutory peremptory or any specified period, this proceeding shall be rendered void, provided that if it has been shown to the satis faction of the Patent Office that some obstacles existed, this provision shall not apply." The aforesaid clause contains a

除其適用，自不妨礙異議權之正當行使，且為防止他人藉故阻礙，使專利申請案件早日確定所必要，不能認係侵害人民之訴訟權與財產權，與憲法尚無牴觸。至上開法條規定，提起異議者，應備具聲請書，附具證件，係關於異議程序之程式，尚非對於行政訴訟兼採職權調查主義所為之限制，併予說明。

proviso ensuring the reasonable exercise of right of objection, which is necessary in the case where people use an objection as an excuse to delay the prompt, irrevocable decision of a patent application. It should not be construed as an infringement of the people's litigation and property rights or contradictory to the Constitution. In addition, Article 101 of the Patent Act requires the person who files an objection to submit a written application, together with supporting evidence as a part of the objection procedure, which does not limit the administrative procedure and the power of investigation by the vested authority.

2. Retrial is an action of the court to render judgment on a litigation case that has been irrevocably decided. To uphold the irrevocability of a ruling, the basis for filing an appeal for retrial or reexamination should be as prescribed in the law. Article 28 of the Administrative Proceedings Act does not include "an irrevocable judgment may also be contested by an action for retrial, provided that some important evidence which might affect the judgment was not taken into consideration"

二、再審乃法院就已裁判確定之訴訟事件，更為審理及裁判之程序；為維護裁判之確定力，提起再審之訴或聲請再審之原因，自應以法律明文規定者為限。行政訴訟法第二十八條，未將民事訴訟法第四百九十七條所稱「確定之判決，如就足影響於判決之重要證物，漏未斟酌」之情形列為再審原因，就行政法院兼具法律審與事實審之功能，且行政訴訟係採一審終結之現制，參酌民、刑事訴訟法均將此種情形定為再審原因之意旨而言，雖有欠週全；惟行政

as prescribed in Article 497 of the Code of Civil Procedure as one of the reasons for filing an appeal. Though the current system of the administrative court conducting trials based on both the matter-of-law and matter-of-fact and adopting a one-tier system does not seem consistent with the intent of retrial as provided in the civil and Code of Criminal Procedures, when an administrative court accepts an appeal for administrative relief, it is natural for the court to determine if there are reasons for the action as stated in Article 28 of the Administrative Proceedings Act and if there was some important evidence not taken into consideration in the irrevocable judgment. Precedents of the Administrative Court in Case (49) Tsai-Tze No.54, Case (50) Tsai-Tze No.8, and Case (54) Tsai-Tze No.95 maintaining that the reasons for appeal for retrial provided in Article 497 of the Code of Civil Procedure are not applicable to appeal for retrial against a judgment rendered in an administrative procedure, are not contradictory to the aforementioned intents and cannot be construed as contradictory to the people's litigation right as protected by the

法院受理再審之訴，審查其有無前揭第二十八條所列各款之再審原因時，對於與該條再審原因有關而確定判決漏未斟酌之重要證物，仍應同時併予審酌，乃屬當然。行政法院四十九年裁字第五十四號、五十年裁字第八號、五十四年裁字第九十五號等判例，認民事訴訟法第四百九十七條（修正前第四百九十三條）所定再審之原因，不得援以對於行政訴訟判決提起再審之訴，與上述意旨無違，尚難認與憲法保障人民訴訟權之規定牴觸。

Constitution.

3. An administrative litigation is a measure for seeking judicial relief when the petitioner thinks that the illegal administrative act of a central or local agency has injured his rights. The administrative litigation provided by our prevailing Administrative Proceedings Act aims primarily at revoking illegal administrative act to be deemed non-existent ab initio so as to eradicate the injury to people's rights. Precedents of the Administrative Court Case (27) Pan- Tze No.28 and Case (20) Pan-Tze No.16 maintain that, "The subject matter of an administrative litigation is the act of a government agency. If in fact the original act ceases to exist, the reason for the appeal also ceases to exist due to non-existence of the subject matter, such that the appeal should be rejected" and "If the subject matter of appeal ceases to exist, the suit relationship is considered ended," were rendered in light of the fact that a litigation for the purpose of revok ing an administrative sanction is predicated upon the existence of an administrative act, provided that there is no need to

三、行政訴訟，乃人民因中央或地方機關之違法行政處分，認為損害其權利，請求司法救濟之方法。我國現行行政訴訟法所規定之行政訴訟，係以撤銷訴訟為主，旨在撤銷違法之行政處分，使其自始歸於無效，藉以排除其對人民權利所造成之損害。行政法院二十七年判字第二十八號及三十年判字第十六號判例所謂：「行政訴訟原以官署之處分為標的，倘事實上原處分已不存在，則原告之訴因訴訟標的之消滅，即應予以駁回」及「當事人請求標的消滅，其訴訟關係即應視為終結」各等語，係因以撤銷行政處分為目的之訴訟，乃以行政處分之存在為前提，如在起訴時或訴訟進行中，該處分事實上已不存在時，自無提起或續行訴訟之必要，首開判例，於此範圍內，與憲法第十六條保障人民訴訟權之規定，自無牴觸。惟行政處分因期間之經過或其他事由而失效，其失效前所形成之法律效果，如非隨原處分之失效而當然消滅者，當事人因該處分之撤銷而有可回復之法律上利益時，仍應許其提起或續行訴訟，前開判例於此情形，應不再援用。

initiate or continue the action when the act no longer exists at the time of initiation of an action or ceases to exist during the course of a litigation. Precedents falling within such an extent do not contradict provisions in Article 16 of the Constitution for the protection of people's litigation rights. However, if an administrative act becomes invalid due to the passage of time or other reasons, while the legal effects produced before its invalidation do not disappear along with the invalidation of the original sanction, the party concerned should be allowed to initiate or continue the litigation, provided the revocation of said act can restore his legal interest. In such event, the aforesaid Precedents are no longer applicable.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。

J. Y. Interpretation No.214（April 17, 1987）*

ISSUE: Do the Executive Yuan Order, stating that "credit cooperatives can no longer be established in any township," and the Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives, contradict the Constitution?

RELEVANT LAWS:

Article 14 and Article 145, Paragraph 2, and Article 149 of the Constitution（憲法第十四條、第一百四十五條、第一百四十九條）; Articles 5, 10, of the Cooperative Act（合作社法第五條、第十條）; Articles 26, 29 of the Banking Act（銀行法第二十六條、第二十九條）; Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives（金融主管機關受託統一管理信用合作社暫行辦法）.

KEYWORDS:

freedom of association（結社自由）, credit cooperative（信用合作社）, financial institutions（金融機構）.**

HOLDING: Credit cooperatives involved in the transaction of some banking business belong to financial enter-

解釋文：信用合作社經營部分銀行業務，屬於金融事業，應依法受國家之管理。行政院五十三年七月廿四日

* Translated by Ching P. Shih.

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

prises. Accordingly, they shall be supervised by the state by law. Executive Yuan Order T.C.T. No. 5148 issued on July 24, 1964, stating that "credit cooperatives can no longer be established in any township" and the Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives promulgated through Directive T.C.C.T No. 13957 issued on June 5, 1970, by the Ministry of Finance are measures made under its legal duty and authorization, used to manage financial institutions in consideration of actual needs for social economy and finance. Referring to Articles 26, 29 of the Banking Act and Articles 5, 10, of the Cooperative Act, the measures mentioned above do not contradict Article 14 and Article 145, Paragraph 2, of the Constitution.

台五十三財字第五一四八號關於「信用合作社在鄉鎮不得再設立」之命令及財政部五十九年六月五日以台財錢字第一三九五七號令訂定之「金融主管機關受託統一管理信用合作社暫行辦法」，乃係依其法定職權及授權，斟酌社會經濟與金融之實際需要，為管理金融機構所採之措施，參酌銀行法第二十六條、第二十九條、合作社法第五條、第十條各規定意旨，與憲法第十四條及第一百四十五條第二項並無牴觸。

REASONING: That the people have the freedom of association is clearly stated in Article 14 of the Constitution. Also, that the cooperative enterprises shall be encouraged and assisted by the state is also provided in Article 145, Paragraph 2,

解釋理由書：按人民有結社之自由，固為憲法第十四條所明定，合作事業應受國家之獎勵與扶助，亦為憲法第一百四十五條第二項所規定，惟金融機構應依法受國家之管理，憲法第一百四十九條定有明文。設立合作社雖屬結

of the Constitution. However, that the financial institutions shall be supervised by the state by law is clearly stated in Article 149 of the Constitution. Although cooperatives are a kind of association, matters such as approving loans and receiving deposits carried out by a cooperative and prescribed in Article 3, Subparagraph 4, of the Cooperatives Act are transactions conducted by the banking business. Thus, credit cooperatives belong to financial enterprises and shall accordingly be supervised by the state by law. Article 26 of the Banking Act states: "The central competent authority may, in consideration of domestic conditions of economy and finance, restrict the enlargement of a bank and its branch in a specific area." That an institution other than a bank cannot transact banking business except as prescribed by law is otherwise also stated in Article 29, Paragraph 1, of the same Act as above. Furthermore, in respect to the cooperative, which receives deposits and dispenses loans, Article 5 of the Cooperatives Act prescribes restrictions regarding the receiving of deposits from persons other than members. In addition, accord-

社之一種，但經營合作社法第三條第四款業務之合作社，其貸放資金與收受存款等事項，本為銀行業務，故信用合作社乃屬金融事業，自應依法受國家之管理。銀行法第二十六條規定：「中央主管機關得視國內經濟、金融情形、於一定區域內限制銀行或其分支機構之增設」。同法第二十九條第一項，亦有除法律另有規定外，非銀行不得經營銀行業務之明文。合作社法第五條對於經營存放款業務之合作社，收受非社員之存款，更設有限制，而合作社之設立，依同法第十條，主管機關並得為准否之批示。綜合上述各規定意旨，行政院基於國家最高行政機關之職權，於五十三年七月二十四日以台五十三財字第五一四八號令，規定「信用合作社在鄉鎮不得再設立」，並於五十九年一月二十三日以台五十九財字第〇六〇八號令及六十年十二月十八日以台六十財字第一二二八九號令，將信用合作社之管理，委託金融主管機關統一辦理，財政部乃於五十九年六月五日以台財錢第一三九五七號令頒及六十年台財錢字第二九一八號令修正「金融主管機關受託統一管理信用合作社暫行辦法」，均係行政院及財政部依據法定職權及授權關係，斟酌當時社會經濟與金融之實際需要，為管理

ing to Article 10 of the same Act, the competent authority may make the decision of approval or not. Summarily reviewing the intentions of the above provisions, based on its duty as the supreme authority of the state, the Executive Yuan issued Order T.C.T. No. 5148 on July 24, 1964, ruling that "The credit cooperatives can no longer be established in any township," and Order T.C.T No. 12289 authorizing the relevant supervising financial authority to oversee the management of credit cooperatives uniformly. Hence, the Ministry of Finance promulgated the Provisional Regulation Governing the Relevant Supervising Financial Authorities Authorized to Uniformly Manage Credit Cooperatives through Directive T.C.C.T No. 13957 on June 5, 1970, and its revision through Directive T.C.C.T. No. 2918 in 1971. Those were measures made by the Executive Yuan and the Ministry of Finance under their legal duties and the relationship of authorization used to manage financial institutions on consideration of actual needs for social economy and finance at that time. They did not contradict Article 14 and Article 145, Paragraph

金融機構所採之措施，與憲法第十四條及第一百四十五條第二項並無牴觸、至信用合作社之設立條件及管理事項，應視社會經濟與金融之實際情形，隨時檢討依法調整，乃屬當然。

2, of the Constitution. It is certain that the requirements for the establishment of a credit cooperative and the matters to be managed shall, on consideration of the actual conditions of social economy and finance, be adjusted by law from time to time.

J. Y. Interpretation No.215（April 29, 1987）*

ISSUE: Does the handling process for obstacle constructions, which originally existed within the sphere of land used for public roads prescribed in Article 11 of the Urban Roads Act, contradict Articles 15 and 143 of the Constitution?

RELEVANT LAWS:

Articles 15 and 143 of the Constitution（憲法第十五條、第一百四十三條）; Article 215 of the Land Act（土地法第二百十五條）; Articles 10 and 11 of the Urban Roads Act（市區道路條例第十條、第十一條）.

KEYWORDS:

urban roads（市區道路）, taking（徵收）, public interest（公共利益）, compensation（補償）, remedial process（救濟程序）.**

HOLDING: The Urban Roads Act is enacted for improving traffic conditions on urban roads and advancing the public interest. According to Article 10 of the Act, the land needed for urban roads shall be taken if a private person owns that land. Article 11 of the same Act

解釋文：市區道路條例係為改善市區道路交通，增進公共利益而制定。市區道路所需土地，如為私人所有，依該條例第十條，得依法徵收。同條例第十一條對於用地範圍內之原有障礙建築物，已特別明定其處理程序，並無應予徵收之規定，關於其補償及爭議

* Translated by Ching P. Shih.

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

specifically prescribes the handling process for obstacle constructions that are within the sphere of land for this kind of specific use. There is no description regarding how taking ought to be done in that article. In respect of the remedial process for compensation and dispute, as the article just mentioned does not exclude the application of certain related legislations, it is sufficient to protect people's rights as well. Thus, the Article does not contradict Articles 15 and 143 of the Constitution.

之救濟程序，既未排除相關法令之適用，足以兼顧人民權利之保障，與憲法第十五條及第一百四十三條並無牴觸。

REASONING: The Urban Roads Act is enacted for constructing, improving, maintaining, using, managing and raising of expenditure of urban roads. It is a necessity for the advancement of the public interest. According to Article 10 of the Act, the land needed for urban roads shall be taken if a private person owns that land. Article 11, Paragraph 1, of the same Act prescribes that: "When drafting a construction plan for each road, the matters regarding razing and removing of, and compensating for, obstacle constructions that are within the sphere of land

解釋理由書：按市區道路條例係為市區道路之修築、改善、養護、使用、管理及其經費之籌措而制定，乃增進公共利益所必要。市區道路所需土地，如為私人所有，依該條第十條，得依法徵收之。同條例第十一條第一項規定：「市區道路用地範圍內原有障礙建築物之拆除、遷讓、補償事項，應於擬訂各該道路修築計畫時，一併規劃列入。」同條第二項、第三項又規定：「修築計畫確定公告後，通知所有權人限期拆除或遷讓，必要時並得代為執行。」「前項限期，不得少於三個月。」依上開規定，對於妨礙建築道路

used for urban roads shall be drawn up into the plan as well." Paragraphs 2 and 3 of the same Article also state that: "After confirming and publishing the construction plan, [the competent authority] shall inform the owner to raze or remove [the obstacles] within a definite time, and, if necessary, may execute it as the deputy of the owner." "The definite time mentioned in the former Paragraph may not be less than 3 months." According to these provisions, in respect of the obstacle constructions hampering the construction of roads, first of all, they provide that the matters regarding razing, removing and the matter of compensation so incurred shall be included in the plan as well; then, after confirming and publishing the construction plan which includes the compensating matter, inform the owner to raze or remove the obstacle within a definite time, and if necessary, may execute the procedure as the deputy of the owner. This handling process is specifically enacted for promptly completing road construction plans. They can be deemed as specific rules for Article 215 of the Land Act. However, to be reasonable and appropri-

之建築物，首先規定應將有關拆除遷讓及因此而須負擔之補償事項，一併規劃列入修築計畫，俟包括補償事項在內之修築計畫確定公告後，再通知所有權人，限期拆除或遷讓，必要時並得代為執行，旨在使道路修築計畫得以迅速完成，而特別明定其處理程序，乃為土地法第二百十五條之特別規定。惟仍明定應給予補償，此項補償，應依有關法令辦理，求其合理相當，且對拆除遷讓之通知及補償行為，依法均許利害關係人提起訴願及行政訴訟，以求救濟，足以兼顧人民權利之保障，與憲法第十五條及第一百四十三條並無牴觸。

ate, the compensation they clearly provide shall be administered by related regulations, and in respect of the razing and removing notice and the compensating action, the Act allows the person involved to make administrative appeals and suits by law for a remedy. It is sufficient to protect the people's rights as well. The Article does not contradict Articles 15 and 143 of the Constitution.

J. Y. Interpretation No.216（June 19, 1987）*

ISSUE: Are the MOJA letters stipulating that the court in conducting a public auction of imported goods with customs duties on credit shall reveal in an auction notice the unpaid duties existing thereon, and the purchaser thereof must pay the said duties before the goods may be delivered congruous with the intent of the Constitution to protect the people's property rights?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）, Articles 31 and 55 of the Customs Act（關稅法第三十一條及第五十五條）.

KEYWORDS:

administrative ordinances（行政命令）, administrative construction（行政解釋）, property rights（財產權）.**

HOLDING: The provision that judges shall adjudicate independently according to law is specifically prescribed in Article 80 of the Constitution. Administrative rules adopted under the duty of seeking proper construction of laws by various government agencies may be applied

解釋文：法官依據法律獨立審判，憲法第八十條載有明文。各機關依其職掌就有關法規為釋示之行政命令，法官於審判案件時，固可予以引用，但仍得依據法律，表示適當之不同見解，並不受其拘束，本院釋字第一三七號解釋即係本此意旨；司法行審判上之法律

* Translated by Nigel N.T. Li, Lee and Li, Attorneys-at-Law.

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

by judges in the course of adjudication, who, not being bound thereby, may in a proper manner, express their opinion in light of the law, as stated in Interpretation No. 137 of this Court. Ordinances issued by a judicial administration involving legal issues in the business of adjudication are merely references for judges, who again, are not bound thereby in the course of adjudication. However, the rules, if and when cited by judges during the course of their adjudication, may be subject to a party's application for constitutional interpretation under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act.

政機關所發司法行政上之命令，如涉及見解，僅供法官參考，法官於審判案件時，亦不受其拘束。惟如經法官於裁判上引用者，當事人即得依司法院大法官會議法第四條第一項第二款之規定聲請解釋。

In respect of the mortgage created on any merchandise whose customs duties have not been cleared, the mortgage interest certainly does not extend to what has been covered by the unpaid customs duties on the merchandise, as Paragraphs 2 and 3 of Article 31 of the Customs Act have clearly prescribed. The letters, Ref. Nos. (65) Ming-Tze-09982, dated November 15, 1976, and Tai (67) Ming-Tze-06392, dated July 22, 1978, issued by the

就關稅未繳清之貨物取得動產抵押權者，其擔保利益自不能存在於該貨物未繳之關稅上，此觀關稅法第三十一條第二項、第三項規定甚明。前司法行政部六十五年十一月十五日台（六五）函民字第〇九九八二號及六十七年七月廿二日台（六七）函民字第〇六三九二號函提示執行法院，於拍賣關稅記帳之進口貨物時，應將該貨物未繳關稅情形，於拍賣公告內載明，並敘明應由買受人繳清關稅，始予點交，此項函示，

former Ministry of Judicial Administration, stipulate that the court of enforcement proceedings, when conducting a public auction of imported goods with customs duties on credit, will state in the notice for public auction that there are unpaid customs duties on the goods, and that the purchaser thereof must clear the duty payment before the goods may be delivered and transferred. These letters are in accord with the provisions of the above-cited Act and are not subject to the application of Article 55, Paragraph 3, of the same Act; thus, they have not encroached upon the interest of the mortgagee of movables as a necessity to secure the imposition of customs duties, and therefore are not contrary to the constitutional safeguard of property rights.

核與上開法條意旨相符，不屬同法第五十五條第三項規定之範圍，既未侵害動產抵押權人之權益，亦為確保關稅之稽徵所必要，與憲法保障人民財產權之本旨，並無牴觸。

REASONING: The provision that judges shall adjudicate independently according to law is specifically prescribed in Article 80 of the Constitution. Administrative rules adopted under the duty of pursuing the proper construction of laws by various government agencies may be applied by judges in the course of adjudi-

解釋理由書：法官依據法律獨立審判，不受任何干涉，憲法第八十條載有明文。各機關依其職掌就有關法規為釋示之行政命令，法官於審判案件時，固可予以引用，但仍得依據法律，表示適當之不同見解，並不受其拘束，本院釋字第一三七號解釋即係本此意旨；司法行政機關所發行政上之命令，

cation, who, not being bound thereby, may in a proper manner express their opinion in light of the law, as stated in Interpretation No. 137 of this Court. The provision that administrative ordinances issued by a judicial administration shall not intervene in adjudication is specifically prescribed in Article 90 of the Court Organic Act. Judicial administrations shall not put forth their own legal views and order judges to follow such views in the course of adjudication. If any legal views are presented, they are references for judges only and shall not bind judges in the course of adjudication. However, the rules, if and when cited by judges during the course of their adjudication, may be subject to a party's application for constitutional interpretation under Article 4, Paragraph 1, Subparagraph 2, of the Grand Justices Council Adjudication Act. We take the case accordingly.

不影響於審判權之行使，為法院組織法第九十條所明定。司法行政機關自不得提示法律上之見解而命法官於審判上適用，如有所提示，亦僅供法官參考，法官於審判案件時，不受其拘束。惟上述各種命令，如經法官於裁判上引用者，當事人即得依司法院大法官會議法第四條第一項第二款之規定聲請解釋。本件聲請，依上開說明，應予受理。

The provisions that imported goods, with either duties to be paid in installments or with credit, may not be transferred before the duties are fully paid, and that if a transfer is made through compul-

分期繳稅或稅款記帳之進口貨物，於關稅未繳清前，不得轉讓，其經強制執行或專案核准者，准由受讓人繼續分期繳稅或記帳，關稅法第三十一條第二項、第三項規定甚明。依此規定，

sory execution or with a specific permit, the transferee is allowed to continue paying the duties in installments or pay the duties with credit, are prescribed clearly in Article 31, Paragraphs 2 and 3, of the Customs Act. Accordingly, in respect of the mortgage created on any goods whose customs duties have not been cleared, the mortgage interest certainly does not extend to what is covered by the unpaid customs duties on the goods. If the transferee who may receive goods through compulsory enforcement proceedings is not granted permission to continue paying the duties in installments or place the duties on credit, he must clear the duty payment before gaining custody of such goods. This mechanism is different from what is prescribed in Article 55, Paragraph 3, of the same Act, under which outstanding or unpaid duties are preferred to common creditors' claims. The letters, Ref. Nos. (65) Ming- Tze-09982, dated November 15, 1976, and Tai (67) Ming-Tze-06392, dated July 22, 1978, issued by the former Ministry of Judicial Administration, stipulate that the court of enforcement proceedings, when conducting a public auction of

就未繳清關稅之貨物取得動產抵押權者，其擔保利益自不能存在於該貨物未繳之關稅上，其因強制執行而受讓該項貨物者，如未獲准繼續分期繳稅或記帳，自須繳清稅款，始可取得貨物，此與同法第五十五條第三項規定係指應繳或應補繳之關稅，就上述情形以外之納稅義務人所有財產受償，僅較普通債權優先者不同。前司法行政部六十五年十一月十五日台（六五）函民字第〇九九八二號及六十七年七月二十二日台（六七）函民字第〇六三九二號函提示執行法院，於拍賣關稅記帳之進口貨物時，應將該貨物未繳關稅情形，於拍賣公告內載明，並敘明應由買受人繳清關稅，始予點交，此項函示，核與關稅法第三十一條第二項、第三項之意旨相符，不屬同法第五十五條第三項規定之範圍，既未侵害動產抵押權人之權益，亦為針對關稅特性，確保關稅之稽徵所必要，與憲法保障人民財產權之旨，並無牴觸。

imported goods whose customs duties are on credit, shall state in the notice of public auction that there are unpaid customs duties on the goods, and that the purchaser thereof must pay the duties before the goods may be delivered and transferred. These letters are in accord with Article 31, Paragraph 2, and not subject to the application of Article 55, Paragraph 3 of the same Act; thus, they have not encroached upon the interest of the mortgagee of movables as a necessity to secure the imposition of customs duties, and therefore are not contrary to the constitutional safeguard of property rights.

Justice Chung-Sheng Lee filed dissenting opinion.

本號解釋李大法官鐘聲提出不同意見書。

J. Y. Interpretation No.217（July 17, 1987）*

ISSUE: Is the Ministry of Finance directive constitutional in instructing tax collection offices to assess and collect, based on information obtained from a land administration office, income tax from a creditor on interest agreed with the debtor on loans secured by mortgage recorded with such office?

RELEVANT LAWS:

Articles 15 and 19 of the Constitution（憲法第十五條、第十九條）; Article 758 of the Civil Code（民法第七百五十八條）; Article 43 of the Land Act（土地法第四十三條）; Article 14, Paragraph 1, Category 4 of the Income Tax Act（所得稅第十四條第一項第四類）; Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983)（財政部中華民國七十二年二月二十四日（七二）台財稅字第三一二二九號函）.

KEYWORDS:

taxpaying bodies（納稅主體）, tax denominations（稅目）, tax rates（稅率）, methods of tax payment（納稅方法）, cause of taxation（課稅原因）, degree of proof（證明力）, principle of taxation by law（租稅法律主義）, income from interest（利息所得）, burden of proof（舉證責任）, rebuttal evidence（反證）, land administration office（地政機關）, tax collection office（稽徵機關）, rule of income and disbursement realization（收付實現原則）.**

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* Translated by Raymond T. Chu.

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

HOLDING: The provision of Article 19 of the Constitution that the people shall have the duty to pay tax in accordance with law is intended to point out that the people have the duty to pay tax pursuant to the prescriptions in respect of taxpaying bodies, tax denominations, tax rates, methods of tax payment, and time of tax payment as set forth by law. Whether there are any facts to support the cause of taxation and the degree of proof of the relevant evidence are questions of fact beyond the sphere of the principle of taxation by law. The Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983) issued to its subordinate financial and tax agencies instructs to the effect that income from interest earned by a creditor on his right secured by a mortgage with an agreed interest expressly stipulated may be assessed and taxed according to the information recorded at the land administration office on the creation and cancellation of the mortgage and that if the party alleges that he has received no interest, he must assume the burden of proof to support his allegation. Inasmuch as this

解釋文：憲法第十九條規定人民有依法律納稅之義務，係指人民僅依法律所定之納稅主體、稅目、稅率、納稅方法及納稅期間等項而負納稅之義務。至於課稅原因事實之有無及有關證據之證明力如何，乃屬事實認定問題，不屬於租稅法律主義之範圍。財政部中華民國七十二年二月二十四日（七二）臺財稅字第三一二二九號函示所屬財稅機關，對於設定抵押權為擔保之債權，並載明約定利息者，得依地政機關抵押權設定及塗銷登記資料，核計債權人之利息所得，課徵所得稅，當事人如主張其未收取利息者，應就其事實負舉證責任等語，係對於稽徵機關本身就課稅原因事實之認定方法所為之指示，既非不許當事人提出反證，法院於審判案件時，仍應斟酌全辯論意旨及調查證據之結果，判斷事實之真偽，並不受其拘束。尚難謂已侵害人民權利，自不牴觸憲法第十五條第十九條之規定。

directive constitutes merely an instruction to tax collection offices with respect to their method of identifying the fact to support the cause of taxation rather than prohibiting the party concerned from producing rebuttal evidence, and is not binding upon the court, which, when hearing a case, has in any event the duty to consider the contents of all arguments and the results of investigation of evidence and to judge whether the fact is true, it can not be said to be an encroachment upon the right of the people or in conflict with Articles 15 and 19 of the Constitution.

REASONING: The provision of Article 19 of the Constitution that the people shall have the duty to pay tax in accordance with law is meant to proclaim the "principle of taxation by law." It is basically intended to point out that the people have the duty to pay tax pursuant to the prescriptions in respect of taxpaying bodies, tax denominations, tax rates, methods of tax payment, and time of tax payment as set forth by law. While it is true that no tax may be levied against the above principle, whether there are any

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務，乃在揭示「租稅法律主義」，其主要意旨係指人民僅依法律所定之納稅主體、稅目、稅率、納稅方法及納稅期間等項而負納稅之義務，課徵租稅固不得違反上述意旨，惟關於個別事件課稅原因事實之有無及有關證據之證明力如何，則屬事實認定問題，不屬於租稅法律主義之範圍。

facts to support the cause of taxation and the degree of proof of the relevant evidence are questions of fact beyond the sphere of the principle of taxation by law.

The Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983) issued to its subordinate financial and tax agencies states: "The recordation of a mortgage has an absolute effect under Article 758 of the Civil Code and Article 43 of the Land Act. Where a creditor who loans money to a debtor against the furnishing of real property as a security perfects the recordation of a mortgage with a land administration office, with the agreed interest expressly stipulated therein, the tax collection office may, based on the information recorded at the land office, assess the creditor's income from such interest accruable in the year before deletion of the recordation of the mortgage and levy tax thereon as a Category 4 income under Article 14, Paragraph 1, of the Income Tax Act. This is because a loan arrangement between individuals is not comparable with that between companies or firms in that the

財政部中華民國七十二年二月二十四日（七二）台財稅字第三一二二九號函提示所屬財稅機關，內載：「抵押權之設定登記，依民法第七百五十八條及土地法第四十三條規定，具有絕對效力。債權人貸款與債務人，由債務人提供不動產，向地政機關辦妥抵押權設定登記，並載明約定利息者，稽徵機關自得依該登記資料，在抵押權塗銷登記前之年度，依法核計利息所得，依所得稅法第十四條第一項第四類規定課稅，因私人借貸非公司行號可比，其無支付利息之帳冊可稽，無法適用收付實現之原則，當憑其登記文件作有按期收取利息之認定，當事人如主張其未收取利息者，應就其事實負舉證責任，所提出之證據，必須具體且合於一般經驗法則，如僅由債務人私人出具之證明，要不得採認」等語，縱有未盡妥洽之處，惟係對於稽徵機關本身就課稅原因事實之認定方法所為之指示，既非不許當事人提出反證，法院於審判案件時，仍應斟酌全辯論意旨及調查證據之結果，判斷事

unavailability of account books to show the receipt or payment of interest thereon makes it impossible to assess such income by the rule of income and disbursement realization, and thus it is only natural that the income from such interest is deemed to have been periodically received as it is stipulated in the documents recorded. If the party alleges that he has received no interest, he must bear the burden of proof to support his allegation, and the evidence produced must be concrete and acceptable under the ordinary rule of thumb (erfahrungsmäβig). A documentary proof executed by an individual as the debtor will be inadmissible." Inasmuch as this directive, albeit not totally satisfactory and appropriate, constitutes merely an instruction to tax collection offices with respect to the method of identifying the fact to support the cause of taxation rather than prohibiting the party concerned from producing rebuttal evidence, and is not binding upon the court, which, when hearing a case, has in any event the duty to consider the contents of all arguments and the results of investigation of evidence and to judge whether the fact is true, it can not be

實之真偽，並不受其拘束，尚難謂已侵害人民權利，自不牴觸憲法第十五條、第十九條之規定。

said to be an encroachment upon the right of the people or in conflict with Articles 15 and 19 of the Constitution.

J. Y. Interpretation No.218（August 14, 1987）*

ISSUE: Are the Ministry of Finance directives in conflict with the Constitution and inconsistent with the Income Tax Act in fixing an invariable percentage of tax upon income from the sale of a house by an individual who fails to produce proof to show the actual price of the deal?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 71, Paragraph 1, first sentence, Article 76, Paragraph 1, Article 79, Paragraph 1, Article 80, Paragraph 1 and Article 83, Paragraph 1 of the Income Tax Act（所得稅法第七十一條第一項前段、第七十六條第一項、第七十九條第一項、第八十條第一項、第八十三條第一項）; Ministry of Finance Directive (67) Tai-Tsai-Shui-Tze No. 32252 (April 7, 1978)（財政部六十七年四月七日(六七)台財稅字第三二二五二號函）; Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 33523 (May 2,1980)（財政部六十九年五月二日（69）台財稅字第三三五二三號函）; Taiwan Provincial Tax Bureau Directive (67) Shui-Yi-Tze No. 596 (February 3, 1978)（台灣省稅務局六十七年二月三日（六七）稅一字第五九六號函）.

KEYWORDS:

method of assessment by imputation（推計核定方法）, taxing authority（稅捐稽徵機關）, assessed value（評定價

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* Translated by Raymond T. Chu.

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格），income from property transaction（財產交易所得），actual price of the deal（實際成交價格），actual cost（實際成本），original acquisition（原始取得），principle of fair taxation（租稅公平原則）.**

HOLDING: That the people have the duty to pay tax under law is explicitly provided by Article 19 of the Constitution. When the state levies income tax under law, every taxpayer shall have the duty to file a tax return on his own initiative and present all account books, documents and vouchers that serve as proof of his income to enable the taxing authority to carry out tax audit and assessment. Where a taxpayer fails to file a tax return or to present documentary evidence, the taxing authority may determine his income on the basis of information obtained upon investigation or the standard profits made by others in the same trade. This method of assessment by imputation does not contradict the purpose of the constitutional provision working on an estimate of the income by the method of imputation, the taxing authority must exert all possible efforts to make an objective and reason-

解釋文：人民有依法律納稅之義務，憲法第十九條定有明文。國家依法課徵所得稅時，納稅義務人應自行申報，並提示各種證明所得額之帳簿、文據，以便稽徵機關查核。凡未自行申報或提示證明文件者，稽徵機關得依查得之資料或同業利潤標準，核定其所得額。此項推計核定方法，與憲法首開規定之本旨並不牴觸。惟依此項推計核定方法估計所得額時，應力求客觀、合理，使與納稅義務人之實際所得相當，以維租稅公平原則。至於個人出售房屋，未能提出交易時實際成交價格及原始取得之實際成本之證明文件者。財政部於六十七年四月七日所發(67)臺財稅字第三二二五二號及於六十九年五月二日所發(69)臺財稅字第三三五二三號等函釋示：「一律以出售年度房屋評定價格之百分之二十計算財產交易所得」，不問年度、地區、經濟情況如何不同，概按房屋評定價格，以固定不變之百分比，推計納稅義務人之所得額自難切近

able estimation closely corresponding to the actual income of the taxpayer so as to safeguard the principle of fair taxation. As regards the situation where an individual having sold a house fails to produce documents to prove the actual price of the deal at the time of conclusion of the transaction and the actual cost of the original acquisition thereof, the Ministry of Finance Directives (67) Tai-Tsai-Shui-Tze No. 32252 issued on April 7, 1978, and (69) Tai-Tsai-Shui-Tze No. 33523 issued on May 2, 1980, state: "The income from a property transaction shall be computed at 20% of the assessed value of the house in the year during which the house was sold." In other words, the amount of the taxpayer's income is imputed at a fixed percentage of the assessed value of the house regardless of any variation due to year, location, and economic conditions. The resulting figure can hardly be expected to come close to the actual price and is unfair as well as unreasonable. Such a method is also inconsistent with the meaning of assessment by imputation as contemplated by the Income Tax Act and must cease to be operative within six

實際，有失公平合理，且與所得稅法所定推計核定之意旨未盡相符，應自本解釋公布之日起六個月內停止適用。

months from the date of issue of this interpretation.

REASONING: Article 19 of the Constitution provides: "The people shall have the duty to pay tax in accordance with the law." When the state levies income tax under the Income Tax Act, whether it be consolidated income tax payable by individuals or business income tax, every taxpayer is required to fill out an income tax return, file the form on his own initiative within the statutory time limit and present all account books, documents and vouchers that serve as proof of his income to enable the taxing authority to investigate and assess, upon receipt of the return, the amounts of income earned and the tax payable by him. Where a taxpayer fails to fill out and file a tax return within the statutory time limit or fails to present account books, documents and vouchers that serve as proof of his income during the taxing authority's process of investigation or reinvestigation, the taxing authority may determine his income on the basis of information obtained upon such investigation or the

解釋理由書：憲法第十九條規定：「人民有依法律納稅之義務」，國家依據所得稅法課徵所得稅時，無論為個人綜合所得稅或營利事業所得稅，納稅義務人均應在法定期限內填具所得稅結算申報書自行申報，並提示各種證明所得額之帳簿、文據，以便稽徵機關於接到結算申報書後，調查核定其所得額及應納稅額。凡未在法定期限內填具結算申報書自行申報或於稽徵機關進行調查或復查時，未提示各種證明所得額之帳簿、文據者，稽徵機關得依查得資料或同業利潤標準，核定其所得額，所得稅法第七十一條第一項前段、第七十六條第一項、第七十九條第一項、第八十條第一項及第八十三條第一項規定甚明。此項推計核定所得額之方法，與憲法首開規定之本旨並不牴觸。惟依推計核定之方法，估計納稅義務人之所得額時，仍應本經驗法則，力求客觀、合理，使與納稅義務人之實際所得額相當，以維租稅公平原則。至於個人出售房屋，未能提示交易時實際成交價格及原始取得之實際成本之證明文件，致難依所得稅法第十四條第一項第七類第一

standard profits made by others in the same trade. Provisions to such effect are expressly set forth in the Income Tax Act, Article 71, Paragraph 1, first sentence; Article 76, Paragraph 1; Article 79, Paragraph 1; Article 80, Paragraph 1; and Article 83, Paragraph 1. This method of assessment by imputation does not contradict the purpose of the constitutional provision mentioned above. Nevertheless, when working on an estimate of the income by the method of imputation, the taxing authority must exert all possible efforts based on the rule of thumb (erfahrungsmäβig) to make an objective and reasonable estimation closely corresponding to the actual income of the taxpayer so as to safeguard the principle of fair taxation. As to the situation where an individual having sold a house fails to produce documents to prove the actual price of the deal at the time of the conclusion of the transaction and the actual cost of the original acquisition thereof, making it difficult to compute his income in the manner as specified in the Income Tax Act, Article 14, Paragraph 1, Category 7 (1), the Ministry of Finance Directives (67)

目計算所得額者，財政部於六十七年四月七日所發⑹台財稅字第三二二五二號及於六十九年五月二日所發⑹台財稅字第三三五二三號等函釋示：「一律以出售年度房屋評定價格之百分之二十計算財產交易所得」，此時既不以發見個別課稅事實真相為目的，而又不問年度、地區、經濟情況如何不同，概按房屋評定價格，以固定不變之百分比，推計納稅義務人之所得額，自難切近實際，有失公平合理，且與所得稅法所定推計核定之意旨未盡相符，應自本解釋公布之日起六個月內停止適用。

Tai-Tsai-Shui-Tze No. 32252 issued on April 7, 1978, and (69) Tai-Tsai-Shui-Tze No. 33523 issued on May 2, 1980, state: "The income from property transaction shall be computed at 20% of the assessed value of the house in the year during which the house was sold." In other words, the amount of the taxpayer's income is imputed at a fixed percentage of the assessed value of the house regardless of any variation due to year, location, and economic conditions. Nor is such formula designed for the purpose of discovering the true facts of the particular tax case. The resulting figure can hardly be expected to come close to the actual price and is unfair as well as unreasonable. Such a method is also inconsistent with the meaning of assessment by imputation as contemplated by the Income Tax Act and must cease to be operative within six months from the date of issue of this interpretation.

Incidentally, the contents of the Taiwan Provincial Tax Bureau Directive (67) Shui-Yi-Tze No. 596 dated February 3, 1978, are covered by the above Ministry

台灣省稅務局於六十七年二月三日所發⑹稅一字第五九六號函，已為上開財政部函所涵蓋，無庸另行解釋，併予敘明。

of Finance directives and need no separate interpretation by this Court.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。

J. Y. Interpretation No.219（September 25, 1987）*

ISSUE: Does Article 16 of the Regulation Governing the Customs Supervision of Containers violate Article 19 of the Constitution?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Articles 4 and 30 of the Customs Act（關稅法第四條、第三十條）; Article 16 of the Regulation Governing the Customs Supervision of Containers（海關管理貨櫃辦法第十六條）.

KEYWORDS:

principle of statutory tax payment（租稅法律主義）, container（貨櫃）, import duty（進口稅）.

HOLDING: Article 16 of the Regulation Governing the Customs Supervision of Containers, amended and promulgated by the Ministry of Finance on October 16, 1976, was stipulated in accordance with principles as expressed in Article 30 of the Customs Act that the containers used for importing cargos shall be exempted from customs duty provided that they are to be re-exported abroad

解釋文：財政部中華民國六十五年十月十六日修正發布之海關管理貨櫃辦法，其第十六條係依關稅法第三十條盛裝貨物用之容器進口後在限期內復運出口者免徵關稅，及同法第四條貨物之持有人為納稅義務人之意旨而訂定。此種貨櫃如未於限期內復運出口，則向該貨櫃本身進口當時為其持有人之運送人或其代理人課徵關稅，與憲法第十九條租稅法律主義並無牴觸。

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* Translated by Assistant Professor Y. K. Huang.

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

within a limited period, and also in accordance with Article 4 of the Customs Act which provides that the duty-payer of customs duty shall be the consignee of the imported goods. Therefore, in the case where the containers were not re-exported within the time limit, the customs duty shall be levied on the carrier or its agent since he was the holder of the containers at the time the containers were imported, and it does not contradict the principle of statutory tax payment as expressed in Article 19 of the Constitution.

REASONING: The Customs Import Tariff No. 8608, which was enacted and promulgated on August 30, 1980, stipulates that the containers imported from abroad with special design used for one or more kinds of transportation shall have a customs import tax of 30% levied on them. (It is tax free in accordance with the Customs Import Tariff Rules, amended on January 16, 1987.) The containers are receptacles used for keeping cargo. When they are imported separately from their carrying vessel, they are no longer the apparatus of that vessel.

解釋理由書：按自國外進口特別設計，且裝備有供一種或多種運輸方式運送之貨櫃，應徵百分之三十之關稅，中華民國六十九年八月三十日修正公布之海關進口稅則第八六〇八號定有明文（中華民國七十六年一月十六日修正之海關進口稅則已定為免稅）。貨櫃為盛裝貨物用之容器而與船舶分離進口時，已非船舶設備，如依進口當時海關進口稅則規定，應納關稅者，必須於進口後六個月內或於財政部核定之日期前，復運出口，始得免徵關稅；又關稅納稅義務人為收貨人、提貨單或貨物之持有人，關稅法第三十條第四條亦分別

In accordance with the Customs Import Tariff Rules for the time of importation, they can be exempted from customs duty provided that they are to be re-exported abroad within six months from the date of importation or before the date fixed by the Ministry of Finance. In addition, Articles 4 and 30 of the Customs Act provide that the duty-payer of customs duty shall be the consignee of the imported goods or the holder of the bill of lading or imported goods. Article 16 of the Regulation Governing the Customs Supervision of Containers, amended and promulgated by the Ministry of Finance on October 16, 1976, which stipulates that the carrier or its agent shall provide the Container Annual Guarantee to the Customs for declaring that the containers will be re-exported abroad within six months from the date of importation or before the date fixed by the Ministry of Finance and the carrier or its agent shall pay the import duty within three months in case they fail to re-export the containers within the time limit. This provision is made according to Articles 4 and 30 of the Customs Act and also complies with the international practice for

規定甚明。財政部於中華民國六十五年十月十六日修正發布海關管理貨櫃辦法，其第十六條有關貨櫃進口須由其運送人或其代理人向海關簽具貨櫃常年保結，保證於進口後六個月內或海關核定之日期前退運出口，逾期應由運送人或其代理人於三個月內繳納其進口稅捐之規定，係依據上開關稅法第三十條及同法第四條之意旨而訂定，與國際貨櫃報關慣例一致。此種貨櫃如未於限期內復運出口者，則向該貨櫃本身進口當時為其持有人之運送人或其代理人課徵關稅，與憲法第十九條租稅法律主義並無抵觸，至財政部七十二年一月七日(72)台財關字第一〇二三八號函，並非確定終局裁判所適用之命令，置其內容已為海關管理貨櫃辦法所涵蓋，併此說明。

container customs brokering. Therefore, in the case where the containers were not re-exported within the time limit, the customs duty shall be levied on the carrier or its agent since he was the holder of the containers at the time the containers were imported, and it does not contradict the principle of statutory tax payment as expressed in Article 19 of the Constitution. It is to be noted here that, as to the Ministry of Finance's letter ruling at issue (72) Tai-Cai-Kuan-Tsu No. 10238 (January 7, 1983), it was not an administrative order applicable to conclusive judgment and its content was also covered by the Regulation Governing the Customs Supervision of Containers.

J. Y. Interpretation No.220（December 23, 1987）*

ISSUE: Does the first sentence of Article 8 of the Regulation Governing Settlement of Labor Disputes During the Period of National Mobilization for Suppression of the Communist Rebellion stating that "If either party disobeys the ruling of the Labor-Management Arbitration Committee, the competent authority may strictly execute that ruling" infringe upon the people's right of instituting legal proceedings under Article 16 of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）; Administrative Execution Act（行政執行法）; The first sentence of Article 8 of the Regulation Governing Settlement of Labor Disputes During the Period of National Mobilization for Suppression of the Communist Rebellion（動員戡亂時期勞資糾紛處理辦法第八條前段）.

KEYWORDS:

right to litigation（訴訟權）, labor disputes（勞資糾紛）, administrative execution（行政執行）, adjudication（裁決）.**

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* Translated by Ching P. Shih.

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

HOLDING: The first sentence of Article 8 of the Regulation Governing Settlement of Labor Disputes During the Period of National Mobilization for Suppression of the Communist Rebellion states: ” If either party disobeys the ruling of the Labor-Management Arbitration Committee, the competent authority may strictly execute that ruling.” The meaning of this article is that when the parties do not comply with the intent of the ruling, the competent authority may employ its administrative execution under law. If there is any dispute, the parties may still ask for a remedy through the legal process. The article mentioned above does not infringe upon the people’s right to litigation; thus, it does not contradict the Constitution. Precedent P.T. No. 528 (Ad. Ct. 1971), regardless of the nature of disputes, considers the above ruling as a final decision which can no longer be challenged. The Precedent is not in accordance with the intention of this Interpretation; therefore, it is no longer applicable.

解釋文：動員戡亂期間勞資糾紛處理辦法第八條前段規定：「勞資評斷委員會之裁決，任何一方有不服從時，主管機關得強制執行。」係指當事人不依裁決意旨辦理時，該管行政機關得依法為行政上之執行而言，如有爭議，仍得依法定程序請求救濟。是前開規定並未限制人民之訴訟權，與憲法尚無牴觸。至行政法院六十年判字第五二八號判例，不分爭議性質如何，認為上述評斷概為最終之裁決，不容再事爭執，與上開解釋意旨不符，不得再行援用。

REASONING: The first sentence of Article 8 of the Regulation Gov-

解釋理由書：按行政院於中華民國三十六年十一月一日發布之動員戡

erning Settlement of Labor Disputes During the Period of National Mobilization for Suppression of the Communist Rebellion promulgated by the Executive Yuan on November 1, 1947, states: ”If either party disobeys the ruling of the Labor-Management Arbitration Committee, the competent authority may strictly execute that ruling.” The so-called ruling is of the nature of administrative act; and the so-called strict execution aims at the execution employed by the competent authority under the Administrative Execution Act. The ruling should not, regardless of the nature of disputes, be deemed as a final decision which can no longer be challenged just because provisions such as this kind of administrative execution existed. If there is any dispute, the parties may still ask for a remedy through the legal process. Article 8 of the Measures does not infringe upon the people’s right to litigation; thus, it does not contradict provisions regarding the protection of the people’s right to litigation in Article 16 of the Constitution.

亂期間勞資糾紛處理辦法第八條前段規定「勞資評斷委員會之裁決，任何一方有不服從時，主管機關得強制執行。」其所謂裁決，乃屬行政處分之性質；所謂強制執行，係指該管行政機關依行政執行法所為之執行。不能因有此行政執行之規定，遂不分爭議之性質如何，而謂其評斷概為最終之裁決，不容再事爭執。當事人如有爭議，仍得依法定程序請求救濟。是上開辦法第八條並未限制人民之訴訟權，與憲法第十六條保障人民訴訟權之規定，尚無牴觸。

Precedent P.T. No. 528 (Ad. Ct.

行政法院六十年判字第五二八號

1971), considering the ruling made under the Measures Governing the Settlement of Labor Disputes during the Period of National Mobilization for Suppression of the Communist Rebellion as a final decision which can no longer be challenged after the ruling has been made, is not in accordance with the intention of this Interpretation and, therefore, is no longer applicable.

判例稱依照戡亂期間勞資糾紛處理辦法所為之評斷為最終之裁判，一經裁決即不容再事爭執，與前解釋意旨不符，不得再行援用。

J. Y. Interpretation No.221（January 27, 1988）*

ISSUE: Where the heir fails to account for the use of the money borrowed or the proceeds from the sale of property by the decedent during the time when the decedent was incapable of managing his business due to serious illness, is Article 13 of the Enforcement Rules of the Estate and Gift Taxes Act, providing to the effect that such money or proceeds shall be included in the estate for tax purposes, contrary to the Constitution by imposing an extra taxation on the people?

RELEVANT LAWS:

Article 19 of the Constitution（憲法第十九條）; Article 1 and Article 17, Paragraph 1, Subparagraph 8 of the Estate and Gift Taxes Act（遺產及贈與稅法第一條、第十七條第一項第八款）; Article 13 of the Enforcement Rules of the Estate and Gift Taxes Act（遺產及贈與稅法施行細則第十三條）.

KEYWORDS:

estate tax（遺產稅）, evasion of tax（逃漏稅）, equality in taxation（課稅公平）.**

HOLDING: The Enforcement Rules of the Estate and Gift Taxes Act provide in Article 13: "Where a decedent

解釋文：遺產及贈與稅法施行細則第十三條規定：「被繼承人死亡前因重病無法處理事務期間舉債或出售

* Translated by Raymond T. Chu.

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contracted any debt or sold any of his property before his death and during the period in which he was incapable of managing his business because of serious illness, and his heir is unable to prove the usage of the money borrowed or the proceeds obtained, such money shall be included in the estate for tax purposes." The purpose of this article is to give full effect to Article 1 and Article 17, Paragraph 1, Subparagraph 8, of the Estate and Gift Taxes Act so as to insure correct accounting of the taxable estate, and is essential to the prevention of possible evasion of estate tax and the maintenance of equality in taxation. It does not add any taxation to what is legally imposed on the people and is hence not inconsistent with Article 19 of the Constitution. As to whether there is any taxable estate in a particular case, either the taxing authority or the taxpayer must be required to assume the burden of proof, as the case may be, under the doctrine of distribution of the burden of proof.

財產，而其繼承人對該項借款或價金不能證明其用途者，該項借款或價金，仍應列入遺產課稅。」旨在貫徹遺產及贈與稅法第一條及第十七條第一項第八款之規定，以求認定課稅遺產之正確，為防止遺產稅之逃漏及維持課稅之公平所必要，並未增加法律所定人民之納稅義務，與憲法第十九條並無牴觸。至具體案件應稅遺產之有無，仍應依舉證責任分配之法則，分由稅捐稽徵機關或納稅義務人盡舉證責任，併予指明。

REASONING: Article 19 of the Constitution provides: "The people shall

解釋理由書：按憲法第十九條規定：「人民有依法律納稅之義務。」

have the duty to pay tax under law." Article 1 of the Estate and Gift Taxes Act provides: "Where a national of the Republic of China who regularly resided in the territory of the Republic of China left property at the time of his death, an estate tax shall be levied under this Act upon all estates owned by him in and outside the Republic of China; where a national of the Republic of China who regularly resided outside the territory of the Republic of China or a person who was not a national of the Republic of China left property in the territory of the Republic of China at the time of his death, an estate tax shall be levied under this Act upon all estates owned by him in the Republic of China." And, under the same Act, the heir has the duty to declare and pay tax pursuant to the levying procedure set forth therein. Furthermore, the Act provides in Article 17, Paragraph 1, Subparagraph 8, that debts of the decedent not repaid prior to his death and verifiable by substantial proof are deductible from the gross amount of the estate. However, granted that debts were contracted or property was sold by the decedent during the time when he was

遺產及贈與稅法第一條規定：「凡經常居住中華民國境內之中華民國國民死亡時遺有財產者，應就其在中華民國境內境外全部遺產，依本法規定，課徵遺產稅。經常居住中華民國境外之中華民國國民，及非中華民國國民，死亡時在中華民國境內遺有財產者，應就其在中華民國境內之遺產，依本法規定，課徵遺產稅。」遺產繼承人並負有依同法所定稽徵程序申報繳納之義務。同法第十七條第一項第八款復規定，被繼承人死亡前，未償之債務，具有確實證明者，應自遺產總額中扣除。惟被繼承人在重病無法處理事務期間，對外舉債或出售財產，縱屬真實，依一般情形，亦難自行處理其因舉債所得之借款，或因出售財產所得之價金，該項借款或價金，自應由繼承人證明其用途，以防止繼承人用被繼承人名義舉債或出售財產為手段，隱匿遺產。因此為貫徹該第一條及第十七條第一項第八款之規定，同法施行細則第十三條乃規定：「被繼承人死亡前因重病無法處理事務期間舉債或出售財產，而其繼承人對該項借款或價金不能證明其用途者，該項借款或價金，仍應列入遺產課稅。」此項規定，旨在兼顧繼承人之利益及認定課稅遺產之正確，為防止遺產稅之逃漏及維持課稅之公平

incapable of managing his business because of serious illness, it would, generally speaking, be difficult for him to personally manage the use of the money so borrowed or the proceeds of the sale of his property. Thus, the heir must of course be required to prove the usage of such money or proceeds to prevent the heir from mismanaging the estate through the accumulation of debts or sale of property in the name of the decedent. To give full effect to Article 1 and Article 17, Paragraph 1, Subparagraph 8, of the Estate and Gift Taxes Act, the Enforcement Rules provide in Article 13: " Where a decedent contracted any debt or sold any of his property before his death and during the period in which he was incapable of managing his business because of serious illness, and his heir is unable to prove the usage of the money so borrowed or the proceeds obtained, such money shall be included in the estate for tax purposes." The purpose of this article is to insure correct accounting of the taxable estate as well as to protect the interest of the heir, and is essential to the prevention of possible evasion of estate tax and the mainte-

所必要，並未增加法律所定人民之納稅義務，與憲法第十九條並無牴觸。至具體案件應稅遺產之有無，仍應依舉證責任分配之法則，分由稅捐稽徵機關或納稅義務人盡舉證責任，併予指明。

nance of equality in taxation. It does not add any taxation to what is legally imposed on the people and is hence not inconsistent with Article 19 of the Constitution. As to whether there is any taxable estate in a particular case, either the taxing authority or the taxpayer must be required to assume the burden of proof, as the case may be, under the doctrine of distribution of the burden of proof.

J. Y. Interpretation No.222（February 12, 1988）*

ISSUE: Do Articles 2 and 4 of the Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants promulgated by the Securities and Exchange Commission, contradict the Constitution?

RELEVANT LAWS:

Article 37, Paragraph 1, of the Securities Exchange Act（證券交易法第三十七條第一項）; Articles 2 and 4, of the Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants（會計師辦理公開發行公司財務報告查核簽證核准準則第二條及第四條）; Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants（會計師檢覈辦法）.

KEYWORDS:

security transaction（證券交易）, accounting offices（會計師事務所）, public interest（公共利益）.**

HOLDING: The Guidelines Governing the Examination, Endorsement, and Approval of Corporations'

解釋文：財政部證券管理委員會於中華民國七十二年七月七日發布之「會計師辦理公開發行公司財務報告

* Translated by Ching P. Shih.

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Publicly Issued Financial Reports Submitted by Accountants promulgated by the Securities and Exchange Commission on July 7, 1983, are a mandate authorized by Article 37, Paragraph 1, of the Securities Exchange Act. Article 2 of these guidelines states: "Corporations' publicly issued financial reports shall be jointly examined and endorsed by at least 2 practicing accountants of established accounting offices"; and Article 4 prescribes the requirements for the organization of accounting offices. The purposes of these provisions are to ensure the excellence of the system of examination and endorsement for corporations' publicly issued financial reports submitted by accountants. These provisions are in accordance with the purpose of the authorization made by the act mentioned above and the need to protect the investing public and advance the public interest; thus, they do not contradict the Constitution. However, since the promulgation of the Guidelines, security exchanges have been continuously evolving, and the Regulation Governing the Review and Approval of the Qualifications of Certified Public

查核簽證核准準則」，係證券交易法第三十七條第一項授權訂定之命令，其第二條規定：公開發行公司之財務報告，應由聯合會計師事務所之開業會計師二人以上共同查核簽證；第四條則對聯合會計師事務所組成之條件有所規定，旨在使會計師辦理公開發行公司財務報告查核簽證之制度，臻於健全，符合上開法律授權訂定之目的，為保護投資大眾、增進公共利益所必要，與憲法尚無牴觸。惟該準則制定已歷數年，社會環境及證券交易情形，均在不斷演變，會計師檢覈辦法亦經修正，前開準則關於檢覈免試取得會計師資格者，組成聯合會計師事務所之條件，與其他會計師不同之規定，其合理性與必要性是否繼續存在，宜由主管機關檢討修正，或逕以法律定之，以昭慎重，併予指明。

Accountants has already been revised. The terms of the former guidelines regarding requirements for the organization of accounting offices by those who acquire the qualification of accountant through review and approval without written examination are different from those of other accountants. Therefore, if the question of whether this differential is still reasonable and necessary should arise, the competent authority may assess and revise it, or directly regulate it by law.

REASONING: The Guidelines Governing the Examination, Endorsement, and Approval of Corporations' Publicly Issued Financial Reports Submitted by Accountants was promulgated by the Securities and Exchange Commission on July 7, 1983, based on the authorization of Article 37, Paragraph 1, of the Securities Exchange Act. Article 2 of the guidelines states: "Corporations' publicly issued financial reports shall be jointly examined and endorsed by at least 2 practicing accountants of accounting offices." Article 4 states: "I. Accounting offices shall be composed of at least 3 practicing account-

解釋理由書：財政部證券管理委員會依據證券交易法第三十七條第一項授權，於中華民國七十二年七月七日發布「會計師辦理公開發行公司財務報告查核簽證核准準則」，其第二條規定：「公開發行公司之財務報告，應由聯合會計師事務所之開業會計師二人以上共同查核簽證。」第四條規定：「一、聯合會計師事務所應由三人以上之開業會計師組成，其中應高等考試會計師及格或依會計師檢覈辦法檢覈面試及格者，不得少於二分之一；具有三年以上查帳經驗者，不得少於二人。二、助理人員總數不得少於九人；其中具有會計師法第十二條第一、二款資格或高

ants, where the number of those who passed the Higher Rank Examination for Accountants or passed the interview examination under the Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants may not be less than 1/2 of the total number of practicing accountants; the number of those who have at least 3 years auditing experience may not be less than 2 persons. II. The total number of assistant personnel may not be less than 9 persons; the number of those who have the qualification of Article 12, Subparagraphs 1and 2, of the Accountant Act or passed the Higher Rank Examination for Accountants may not be less than 2/3; graduated from an accounting department in a university at the undergraduate or graduate level, or Accounting Auditors may not be less than 1/3 of those assistant personnel. III. The number of junior-level accountants of accounting offices who have not been penalized under the Securities Transaction Act by suspension of performance or of endorsement in the past 2 years, or have not been disciplined by suspension of practice under the Account-

等考試會計審計人員及格者，不得少於三分之二；會計研究所或大學會計系組畢業或高等考試會計師、會計審計人員及格者，不得少於三分之一。三、聯合會計師事務所之開業會計師，至少三人於最近二年度內未受證券交易法所定停止執行簽證之處分，或受會計師法所定停止執行業務之懲戒處分。四、聯合會計師事務所應具有共同之辦公處所。」旨在調和各會計師之學識經驗，提高簽證品質，強化其公信力，使會計師辦理公開發行公司財務報告查核簽證之制度，臻於健全，符合上開法律授權訂定之目的，為保護投資大眾、增進公共利益所必要，與憲法尚無牴觸。惟該準則制定已歷數年，社會環境及證券交易情形，均在不斷演變，會計師檢覈辦法亦經修正，前開準則關於檢覈免試取得會計師資格者，組成聯合會計師事務所之條件，與其他會計師不同之規定，其合理性與必要性是否繼續存在，宜由主管機關檢討修正，或逕以法律之，以昭慎重，併予指明。

ant Act shall be at least 3 persons. IV. The accounting offices shall have offices in common." The purposes of these provisions are to ensure the educational background and experience of each accountant, enhance the quality of endorsement, strengthen his or her credibility before the public, and ensure the excellence of the system of examination and endorsement for corporations' publicly issued financial reports submitted by accountants. These provisions are in accordance with the purpose of the authorization made by the Act mentioned above and the need to protect the investing public and advance the public interest; thus, they do not contradict the Constitution. However, since the promulgation of the Guidelines, security exchanges have been continuously evolving, and the Regulation Governing the Review and Approval of the Qualifications of Certified Public Accountants has already been revised. The terms of the former guidelines regarding the requirements for the organization of accounting offices by those who acquire the qualifications of accountant through review and approval without written examination

are different from those of other accountants. Therefore, if the question of whether this differential is still reasonable and necessary should arise, the competent authority may assess and revise it, or directly regulate it by law.

J. Y. Interpretation No.223（March 25, 1988）*

ISSUE: Do the terms of Ordinance (1985) J.J.T. No. 3217 issued by the Kinmen War Zone Political Affairs Committee respectively prescribing the speed limit for each section of road in each area contradict the Constitution?

RELEVANT LAWS:

Article 93, Paragraph 1, of the Regulation Governing Road Traffic Safety（道路交通安全規則第九十三條第一項）.

KEYWORDS:

speed limit（行車速度）, suburban roads（郊外道路）, war zone（戰區）, traffic safety（交通安全）, administrative measure（行政措施）.**

HOLDING: In respect of the speed limits for motor vehicles, the terms of Ordinance (1985) J.J.T. No. 3217 issued by the Kinmen War Zone Political Affairs Committee respectively prescribe the speed limit for each section of road in each area. They state that, except for speed limits of 50 km.p.h. or 60 km.p.h. in designated areas, the speed limit on

解釋文：金門戰地政務委員會七四擇建字第三二一七號函就金門地區行車速度所為之限制，其中有關該地區各路段行車速度，在郊外道路之時速，除限制為六十公里或五十公里者外，其他路段及戰備道不得超過四十公里之規定，乃為因應戰地特殊路況，維護交通安全所必要，與憲法尚無牴觸。

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suburban roads, on other roads and war zone roads shall be no more than 40 km.p.h. The speed limits are set up for the special conditions of roads in a war zone and the necessity for maintaining traffic safety. They do not contradict the Constitution.

REASONING: The intention of Article 93, Paragraph 1, of the Regulation Governing Road Traffic Safety regarding the speed of motor vehicles regulated by signs is to authorize the competent transportation and communications authorities, on consideration of actual conditions in local areas, to adjust the speed of motor vehicles by signs in certain sections of roads. The purposes of this provision are to take appropriate measures in accordance with local conditions and to maintain traffic safety. In areas where a sign has not been erected, the speed of motor vehicles may not be over the limit stated in each subparagraph of the same paragraph. In respect of speed limits for motor vehicles, the terms of Ordinance (1985) J.J.T. No. 3217 issued by the Kinmen War Zone Committee respectively prescribe

解釋理由書：按道路交通安全規則第九十三條第一項關於行車速度依標誌之規定，意在授權交通主管機關斟酌當地實際狀況，以標誌調整特定路段之行車速度，期能因地制宜，維護交通之安全，無標誌者，則不超過同項各款之限制。金門戰地政務委員會七四擇建字第三二一七號函就金門地區行車速度所為之限制，其中有關該地區各路段行車速度，在郊外道路之時速，除限制為六十公里或五十公里者外，其他路段及戰備道不得超過四十公里之規定，仍在上開規定授權範圍之內，乃為因應戰地特殊路況，維護交通安全所必要，如當時未及樹立標誌，乃行政措施是否失當之問題，與憲法尚無牴觸。

the speed limit for each section of road in each area. They state that, except for speed limits of 50 km.p.h. or 60 km.p.h. in designated areas, the speed limit on suburban roads, on other roads and war preparation roads shall be no more than 40 km.p.h. The speed limits are still within the scope of the authorization of the above provision and set up for special conditions of roads in the war zone and the necessity for maintaining traffic safety. If signs have not been erected in time, this is a question of whether the administrative measure is improper or not. The provisions themselves do not contradict the Constitution.

J. Y. Interpretation No.224（April 22, 1988）*

ISSUE: Are the relevant provisions of the Tax Levy Act, in requiring that a person who wishes to petition for a tax review pay a proportional amount of tax so defaulted or post adequate security as a condition for submission of such a petition, in violation of the Constitution?

RELEVANT LAWS:

Articles 7, 16 and 19 of the Constitution（憲法第七條、第十六條及第十九條）; Articles 35 to 38, Paragraph 1 and 3, and 39 of the Tax Levy Act（稅捐稽徵法第三十五條至第三十八條第一項及第三項、第三十九條）.

KEYWORDS:

petition for review（申請復查）, security（擔保）, administrative relief（行政救濟）, compulsory enforcement（強制執行）.**

HOLDING: The provisions of the Tax Levy Act, which require a petitioner to pay a portion of the tax or post adequate security as a condition for a petition for review and thus deprive a party who cannot pay or post security of his

解釋文：稅捐稽徵法關於申請復查，以繳納一定比例之稅款或提供相當擔保為條件之規定，使未能繳納或提供相當擔保之人，喪失行政救濟之機會，係對人民訴願及訴訟權所為不必要之限制，且同法又因而規定，始予強制

* Translated by David W. Su of Lee & Li, Attorneys-at-Law.

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opportunity of seeking administrative relief, constitute an unnecessary restriction on the people's rights to administrative appeal and litigation. The same Act further provides that once a petition for review is filed, the compulsory enforcement thereof shall be suspended until such procedure of administrative relief is finally concluded. This is also unfair to those who have not commenced such procedure of administrative relief. These provisions are inconsistent with the intention behind Articles 7, 16, and 19 of the Constitution and shall become void within two years from the date of this Interpretation. During the interim period, the foregoing provisions shall, along with the issues of securing the payment of tax and priority in payment of tax, be reviewed and revised from an overall perspective, so that both the constitutional provisions for protecting the rights of administrative appeal and litigation and the principle of equality in assessing tax will be effectively advanced.

申請復查者，須於行政救濟程序確定後執行，對於未經行政救濟程序者，亦有欠公平，與憲法第七條、第十六條、第十九條之意旨有所不符，均應自本解釋公布之日起，至遲於屆滿二年時失其效力。在此期間，上開規定應連同稅捐之保全與優先受償等問題，通盤檢討修正，以貫徹憲法保障人民訴願、訴訟權及課稅公平之原則。

REASONING: Articles 35 to 37 and Article 38, Paragraph 1, of the Tax Levy Act, which require a petitioner to

解釋理由書：稅捐稽徵法第三十五條至第三十八條第一項關於申請復查，以繳納一定比例之稅款或提供相當

pay a portion of the tax or post adequate security as a condition for a petition for review, thus requiring a petitioner to go through the review process before seeking administrative appeal or litigation, despite their benefit of procuring the speedy recovery or security for part of the tax, could produce the result that only those who can afford the required payment have the remedy of administrative relief and that those who can not post adequate security may lose such remedy. Moreover, Article 38, Paragraph 3, and Article 39 provide that once an application for review is instituted, the compulsory enforcement of the tax shall be deferred until the final conclusion of the review, administrative appeal or litigation. Those who apply for review may, after paying only one half or one third of the tax assessed or providing security there for, use the administrative relief procedure to significantly delay the payment of the remaining portion to conceal assets and thus evade the remaining tax. Not only do these provisions fail to accomplish their purpose of correcting problems, they constitute unnecessary restrictions on the

擔保為條件，及不服復查決定始得提起訴願、行政訴訟之規定，雖使部分稅款迅獲清償或擔保，但僅有資力之人，得享行政救濟之利益，而未能繳納一定比例之稅款或提供相當擔保者則喪失行政救濟機會。且同法又因而於第三十八條第三項及第三十九條規定，申請復查者，須於復查、訴願或行政訴訟確定後，始予強制執行，致申請復查者反可於繳納應繳稅款之半數或三分之一或提供相當擔保後，利用行政救濟程序，長期拖欠未繳部分或趁機隱匿財產，以逃漏其餘稅款，亦難達防止流弊之目的，係對人民訴願及訴訟權所為不必要之限制，其中第三十九條之規定，對於未經行政救濟程序者，亦有欠公平，且與我國行政救濟制度不因提起救濟程序而停止原處分執行之原則不合，是上述規定有關解釋文所示部分與憲法第七條、第十六條、第十九條之意旨有所不符，均應自本解釋公布之日起，至遲於屆滿二年時失其效力。在此期間，上開規定，應連同稅捐之保全與優先受償等問題，通盤檢討修正，以貫徹憲法保障人民訴願、訴訟權及課稅公平之原則。

right of administrative appeal or litigation. Article 39 is unfair to those who choose not to go through the administrative relief procedure and contradicts the principle of administrative relief which requires that enforcement of an administrative order shall not be affected by the commencement of an administrative relief procedure. Therefore the foregoing provisions as mentioned in this text are inconsistent with the intention behind Articles 7, 16, and 19 of the Constitution and shall become void within two years from the date of this Interpretation. During the interim period, the foregoing provisions shall be, along with the issues of security for and priority in payment of taxes, reviewed and revised in a comprehensive manner, so that the constitutional principles of protecting the rights of administrative appeal and litigation as well as the principle of fair taxation may be completely effectuated.

Justice Chung-Sheng Lee filed dissenting opinion.

Justice Chien-Hua Yang filed dissenting opinion in part.

本號解釋李大法官鐘聲提出不同意見書；楊大法官建華提出理由不同意見書。

J. Y. Interpretation No.225（April 29, 1988）*

ISSUE: Is the Code of Civil Procedure constitutional in providing that the plaintiff bears the court costs where the suit is withdrawn after it is instituted?

RELEVANT LAWS:

Article 15 of the Constitution（憲法第十五條）; Article 83, Paragraph 1 and Article 249, Paragraph 1, Subparagraph 6 of the Code of Civil Procedure（民事訴訟法第八十三條第一項、第二百四十九條第一項第六款）.

KEYWORDS:

court costs（裁判費）, non-gratuitous principle（有償主義）, abuse of the process（濫行起訴）.**

HOLDING: Civil litigation is a proceeding whereby the party appeals to the judicial organ for determining his private rights for his personal interest. Payment of court costs is one of the prerequisites for the institution of an action. Even if the suit is withdrawn by the plaintiff after it has been brought, he is still obligated to pay the court costs in curred in

解釋文：民事訴訟係當事人請求司法機關確定其私權之程序，繳納裁判費乃為起訴之要件，原告於提起訴訟後撤回其訴，自應負擔因起訴而生之訴訟費用。民事訴訟法第八十三條第一項：「原告撤回其訴者，訴訟費用由原告負擔」之規定，與憲法第十五條尚無牴觸。

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* Translated by Raymond T. Chu.

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connection with the institution of the suit. The provision of the Code of Civil Procedure, Article 83, Paragraph 1, that "if the plaintiff withdraws his action, he shall bear the costs thereof" is not in conflict with Article 15 of the Constitution.

REASONING: Civil litigation is a proceeding whereby the party appeals to the judicial organ for determining his private rights for his personal interest. To be fair, all court costs and expenses incurred should of course be borne by the litigant parties. This is the reason that the Code of Civil Procedure embraces the non-gratuitous principle, and the payment of the court costs in the sum specified by the Act Governing Costs of Civil Actions is one of the prerequisites for the institution of an action. If this essential requirement is not met when the action is brought and the defect is not amended within the period fixed by the presiding judge, the court must dismiss the case by an order in pursuance of the Code of Civil Procedure, Article 249, Paragraph 1, Subparagraph 6. While the court shall, when delivering the final decision, order ex officio that the

解釋理由書：民事訴訟係當事人為自己之利益，請求司法機關確定其私權之程序，自應由當事人負擔因此所生之費用，方稱公平，故我民事訴訟法採有償主義，以依民事訴訟費用法繳納定額之裁判費為起訴之要件，如起訴不備此項要件，經審判長定期命其補正，而未補正者，法院應依民事訴訟法第二百四十九條第一項第六款裁定駁回。雖此項裁判費及其他訴訟費用，法院為終局裁判時，應依職權裁判命敗訴之當事人或其他引起無益訴訟行為之人負擔，惟訴訟之終結非必經裁判，如原告於起訴後終局判決前，撤回其訴者，既仍得再行起訴，為防止原告濫行起訴，此項訴訟所生之費用，自應由引起訴訟之原告負擔。民事訴訟法第八十三條第一項：「原告撤回其訴者，訴訟費用由原告負擔」之規定，為增進公共利益所必要，與憲法第十五條尚無牴觸。

defeated party or another party who brought the meaningless lawsuit bears such court costs and other fees and expenses arising out of the proceeding, a lawsuit is not necessarily ended by court adjudication, and a plaintiff who withdraws his suit after instituting the proceeding and before a final and binding judgment is made is entitled to again bring a suit. Thus, to avoid abuse of the process, the plaintiff who initiates the lawsuit must be made to pay all costs for such proceeding. We conclude that the provision of the Code of Civil Procedure, Article 83, Paragraph 1, that "if the plaintiff withdraws his action, he shall bear the costs thereof," being necessary for the furtherance of the public interest, is not in conflict with Article 15 of the Constitution.

J. Y. Interpretation No.226（May 20, 1988）*

ISSUE: Should a worker who handles administrative matters be treated as a worker under the Enforcement Rules of the Factory Act?

RELEVANT LAWS:

Article 4 of the Factory Act（工廠法第一條）；Article 3 of the Enforcement Rules of the Factory Act（工廠法施行細則第三條）; Article 2, Paragraph 1, of the Labor Safety and Health Act（勞工安全衛生法第二條第一項）.

KEYWORDS:

workers（工人）, office workers（事務性工人）, employers（雇主）, power-generating equipment（發動機器）, factories（工廠）, Taiwan Provincial Government（臺灣省政府）.**

HOLDING: Article 3 of the Enforcement Rules of the Factory Act, promulgated by the Ministry of Interior on June 24, 1976, stipulates that: "the term 'worker' mentioned in this Law refers to a person employed in a line of work and earning a wage." An equivalent definition of 'worker' was also given in Article 3

解釋文：中華民國六十五年六月廿四日內政部發布施行之工廠法施行細則第三條規定：「本法所稱工人，係指受僱從事工作獲致工資者。」臺灣省政府於中華民國六十八年三月廿三日修正臺灣省工廠工人退休規則，其第三條所稱工人，與上開規定相同，並不以從事製造、加工、修理、解體等工作者

* Translated by Professor Cing-Kae Chiao.

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of the amended Regulation Governing the Retirement of the Factory Workers of Taiwan Province promulgated by the Taiwan Provincial Government on March 23, 1979, which does not specifically restrict the definition of 'worker' to a person working only in manufacturing, processing, repairs, or disassembly. In this case, an office worker employed by an employer to work in a factory's work area or in an office setting and who receives wages is included in the aforementioned definition.

為限，來函所稱「事務性工人」，如係受僱主僱用而於工廠之作業場所或事業場所從事工作而獲致工資者，亦包括在內。

REASONING：The definition of 'worker' in the Factory Act was ambiguous prior to and following the promulgation of the law. In accordance with the Factory Act, which was amended and promulgated on December 30, 1932, the Enforcement Rules of the Factory Act were to be amended and promulgated on the same date. Article 1 of the above Enforcement Rules stated that: "the term 'worker' mentioned in this Act refers to those workers who are directly involved in production or assisting in production work. Excluded are all other employees

解釋理由書：工廠法所稱工人之含義，法令之規定前後寬嚴有異。按工廠法於中華民國二十一年十二月三十日修正公布時，工廠法施行條例亦於同日修正公布。該施行條例首條揭示：「工廠法第一條所稱工人，係指直接從事生產或輔助其生產工作之工人而言，其僱用員役與生產工作無關者不在此限」，對工人之定義，採取較嚴之規定。惟工廠法於中華民國六十四年十二月十九日再修正時，為適應工業發展之需要，擴大其適用範圍，將工廠法原第一條中之「平時僱用工人在三十人以上者」之限制刪除，改為：「凡用發動機

and those not involved in production work". The above definition thus constitutes a stricter definition of the term 'worker'. As the Factory Act was amended on December 29, 1975, to accommodate the needs of industrialization, its scope of applicability was widened. The restrictive stipulation on "factories employing 30 or more workers" was changed to "any factory using power-generating equipment shall be subject to this law." The aforementioned Enforcement Rules that had been in effect for more than forty years were rendered null and void, as Article 76 of the amended Enforcement Rules empowered the Ministry of Interior to enact enforcement rules. Subsequently, on June 24, 1976, the Ministry of Interior promulgated a new rule, in which Article 2 declared that: "the term 'factories' refers to any workplace or office workplace which employs workers working in manufacturing, processing, repairs and disassembly." To further clarify the intent of the Law, the Rules drew from Paragraph 1, Article 2, of the Labor Safety and Health Act promulgated on April 16, 1974. This was reflected in Article 3 of the Rules, which

器之工廠，均適用本法」；且於同日廢止已施行四十餘年之上述工廠法施行條例，於新修正之工廠法第七十六條，授權內政部訂定施行細則。中華民國六十五年六月廿四日，內政部基於此授權，發布工廠法施行細則，其第二條後段規定：「所稱工廠，係指凡僱用工人從事製造、加工、修理、解體等作業場所或事業場所。」並為貫徹母法之修正意旨，參照中華民國六十三年四月十六日公布之勞工安全衛生法第二條第一項，而於第三條明定：「本法所稱工人，係指受僱從事工作獲致工資者」對工人之定義，改採較寬之規定。準此，凡受僱於雇主，在工廠之作業場所或事業場所（事務所）從事工作而獲致工資之工人均屬之，並不以從事製造、加工、修理、解體等工作者為限。台灣省政府於中華民國六十八年三月二十三日修正台灣省工廠工人退休規則，其第三條所稱工人，與上開工廠法施行細則第三條之規定相同。來函所稱之「事務性工人」亦包括在內。

clearly states that: “the term ‘worker’ mentioned in this Law refers to a person employed in a line of work and earning a wage”, hence broadening the definition of the term 'worker'. Therefore, any worker who is employed by an employer and works at a factory workplace or office workplace is a worker under this definition and the scope of the term is no longer restricted to those working only in manufacturing, processing, repairs and disassembly. The definition of 'worker' given by Article 3 of the amended Regulation Governing the Retirement of the Factory Workers of Taiwan Province promulgated by the Taiwan Provincial Government on March 23, 1979, is equivalent to the aforementioned definition stipulated in Article 3 of the Enforcement Rules. In this case, an office worker is included in the aforementioned definition.

J. Y. Interpretation No.227（June 17, 1988）*

ISSUE: Is the guarantor in a transaction punishable as the subject of the offence specified by Article 38 of the Act of Secured Transactions for Movable Property?

RELEVANT LAWS:

Articles 5, 16, 27, 33, 38, 39 and 40 of the Act of Secured Transactions（動產擔保交易法第五條、第十六條、第二十七條、第三十三條、第三十八條、第三十九條、第四十條）; Article 31, Paragraph 1 of the Criminal Code（刑法第三十一條第一項）.

KEYWORDS:

subject of the offense（犯罪主體）, formal act（要式行為）, guaranty agreement（保證契約）, guarantor（保證人）, accessory contract（從契約）, guaranteed obligation（被保證債務）, chattel mortgage（動產抵押）, conditional sale（附條件買賣）, trust receipt（信託占有）.**

HOLDING: The subject of the offense specified in Article 38 of the Act of Secured Transactions for Movable Property is the debtor in a Secured Transaction and does not include the guarantor

解釋文：動產擔保交易法第三十八條之罪，係以動產擔保交易之債務人為犯罪主體，並不包括其保證人在內。

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* Translated by Raymond T. Chu.

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in such a transaction.

REASONING:.A transaction concluded under the Act of Secured Transactions for Movable Property is a formal act and must be put down in writing in the form of a contract, with such particulars as are required to be stated in an agreement of chattel mortgage, conditional sale, or trust receipt, as the case may be, by explicit provisions set forth in Article 5, 16 or 33 of said Act. The question about which party is the debtor in a particular transaction is determined by examining the details of the contract. A guaranty agreement, on the other hand, is an accessory contract between the creditor and a third party, and does not constitute a formal act. While the guarantor does have an obligation based on the guaranty, his obligation is secondary to the guaranteed obligation, and he has a legal status distinct from that of the debtor. Article 38 of the Act of Secured Transactions for Movable Property provides: "A debtor in a Secured Transaction for Movable Property who, in the attempt to gain illegal profits, moves away, sells, pledges, trans-

解釋理由書：依動產擔保交易法成立之交易，係屬要式行為，應以書面訂立契約，視其為動產抵押、附條件買賣或信託占有，分別載明其應記載之事項，此在該法第五條、第十六條、第十七條及第三十三條規定甚明。孰為交易之債務人，即依此等契約之記載。至於保證契約，則為第三人與債權人訂立之從契約，並非要式行為。保證人雖負有保證債務，究僅為從屬於被保證之債務，其地位與債務人並不相同。該法第三十八條規定：「動產擔保交易之債務人，意圖不法之利益，將標的物遷移、出賣、出質、移轉、抵押或為其他處分，致生損害於債權人者，處三年以下有期徒刑、拘役或科或併科六千元以下之罰金。」法律既明文限制以債務人為犯罪主體，而未如同法第三十九條或第四十條兼將第三人併列在內，顯係因特定之債務人關係而始成立之罪，保證人自不包括在內。除其有與債務人共同實施或教唆、幫助之情形，應依刑法第三十一條第一項規定以共犯論之外，不得單獨為該罪之犯罪主體。

fers, creates a mortgage on, or otherwise disposes of the subject matter of the transaction, thereby causing damage to the creditor, is punishable with imprisonment of not more than three years or detention or, in lieu thereof or in addition thereto, a fine of not more than 6,000 yin-yuan. "Inasmuch as the law specifically limits the subject of the offense to the debtor, rather than including third persons as the subjects of the offense under Articles 39 and 40 of the same Act, the offense specified in Article 38 is obviously one that may be established only if it is based upon the special relationship of the debtor, and the law is certainly not intended to include the guarantor, who, unless being found to have acted jointly with, incited, or assisted the debtor in committing such an offense and is for that reason punishable as a joint offender under Article 31, Paragraph 1, of the Criminal Code, may not, by himself alone, be the subject of such offense.

J. Y. Interpretation No.228（June 17, 1988）*

ISSUE: Is Article 13 of the State Compensation Act constitutional in providing specifically for the liability of the State where a "public functionary with the duty of trial or prosecution" infringes upon the freedom or right of a person while taking part in the trial or prosecution of a case, in distinction from the situation involving other public functionaries?

RELEVANT LAWS:

Articles 7, 16, 23 and 24 of the Constitution,（憲法第七條、第十六條、第二十三條、第二十四條）, Article 2, Paragraph 2, first sentence, and Article 13 of the State Compensation Act（國家賠償法第二條第二項前段、第十三條）.

KEYWORDS:

state compensation（國家賠償）, legislative discretion（立法裁量）,duty of trial or prosecution（審判或追訴職務）, tortious acts（侵權行為）, compensation for wrongful imprisonment（冤獄賠償）.**

HOLDING: The provision of Article 13 of the State Compensation Act that "this Act is applicable where a public functionary with the duty of trial or prosecution who, in the performance of his

解釋文：國家賠償法第十三條規定：「有審判或追訴職務之公務員，因執行職務侵害人民自由或權利，就其參與審判或追訴案件犯職務上之罪，經判決有罪確定者，適用本法規定。」係

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duty, infringes upon the freedom or right of a person, and is convicted and sentenced by an irrevocable judgment for his crime committed in connection with his duty while taking part in the trial or prosecution of a case" is a special law directed at the characteristics of such duty without having gone beyond the scope of legislative discretion, and is therefore not in contradiction to the Constitution.

針對審判與追訴職務之特性所為之特別規定，尚未逾越立法裁量範圍，與憲法並無牴觸。

REASONING: The legislation of the State Compensation Act is based on Article 24 of the Constitution, which provides: "Any public functionary who, in violation of the law, infringes upon the freedom or right of any person shall, in addition to being subject to disciplinary measures in accordance with the law, be held liable under criminal and civil laws. The injured person may, in accordance with the law, claim compensation from the State for damages sustained." When making this law, the legislature is free to use its discretion to set forth reasonable requirements for people's applications for state compensation. With respect to the liability for damages arising out of or in

解釋理由書：憲法第二十四條規定：「凡公務員違法侵害人民之自由或權利者，除依法律受懲戒外，應負刑事及民事責任。被害人民就其所受損害，並得依法律向國家請求賠償。」據此而有國家賠償之立法，此項立法，自得就人民請求國家賠償之要件為合理之立法裁量。國家賠償法第二條第二項前段：「公務員於執行職務行使公權力時，因故意或過失不法侵害人民自由或權利者，國家應負損害賠償責任。」係國家就公務員之侵權行為應負損害賠償責任之一般規定。而同法第十三條：「有審判或追訴職務之公務員，因執行職務侵害人民自由或權利，就其參與審判或追訴案件犯職務上之罪，經判決有罪確定者，適用本法規定。」則係國家

connection with tortious acts of public functionaries in general, the State Compensation Act provides in Article 2, Paragraph 2, the first sentence: "Where a public functionary who, in performing his duty to enforce the public power, has wrongfully infringed upon the freedom or right of any person as a result of his intentional or negligent act, the State shall be liable for damages sustained by the person." Specifically, the liability for damages arising out of or in connection with tortious acts committed by public functionaries with the duty of trial or prosecution is set forth in Article 13 of the same Act, which provides: "This Act is applicable where a public functionary with the duty of trial or prosecution who, in the performance of his duty, infringes upon the freedom or right of a person, and is convicted and sentenced by an irrevocable judgment for his crime committed in connection with his duty while taking part in the trial or prosecution of a case."

就有審判或追訴職務之公務員之侵權行為應負損害賠償責任之特別規定。

Under the current judiciary system, when a public functionary in charge of a trial or prosecution performs his duty, he

依現行訴訟制度，有審判或追訴職務之公務員，其執行職務，基於審理或偵查所得之證據及其他資料，為事實

is vested with the power to render judgment on the questions of facts and law by moral conviction and the opinion in which he firmly believes based on the evidence and other information obtained during a trial or investigation. It is thus inevitable that public functionaries with the duty of trial or prosecution at different levels will disagree with each other's moral conviction or opinions. Such variance, if any, may be put right by the mechanism already existing within the framework of the judiciary system. In criminal cases, damages are compensable under the system of compensation for wrongful imprisonment. To ensure judicial independence and that no external interference will be applied in prosecution so that fairness and justice may be upheld, any such inevitable variance within reasonable degree must be tolerated and should not be taken by any party as a ground to support his argument that his freedom or right has been wrongfully infringed upon, based on which to claim state compensation. Only in this way will all public functionaries with the duty of trial or prosecution be able to take an impartial position in their efforts to

及法律上之判斷，係依其心證及自己確信之見解為之。各級有審判或追訴職務之公務員，就同一案件所形成之心證或見解，難免彼此有所不同，倘有心證或見解上之差誤，訴訟制度本身已有糾正機能。關於刑事案件，復有冤獄賠償制度，予以賠償。為維護審判獨立及追訴不受外界干擾，以實現公平正義，上述難於避免之差誤，在合理範圍內，應予容忍。不宜任由當事人逕行指為不法侵害人民之自由或權利，而請求國家賠償。唯其如此，執行審判或追訴職務之公務員方能無須瞻顧，保持超然立場，使審判及追訴之結果，臻於客觀公正，人民之合法權益，亦賴以確保。至若執行此等職務之公務員，因參與審判或追訴案件犯職務上之罪，經判決有罪確定時，則其不法侵害人民自由或權利之事實，已甚明確，非僅心證或見解上之差誤而已，於此情形，國家自當予以賠償，方符首開憲法規定之本旨。

make objective and equitable decisions in adjudication and prosecution without having to be overly cautious, and will the lawful rights of the people be thus protected. In the case where such a public functionary is convicted and sentenced by an irrevocable judgment because of the crime he has committed in connection with his duty while taking part in a trial or prosecution, then the fact that he has wrongfully encroached upon the freedom or right of a person has become rather obvious and is not just a matter of the difference in moral conviction or opinions. When this happens, the State must certainly be held liable for damages in order to conform to the spirit contemplated in the constitutional provision quoted above.

It must be noted that the principle of equality embodied in the Constitution does not forbid reasonable variation in statutory provisions regulating the State's liability for compensation based on dissimilarity in the functions of different organs of the State. In cognizance of this concept, we hold that Article 13 of the State Compensation Act, as a special law

按憲法所定平等之原則，並不禁止法律因國家機關功能之差別，而對國家賠償責任為合理之不同規定。國家賠償法針對審判及追訴職務之上述特性，而為前開第十三條之特別規定，為維護審判獨立及追訴不受外界干擾所必要，尚未逾越立法裁量範圍，與憲法第七條、第十六條、第二十三條及第二十四條並無牴觸。

directed at the characteristics of the duty of trial and prosecution, is necessary in order to ensure judicial independence, that no external interference will be applied in prosecution, and that said Article has not gone beyond the scope of the legislative discretion and is therefore not in contradiction to Articles 7, 16, 23, and 24 of the Constitution.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。

J. Y. Interpretation No.229（July 29, 1988）*

ISSUE: (1) Is the restriction imposed by the proviso to Article 107 of the Code of Civil Procedure on the one who applies for procedural relief under the system of litigation *in forma pauperis* contrary to Article 16 of the Constitution?

(2) Is the provision of Paragraph 3 of Article 380 of the Code of Civil Procedure requiring that a motion for further proceedings after the conclusion of a settlement in a lawsuit be filed within a specified time limit contrary to Article 16 of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）, Article 107, proviso, and Article 380 of the Code of Civil Procedure（民事訴訟法第一百零七條但書、第三百八十條）, J. Y. Interpretation No. 225（司法院釋字第二二五號解釋）.

KEYWORDS:

litigation *in forma pauperis*（訴訟救助）, court costs and expenses（訴訟費用）, settlement（和解）, further proceedings（繼續審判）, irrevocable judgment（確定判決）.**

HOLDING: 1. The purpose of the system of litigation in forma pauperis provided in the Code of Civil Procedure

解釋文：一、民事訴訟法規定之訴訟救助制度，乃在使有伸張或防衛權利必要而無資力支出訴訟費用之人，

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to enable those who want to have their rights affirmed or defended but are destitute of means to pay the court costs and expenses to exercise their right of instituting legal proceedings. However, to avoid the possibility of abuse of this system by the institution of meaningless proceedings and thus unnecessarily increasing the workload of courts, the Act provides in the proviso to Article 107 that "this shall not apply where there is apparently no prospect for the person to win the case." The restriction is essential to the public interest and is not contrary to Article 16 of the Constitution.

仍得依法行使其訴訟權。又恐當事人濫用此項制度，進行無益之訴訟程序，徒增訟累，故於該法第一百零七條但書規定「但顯無勝訴之望者，不在此限。」此為增進公共利益所必要，與憲法第十六條並無牴觸。

2. While a settlement reached in a lawsuit has the same effect as an irrevocable judgment, a motion for further proceedings filed after a settlement was concluded will result in the resumption of a proceeding that has already ended, and must therefore be subject to a limitation of a period to maintain the order of law. Article 380 of the Code of Civil Procedure, which provides in Paragraph 3 thereof that the provision in respect of the peremptory period for the institution of a petition for

二、訴訟上和解與確定判決有同一之效力，和解成立後請求繼續審判，將使已終結之訴訟程序回復，為維持法律秩序之安定，自應有期間之限制，民事訴訟法第三百八十條第三項，就同條第二項之請求繼續審判，準用第五百條提起再審之訴不變期間之規定，與憲法第十六條亦無牴觸。

retrial as set forth in Article 500 of the Code shall apply mutatis mutandis to a motion for further proceedings under Paragraph 2 of said Article, is not contrary to Article 16 of the Constitution.

REASONING: 1. Civil litigation is a proceeding whereby parties request the judicial authority to determine their private rights for their personal interest. To be fair, all court costs and expenses incurred should of course be borne by the litigant parties. This is the reason that the Code of Civil Procedure has adopted the non-gratis principle, which has been clearly expounded in our Interpretation No. 225. For persons who are destitute of means of payment for the court costs and expenses, however, the Act permits proceedings in forma pauperis to enable the indigent to claim or defend their rights through the exercise of their right of instituting legal proceedings. Nonetheless, to avoid a possible increase in the workload of courts in consequence of the institution of meaningless proceedings that take advantage of this system, appropriate restrictions are necessary if, prima facie, there

解釋理由書：一、民事訴訟係當事人為自己之利益，請求司法機關確定其私權之程序，自應由當事人負擔因此所生之費用，方稱公平，故我民事訴訟法採有償主義，前經本院釋字第二二五號解釋之解釋理由書釋明在案。對於無資力支出訴訟費用之當事人，則設有訴訟救助制度，使其仍得為伸張或防衛權利而行使其訴訟權。惟依當事人之主張，就形式上觀察，為顯無勝訴可能之訴訟事件，如亦藉此制度進行無益之訴訟程序，則徒增訟累，自應有適當之限制，故民事訴訟法第一百零七條但書規定「但顯無勝訴之望者，不在此限」。此為增進公共利益所必要，與憲法第十六條並無牴觸。

is no prospect of success for the claimant in the litigation. It is therefore set forth in the proviso to Article 107 of the Code that "this shall not apply where there is apparently no prospect for the person to win the case," and such restriction is essential to the public interest and is not contrary to Article 16 of the Constitution.

2. The conclusion of a settlement in a lawsuit has the same effect as an irrevocable judgment under Paragraph 1 of Article 380 of the Code of Civil Procedure as well as putting the proceedings to an end. Where there is a ground for nullification or revocation of the settlement, however, a motion for further proceedings may be filed, and a well-grounded motion for further proceedings will result in the resumption of a proceeding that has already been closed. The settlement which had the same effect as an irrevocable judgment will then become ineffective as soon as a new judgment is entered on the original action and becomes irrevocable. Such a motion must therefore be subject to the limitation of a period to maintain the order of law and ensure the safety of trans-

二、訴訟上和解成立，不僅終結訴訟，且依民事訴訟法第三百八十條第一項規定，與確定判決有同一之效力。惟和解有無效或得撤銷之原因者，得依同條第二項規定請求繼續審判，繼續審判之請求有理由時，將使已終結之訴訟程序回復，並於法院就原訴訟事件另為裁判確定後，原與確定判決有同一效力之和解，亦隨之喪失其效力，為維持法律秩序之安定，確保社會交易之安全，自應有期間之限制。民事訴訟法第三百八十條第三項，就同條第二項之請求繼續審判，準用第五百條提起再審之訴不變期間之規定，即係本此意旨，與憲法第十六條亦無牴觸。

actions in society. For this reason, Article 380 of the Code of Civil Procedure, which provides in Paragraph 3 thereof that the provision in respect of the peremptory period for the institution of a petition for retrial as set forth in Article 500 of the Act shall apply mutatis mutandis to a motion for further proceedings under Paragraph 2 of said Article, is not contrary to Article 16 of the Constitution.

Justice Zu-Zan Yang filed dissenting opinion in part.

本號解釋楊大法官日然提出一部不同意見書。

J. Y. Interpretation No.230（August 5, 1988）*

ISSUE: It is held by the Administrative Court in its precedent that a mere description of facts or statement of reasons made by a government agency is not an administrative act within the meaning defined in the Administrative Appeal Act and that no administrative appeal against such description or statement is legally permissible. Does this precedent impose a limitation on the right of the people under the Administrative Appeal Act and thereby contradict Article 16 of the Constitution?

RELEVANT LAWS:

Article 16 of the Constitution（憲法第十六條）; Article 1 and Article 2, Paragraphs 1 and 2 of the Administrative Appeal Act（訴願法第一條、第二條第一項、第二項）; Article 1 of the Administrative Proceedings Act（行政訴訟法第一條）; J. Y. Interpretation No. 156（司法院釋字第一五六號解釋）; The Supreme Administrative Court's Precedent T.T. 41 (Supreme Administrative Court 1973)（行政法院六十二年裁字第四一號判例）.

KEYWORDS:

administrative appeal（訴願）, administrative act（行政處分）, deemed administrative act（視同行政處分）, logical construction（當然解釋）, administrative litigation（行政爭訟）.**

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* Translated by Raymond T. Chu.

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

HOLDING: Under Article 1 of the Administrative Appeal Act, the prerequisite for the institution of an administrative appeal is that there exists an administrative act, and the term "administrative act" is expressly defined in Article 2 thereof. The Supreme Administrative Court held in Precedent T.T. 41 (Supreme Administrative Court, 1973): "A mere description of facts or statement of reasons made by a government agency does not constitute an approval or disapproval given to an application submitted by any citizen, nor does such description or statement result in any legal effect. It is therefore not an administrative act within the meaning defined in the Administrative Appeal Act. Consequently, no administrative appeal against such description or statement is permissible under law." The decision is only a logical construction of the text of the Administrative Appeal Act and does not contradict Article 16 of the Constitution.

解釋文：提起訴願，依訴願法第一條規定，以有行政處分存在為前提，行政處分之定義，同法第二條亦有明文規定。行政法院六十二年裁字第四十一號判例：「官署所為單純的事實敘述或理由說明，並非對人民之請求有所准駁，既不因該項敘述或說明而生法律上之效果，非訴願法上之行政處分，人民對之提起訴願，自非法之所許」，係前開訴願法條文之當然詮釋，與憲法第十六條並無牴觸。

REASONING: While the people have the right to make an administrative appeal or bring a lawsuit under

解釋理由書：人民有訴願及訴訟之權，固為憲法第十六條所明定，惟行政爭訟之進行，仍應依有關法律之規

Article 16 of the Constitution, the process for conducting administrative litigations is governed by law. The Administrative Appeal Act provides in Article 1, the first sentence: “A person who believes that an administrative act of a central or local government authority is unlawful or improper, thereby causing injury to his right or interest, may institute an administrative appeal or re-appeal under this Act.” Article 2, Paragraph 1, of the same Act states: “The term 'administrative act' used in this Act means a unilateral administrative act taken by a central or local government authority in the exercise of its function in respect of a specific matter, with the effect in public law.” Paragraph 2 of the same Article says: “The omission of an act by a central or local government authority in response to a lawful application of the people, to which such authority is legally bound to act within the statutory period, thereby causing damage to the right or interest of any person, is deemed to be an administrative act.” These provisions are designed to require the existence of an administrative act or a deemed administrative act of an administrative authority

定。訴願法第一條前段：「人民對於中央或地方機關之行政處分，認為違法或不當，致損害其權利或利益者，得依本法提起訴願、再訴願」。第二條第一項：「本法所稱行政處分，謂中央或地方機關基於職權，就特定之具體事件所為發生公法上效果之單方行政行為」。同條第二項：「中央或地方機關對於人民依法聲請之案件，於法定期限內應作為而不作為，致損害人民之權利或利益者，視同行政處分」。係規定訴願之提起，以有行政機關就特定之具體事件所為發生公法上效果之行政處分或視同行政處之情形存在為前提。又行政訴訟法第一條則以人民認為行政處分損害其權利，經依訴願程序請求救濟，仍不服其決定為提起行政訴訟之要件，前開規定乃採取類似行政爭訟制度國家之通例。行政法院六十二年裁字第四十一號判例稱：「官署所為單純的事實敘述或理由說明，並非對人民之請求有所准駁，既不因該項敘述或說明而生法律上之效果，非訴願法上之行政處分，人民對之提起訴願，自非法之所許」。係前開訴願法條文之當然詮釋，並未違背本院釋字第一五六號解釋意旨，亦未限制人民依訴願法應享之權利，與憲法第十六條自無牴觸。

in respect of a specific matter, with the effect in public law, as a prerequisite for the institution of an administrative appeal. Similarly, Article 1 of the Administrative Proceedings Act provides that the essential element for the institution of administrative litigations is that a person's right is injured by an administrative act and that he is dissatisfied with the decision made upon his petition for remedy filed in pursuance of the administrative appeal procedure. The principle embodied in the foregoing provision is similar to the doctrine generally accepted among nations with a mechanism for administrative litigations. The Supreme Administrative Court held in Precedent T.T. 41 (Supreme Administrative Court, 1973): “A mere description of facts or statement of reasons made by a government agency does not constitute an approval or disapproval given to an application submitted by any citizen, nor does such description or statement result in any legal effect. It is therefore not an administrative act within the meaning defined in the Administrative Appeal Act. Consequently, no administrative appeal against such description or

statement is permissible under law." The decision is only a logical construction of the text of the Administrative Appeal Act and does not contradict the essence of our J. Y. Interpretation No. 156, nor does it impose any limitation on the right of the people under the Administrative Appeal Act. Thus, we do not find it to be contrary to Article 16 of the Constitution.

J. Y. Interpretation No.231（October 7, 1988）*

ISSUE: Should a special budget proposed in response to an emergency or a serious event be included in the total national budget?

RELEVANT LAWS:

Article 164 of the Constitution（憲法第一百六十四條）; Article 75 of the Budget Act（預算法第七十五條）.

KEYWORDS:

total budget（預算總額）, special budget（特別預算）.**

HOLDING: The so-called "total national budget" described in Article 164 of the Constitution refers to the total amount the government proposes for the annual national budget, which does not include any special budget proposed as a result of an emergency or a serious event.

解釋文：憲法第一百六十四條所謂「預算總額」，係指政府編製年度總預算時所列之歲出總額而言，並不包括因有緊急或重大情事而提出之特別預算在內。

REASONING: The first sentence of Article 164 of the Constitution stipulates: "Expenditures for educational programs, scientific studies, and cultural services shall not be, in respect to the

解釋理由書：憲法第一百六十四條前段規定：「教育、科學、文化之經費，在中央不得少於其預算總額百分之十五，在省不得少於其預算總額百分之二十五，在市、縣不得少於其預算總

* Translated by Dr. C.Y. Huang of Tsar & Tsai Law Firm.

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Central Government, less than 15 percent of the total national budget; in respect to the Provinces, less than 25 percent of the total provincial budget; and in respect to the Municipality or Hsien, less than 35 percent of the total Municipal or Hsien budget." The "total national budget" therein refers to the total expenditure budgeted by the governments at various levels for day-to-day administrative execution. The said total national budget is drawn up once in each fiscal year on the basis of annual revenues and expenditures. Under the current budgetary system, on condition of any of the events described in Article 75 of the Budget Act, a special budget may be drawn up in addition to the annual national budget. Naturally, the special budget proposed in response to an emergency or a serious event is not included in the aforesaid total national budget.

額百分之三十五」，其中所稱「預算總額」係指各級政府為平常施政而編製年度總預算時所列之歲出總額。此項年度總預算，政府於每一會計年度，各就其歲入、歲出全部彙總編成，且每一會計年度祇辦理一次。至特別預算，就現行預算制度而言，則以具有預算法第七十五條所列各款情事之一者，始得於年度總預算外提出之。此項因應緊急或重大情事而特別編之預算，自不包括在前述預算總額之內。

J. Y. Interpretation No.232（November 4, 1988）*

ISSUE: Does Article 25 of the Land Act apply in the case where the joining of publicly owned lands to those of landowners, who under Article 58 of the Equalization of Land Rights Act voluntarily compose a rezoning committee to deal with the rezoning of urban lands, is a disposal activity rendering alteration of right based on the landowner's self-intent?

RELEVANT LAWS:

Article 25 of the Land Act（土地法第二十五條）; Articles 56 and 58 of the Equalization of Land Rights Act（平均地權條例第五十六條、第五十八條）.

KEYWORDS:

rezoning（重劃）, urban lands（市地）, disposal activity（處分行為）, adjudication（裁決）.**

HOLDING: The meaning of the statement that government-owned lands join those of landowners, who under Article 58 of the Equalization of Land Rights Act voluntarily compose a rezoning committee to deal with the rezoning of urban lands, and the meaning of the

解釋文：公有土地參加依平均地權條例第五十八條之土地所有權人自行組織重劃會辦理市地重劃，其實質意義與主管機關依同條例第五十六條辦理市地重劃，而將公有土地核定屬重劃區範圍予以重劃同，係為實現憲法平均地權之政策而設，並非土地所有權人以

* Translated by Ching P. Shih.

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statement that the competent authority carrying out the rezoning of urban lands under Article 56 of the same Act and ratifying publicly owned land within rezoning areas rezones the land are substantially the same. The former is designed to fulfill the policy of equalization of urban land rights under the Constitution. Since there is no disposal activity rendering alteration of right based on the landowner's self-intent involved, Article 25 of the Land Act does not apply here.

自己之意思使權利發生變更之處分行為，自無土地法第二十五條之適用。

REASONING: According to the provision in Articles 56-58 of the Equalization of Land Rights Act, the rezoning of urban lands can be carried out by the competent authority at every level after reporting it to the competent authority at a higher level and receiving approval, or by the rezoning committee voluntarily composed of the landowners after the approval of the competent authority. The latter is designed to promote the use of lands, broaden the rezoning of urban lands, and encourage landowners to organize a rezoning committee voluntarily to carry out the rezoning of urban lands, and thus to

解釋理由書：依平均地權條例第五十六條至第五十八條規定，都市土地重劃，有由各級主管機關報經上級主管機關核准後辦理者，有由土地所有權人自行組織重劃會經主管機關核准後實施者。後一情形之重劃，乃國家為促進土地利用，擴大市地重劃，獎勵土地所有權人自行組織重劃會辦理市地重劃而設，以免主管機關依前一情形辦理重劃多所勞費，兩者均有公有土地夾雜在內之可能，其在手續上固有所不同，但在實質意義上則均為主管機關准否重劃之行政處分，旨在實現憲法平均地權之政策，促進土地利用效益，加速取得公共設施保留地。在後一情形之重劃，祇須

help the competent authority to avoid spending too much time and expense to carry out the rezoning. Both of them may rezone the publicly owned lands, although in respect of the dealing process, a difference between them originally existed; however, in view of their substantial meanings, these two are both administrative acts made by the competent authority for the approval or disapproval of rezoning. Their purposes are to fulfill the policy of equalization of urban land rights under the Constitution, promote the use of lands, and expedite the process to obtain the lands reserved for public facilities. When rezoning is carried out in the latter situation, it is satisfactory that at least 1/2 of the total number of the owners of private lands within the rezoning area, whose lands occupy more than 1/2 of the total amount of private lands within the rezoning area, have expressed their consent and that the rezoning has been approved by the competent authority; when rezoning in the former situation, the competent authority shall hold a mediation where at least 1/2 of the total number of the owners of privately owned lands within the

重劃區內私有土地所有權人半數以上，而其所有土地面積超過重劃區私有土地總面積半數以上者之同意，並經主管機關核准即可；在前一情形之重劃，須有重劃地區內私有土地所有權人半數以上，而其所有土地面積超過重劃地區土地總面積半數者表示反對時，主管機關始應予調處，並參酌反對理由修訂重劃計畫書重行報請核定，公告實施，土地所有權人不得再提異議。其中所謂「同意」或「反對」，僅係私有土地所有權人，促使主管機關行使職權或重新斟酌之手段，而與公有土地無涉。且市地重劃交換分配之結果，依上開條例第六十二條前段規定：「市地重劃後，重行分配與原土地所有權人之土地，自分配結果確定之日起，視為其原有之土地」。就此交換分配言，乃係法律規定之效果，並非土地所有權人以自己之意思使權利發生變更之處分行為，亦至明顯。至於土地法第二十五條規定：「省市縣政府對於其所管公有土地，非經該管區內民意機關同意，並經行政院核准，不得處分，或設定負擔或為超過十年期間之租賃」，其所謂「處分」，係指基於土地所有權人自己之意思使權利發生變更之行為而言，並不包括上述參加市地重劃之情形在內；其規定應經「行政院

rezoning area, whose lands occupy more than 1/2 of the total amount of privately owned lands within the rezoning area, have expressed their opposition, to revise the rezoning proposal on consideration of the reasons for opposition, report it again for approval, and then publish and execute it, so that the landowners may no longer express any objections. The so-called "consent" or "opposition" is only a means employed by the owners of privately owned lands to urge the competent authority to exercise its duty or to reconsider and is not related to the publicly owned lands. In addition, in respect of the consequence of exchange and apportionment for urban-land rezoning, the former provision of Article 62 of the above Act states: "After rezoning the urban lands, the lands reapportioned and owned by the original owners shall be deemed their originally owned lands." Regarding this kind of exchange and apportionment, the consequence is an effect provided by law; it is obvious that no disposal activity rendering alteration of right based on the landowner's self-intent is involved. Article 25 of the Land Act states: "Without the

核准」，亦與市地重劃依上開條例規定，由中央或地方主管機關核准者有別。從而公有土地參加上述後一情形之市地重劃，自無土地法第二十五條之適用。

consent of a representative institution located in its jurisdiction and the approval of the Executive Yuan, no provincial, municipal, or county government can dispose of the publicly owned lands under its control, or fix charges or lease more than 10 years on those lands." The so-called "disposal" focuses on the activity rendering alteration of right based on the landowner's self-intent, but does not include the joining of rezoning urban lands; the so-stated "approval of the Executive Yuan" is also different from the approval of the central or local competent authorities under the Act mentioned above. Therefore, Article 25 of the Land Act will not be applicable to the publicly owned lands that adjoin the urban-land rezoning in the latter situation mention above.

Justice Geng Wu filed dissenting opinion.

Justice Chien-Hua Yang filed dissenting opinion, in which Justice Yueh-Sheng Weng, Justice Zu-Zan Yang and Justice Herbert Han-Pao Ma joined.

本號解釋吳大法官庚提出不同意見書；楊大法官建華、翁大法官岳生、楊大法官日然與馬大法官漢寶共同提出不同意見書。

J. Y. Interpretation No.233（December 9, 1988）*

ISSUE: Does Article 108, Paragraph 1, of the Code of Criminal Procedure regarding the court's decree for extending detention contradict Article 8 of the Constitution?

RELEVANT LAWS:

Article 8 of the Constitution（憲法第八條）; Article 108, Paragraph 1, of the Code of Criminal Procedure（刑事訴訟法第一百零八條第一項）.

KEYWORDS:

personal freedom（身體自由）, arrest（逮捕）, detention（拘禁）.**

HOLDING: Article 108, Paragraph 1, of the Code of Criminal Procedure regarding the court's decree for extending detention does not contradict Article 8 of the Constitution.

解釋文：刑事訴訟法第一百零八條第一項關於法院裁定延長羈押之規定，與憲法第八條並無牴觸。

REASONING: The first sentence part of Article 8, Paragraph 1, of the Constitution clearly states that personal freedom shall be guaranteed to the people.

解釋理由書：按人民身體之自由應予保障，除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程序，不得逮捕拘禁，憲法第八條第一項

* Translated by Ching P. Shih.

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Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. In respect of the person detained by the court under suspicion of having committed a crime, to compel the persons executing detention under the law to deal carefully with the matter, Article 108, Paragraph 1, of the Code of Criminal Procedure describes a restriction on the duration of detention. For the thorough fulfillment of the intention of the article of the Constitution mentioned above, this provision allows the court to extend a detention through a decree before the expiration of the duration of detention where it is necessary to further detain the suspect. Article 8, Paragraph 2, of the Constitution regards only the case of arrest and detention executed by the authorities other than the courts, but excludes the situation where the court extends a detention through a decree. Therefore, the detention executed by the courts will not incur the question of written notice and wherefore petition for a trial. However, to protect the personal

前段定有明文。人民因犯罪嫌疑經法院羈押者，為促使依法執行羈押人員審慎將事，刑事訴訟法第一百零八條第一項就羈押期間設有限制，其有繼續羈押必要者，許法院於期間未滿前，以裁定延長之，即為貫徹前開憲法條文之意旨。至憲法第八條第二項之規定，係指人民受法院以外機關之逮捕拘禁而言，不包括刑事訴訟法第一百零八條第一項之法院裁定延長羈押在內，故法院所為之羈押，不發生另書面告知並據以聲請提審之問題。惟為確切保障人民身體自由，法院所為延長羈押之裁定，應依照刑事訴訟法有關規定，及時使被告知悉，併予說明。

freedom completely, the decree for extending detention issued by the courts shall, according to the related provisions of the Code of Criminal Procedure, render the accused informed in due time.

Justice Chien-Tsai Cheng filed dissenting opinion.

本號解釋鄭大法官健才提出不同意見書。

Appendix I

THE GRAND JUSTICES' ROLE IN PROCESS OF THE R.O.C. DEMOCRATIC CONSTITUTIONALISM*

INTRODUCTION

Often referred to as "the Guardian of the Constitution" by the people it serves, the Grand Justices Council of the Judicial Yuan, under which the Constitutional Court has been established since 1992, is the highest judicial body of the nation, charged with interpreting the Constitution of the Republic of China. The Republic's Constitution of 1947 is based on the political doctrines advocated by the nation's Founding Father, Dr. Sun Yat-sen. These doctrines are elaborated as the "Three Principles of the People", including Nationalism, Democracy, and Social Welfare of People, namely of the People, by the People, and for the People. The "Five-Power Government", as envisioned by Dr. Sun, is a hybridization of classical Chinese political traditions and Montesquieu's doctrine of the separation of powers, from which arise the delicate checks and balances between the Executive, Legislative, Judicial, Examination, and Control Yuans.

The Judicial Yuan, of which the Grand Justices Council is its main body, supervises the administration of the court system. The Grand Justices Council, however, is not a court of final instance for civil, criminal and administrative cases, but instead a body of ultimate authority to review the constitutional validity of relevant statutes or regulations whenever legal remedies are exhausted. The Constitutional Court, comprised of the entire Grand Justices Council, is vested with the power to review, and dissolve if necessary, any political party that threatens the existence of the Republic or the democratic constitutional order.

Since its inception in 1948, the Grand Justices has gone through six terms and rendered over 623 decisions. Cases in the early days of the Republic focused on defining the function and authority of government, and on settling disputes between various

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* Prepared by Justice Vincent Sze（施文森）and Professor Robert Huai-Ching Tsai（蔡懷卿） for those who are not quite familiar with the R.O.C. constitutional system.

government agencies. As time progressed, cases involving fundamental rights of individuals have been increasing. Current court dockets are dominated by those cases initiated by individuals instead of government agencies.

I. THE BIRTH OF A CONSTITUTION

1. Historical Background

The idea of a constitutional state for the Chinese people was first conceived in the late nineteenth century while the country was still under the rule of the Ch'ing Dynasty. The empire, steeped in tradition and phobia, had suffered a series of grave military and diplomatic setbacks against the voracious Western powers. In an attempt to modernize and strengthen the faltering kingdom, patriotic intellectuals K'ang Yu-wei and Liang Ch' I-ch'ao proposed to Emperor Kuang-hi in 1898 an ambitious reform program to convert the nation to a constitutional monarchy.

The program was heartily embraced by the young and liberal emperor, who was eager to reinvigorate his declining nation. Historically referred to as the Hundred Day' s Reform, Emperor Kuang-hi's ambitious vision lasted no longer than a few decrees before it was brutally crushed by the archconservative Empress Dowager Ts'u-hsi. The reform participants were either executed or banished, and the Emperor himself was seized and detained until his death ten years later. Empress Dowager Tz'u-hsi took over the government and drove the empire further along its faltering path towards destruction. The unfortunate failure of this early attempt at reform considerably delayed the modernization of China and its subsequent constitutional development, yet it sowed the seeds of revolution to come a decade later.

In 1894, Dr. Sun Yat-sen, a man who is revered as the founding father of modern China by all Chinese, began to advocate for revolution to save China from the foreign colonialists. A patriotic intellectual with a cosmopolitan outlook, Dr. Sun was born in southern China, raised by his elder brother in Hawaii, and educated in Western medicine at the Hongkong University. He recognized the severity of the threat that Western imperialism posed on his motherland, and believed that the destruction of China can only be averted through the timely overthrow of corrupt dynastic rule.

As the political platform of this revolution, Dr. Sun advocated the "Three Principles of the People": Nationalism, Democracy, and the Social Welfare of People (i.e. of the People, by the People, for the People.) As part of the revolutionary process, his doctrines appealed to the people's sense of nationalism, and urged the overthrow of authoritarian Manchurian rule in order to establish in its place a government of the people. This newly established government would take the form of a democracy administered by the people, and function to provide for the people it serves. To this end, Dr. Sun crafted the "Fundamentals of National Reconstruction", in which he outlined a meticulous plan to develop China's infrastructure step by step.

Inspired by Dr. Sun's visionary ideology and ardor, the people of China rose repeatedly in rebellion against the Ch'ing Dynasty. After ten unsuccessful attempts, the rebels finally in 1911 forced the Emperor to abdicate peacefully, bringing thousands of years of rule by monarchy to its overdue conclusion. With the demise of the Ch'ing Dynasty, the Republic of China, the first republic on the Asian continent, was subsequently born. The Revolutionary Alliance Society, led by Dr. Sun, was pivotal in dawning this new era of Chinese history, and did consequently evolve into the Nationalist Party (Kuomintang or KMT) as the Republic took shape.

In the early days of the Republic, before the political basis of a fledgling democracy had enough time to take root, the powerful remnants of the Ch'ing Dynasty, notably those with military might, threatened to tear the new nation asunder. Notwithstanding conciliatory efforts made by Dr. Sun and his disciples, true peace and stability between the warlords could not be achieved in the new China, and disarray befell the entire country as feuding factions seized dominance. Dr. Sun and his organization retreated to the southern province of Guangdong, where KMT established a power base both politically and militarily.

In 1925, Dr. Sun passed away in Beijing while making a last-ditch effort to negotiate peace between the warlords and unify the nation. In the following year, Generalissimo Chiang Kai-shek, Dr. Sun's heir-apparent in the KMT, commenced military actions against the warlords in northern China. The Northern Expedition concluded successfully in 1928, and China was at last unified as a republic.

When the Republic was formed in 1911, the new government promulgated the

Provisional Basic Law, a legal framework by which the nation would be governed prior to the adoption of a constitution. In 1912, a constitutional assembly was convened at the Heaven's Temple in Beijing, and a document named "The Heaven's Temple Constitution Draft" was prepared. However, the nation's unstable political climate defeated this effort. In the subsequent years, each administration proposed its own draft of the constitution, but none were ever successfully adopted.

In 1923, during President Tsao-kun's administration, a constitution based on the Heaven's Temple Constitution Draft did actually pass through three readings in the Congress, and may be called the first constitution of the Republic of China. However, President Tsao-kun's election was tainted by scandalous bribery, and his government soon fell apart in 1924. Consequently, the legitimacy of the 1923 draft was always in doubt, and is not generally accepted by legal historians as a valid constitution.

After the successful Northern Expedition, the KMT set about organizing the National Government in the city of Nanjing. Step by step, this new government tried to advance Dr. Sun's political legacy by guiding the nation towards the democratic constitutional state he had envisioned. As laid down by Dr. Sun prior to his passing, the process of political reconstruction in the Republic of China was to be divided into three stages, namely the military period, the political tutelage period, and the constitutional period. The period from the 1911 revolution to the nation's reunification in 1928 was to be properly referred as the "military period." The period from the establishment of the National Government in Nanjing to the formal adoption of a legitimate constitution was to be referred as the "tutelage period." During this period, the Government would promote democratic processes and educate its citizens in the exercise of their rights. The "constitutional period" has been ongoing and evolving since the promulgation of our modern Constitution.

The National Government promulgated in 1928 the Organic Law of the Government of China, and in 1931 the Provisional Constitution for the Period of Political Tutelage. It adopted a "Five-Power" governmental structure based on Dr. Sun's unique political theory and principles. The National Government targeted a six-year schedule of "political tutelage" to prepare the people for a democratic constitution. A committee to draft the constitution was established in 1933, and the final document it produced on May 5, 1936, is historically referred to as "the Double Five Draft Constitution." This

draft incorporated most of Dr. Sun's ideas, and may be the version that most closely resembles Dr. Sun's vision.

The official adoption and enactment by the National Assembly would be necessary prior to the promulgation of the nation's constitution. Election of delegates to the National Assembly was scheduled to be complete by October 10, 1936, in order to achieve the date targeted by the Government for promulgation, November 12, 1936. However, elections in various provinces were not completed on time, compelling the Government to postpone the enactment of a constitution for yet another year. The KMT resolved to convene the National Assembly on November 12, 1937, for said purpose.

Once again, however, history intervened to sidetrack China's progress towards democracy. In July of 1937, on the eve of World War II, the Sino-Japanese War broke out following Japan's full-scale invasion of China. The chaos of war had made it impossible to summon the elected delegates from provinces occupied by the Japanese invaders, thus suspending the constitutional convention for the duration of the War.

China endured and resisted brutal mutilation at the hands of the Japanese Empire for eight years before it could rise victorious with the Allies in 1945. After evicting the invaders from its sovereignty, the Central Government (formerly called the National Government) resumed its agenda for framing a constitution. Through a series of "Political Consultation Conferences" held by the KMT along with other major political parties, notably the Chinese Communists Party, a substantially revised Double Five Draft Constitution was agreed upon as an acceptable compromise.

On November 15, 1946, the National Assembly was convened in Nanjing for enactment of the Constitution. The revised draft based upon resolutions reached by the aforesaid Political Consultation Conferences finally passed three readings at the convention, and was formally adopted as the Constitution for the Republic of China. It was thus promulgated on January 1, 1947, to be effective as of December 25, 1947.

At this point, it would appear that the struggle of many years to adopt a constitution has come to a fruitful end, and the fulfillment of the founding father's dream is at last within reach. Regrettably, however, in less than a year after the Constitution was adopted, the Chinese Communists began a civil war against the Central Government.

Exhausted after eight years of war against the Japanese invaders, the Central Government, held by the KMT, lost ground steadily to the Chinese Communists.

In 1949, the Central Government retreated to Taiwan, an island off China's southern coast that was returned to Chinese sovereignty after World War II following 50 years of Japanese imperialist occupation. Meanwhile, the Chinese Communists proclaimed its sovereignty over China as the government of People's Republic of China (PRC), and promulgated its own socialist constitution. Over the years, the Central Government of the Republic of China has unwaveringly pronounced the Communists a renegade regime, and vowed to eliminate it. The two factions assert constant political and military tension across the Taiwan Strait, and disarray has once again befallen China. Under such adverse political environment, the Republic of China Constitution, once sovereign over entire China, must for the time being survive and evolve on Taiwan as this new chapter of history resolves itself.

Upon relocation to Taiwan, President Chiang Kai-shek promptly instated law and order with a firm hand. The National Assembly, in abidance to President Chiang's dictate for stringent social order, adopted the Temporary Provisions for Wartime. The Provisions suspended parts of the Constitution, thus enabling the government to abridge certain fundamental rights of the people for the sake of security. Draconian measures such as the declaration of martial law, indefinite postponement of congressional re-elections, and removal of presidential term limits, were implemented to insure political stability. While in hindsight the wisdom of such totalitarian measures may be questionable, it must be pointed out that events of the period necessitated painful sacrifices, through which social order and political stability could seem more relevant to the survival of the Republic than democratic reforms.

In the ensuing decades, the Temporary Provisions remained in place while the Government set about building a vibrant economy on Taiwan. Between the 1950s and the 1970s, Taiwan's export-oriented economy sustained a high growth rate, and steadily accumulated a foreign currency reserve that ranked among the highest in the world. The prospering economy helped nurture the society's potential to advance politically. Gradually, the people of Taiwan demanded, in ever increasing volume, more social freedom and political participation. In 1987, President Chiang Ching-kuo, the son of President Chiang Kai-shek, answered the peoples' call for political freedom and social

liberty by lifting martial law at long last.

President Lee Teng-huei took office in 1988 after President Chiang Ching-kuo passed away. Over the next decade, President Lee presided over a series of important political reforms to turn the state into a genuine democracy. In 1990, by judicial interpretation of the Constitution, the long overdue congressional election was resumed after forty three years of suspension. Subsequently, the Temporary Provisions was repealed, and the Period of National Mobilization for Suppression of the Communist Rebellion came to an end. The development of the Republic's constitution had thus arrived at a new era.

Between 1991 and 2000, the National Assembly enacted five amendments to the Constitution. These amendments redistributed legislative powers, vacated the provincial structure and, most significantly, converted the presidency to an office directly elected by the people. In 1995, for the first time in the Republic's history, the head of the government was elected directly by the citizens residing in Taiwan. As observed by many legal historians, the inauguration of Mr. Lee as the first popularly elected President is paramount to a de facto Second Republic.

The robustness of the Constitution faced yet another test in 1999, when the outcome of a bitterly contested presidential election necessitated the Republic's first transfer of power from the ruling party to the opposition party. In accordance with the Constitution, the KMT, which had governed the Republic since its inception, handed over the reins of government to the Democratic Progressive Party (DPP) in a peaceful and timely manner. The inauguration of President Chen Sui-bian exemplifies the maturity of the Republic and the strength of the Constitution. Notwithstanding differences in political affiliation, all citizens of the Republic can at last expect equal protection and guarantees under the Constitution.

However, in spite of its revocation of the Period of National Mobilization for Suppression of the Communist Rebellion and cessation of open belligerence towards the Communist regime, the Government of the Republic of China has not officially renounced its territorial claims on Mainland China, a stance implicitly irreconcilable with the current administration's political intentions. Therefore, it may be objectively observed that the Constitution has retained its heritage from the 1911 Republic, all the

while seeking a viable identity in its presently ambivalent situation.

2. The Theory of the Constitution

The Republic of China Constitution is at its core the brainchild of Dr. Sun Yat-sen. In an effort to adapt China's historically and socially conservative society to a new democratic order, Dr. Sun melded its classical political thinking with Montesquieu's doctrine of separation of powers to create the "Five-Power Constitution" theory.

To those learned in Montesquieu's construction of a three-fold separation of governmental powers, the Republic of China Constitution could seem novel, yet ingenuous. Dr. Sun incorporated elements of traditional Chinese political structure into the classical Montesquieu model to form a five-fold separation of governmental powers: Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan, and Control Yuan ("Yuan" being the Chinese phonetic for a government branch.) In addition to the customary checks-and-balances between the executive, legislative, and judicial branches, Dr. Sun designed two more branches with a distinctive Chinese heritage, that of the Executive and Control Yuans. This "Five-Power Constitution" theory is in fact an extension of Montesquieu's doctrine, and accords with mainstream political thought underlying a modern democracy.

Unlike the traditional aristocracy in Western history, imperial authorities in Chinese history had always elevated commoner into the ruling class through rigorous examinations to ensure honesty and fairness in the power of government. Dr. Sun reasoned this to be a worthy idea, and conceptualized the Examination Yuan to parallel such function in a democracy. As the branch in charge of all personnel affairs for the government, it administers uniform examinations to qualify civil service positions and professional licenses.

Throughout the various dynasties in Chinese history, the emperors had maintained, in spite of their absolute power to rule, an independent authority to impeach and censor aberrant government officials as well as to admonish, on occasion, the emperors themselves. Dr. Sun believed that China's new government must vest similar authority and independence in the Control Yuan to ensure integrity and efficiency throughout its hierarchy. Consequently, the Control Yuan is charged with the responsibility to investigate government misconduct, impeach high-ranking officials, as well as audit the govern-

ment's budget.

While developing the "Five-Power Constitution", Dr. Sun painstakingly studied the constitutions of various governments around the world, objectively evaluated the roots of their strengths and weaknesses, and tirelessly engineered the roadmap by which national reconstruction would navigate once the timing was ripe.

Dr. Sun proposed to divide the traditional imperial powers into three clearly defined authorities and, along modern political thoughts, properly allocated them to the three independent branches of government - the legislative, the executive, and the judicial. Furthermore, he vacated from the legislative branch the power of impeachment and censor, and from the executive branch the power of examination, and re-distributed them respectively to two additional independent branches patterned after the traditional Chinese government. Indeed, the new structure may resemble neither the imperial China of the past nor the modern democracy of the West. However, if one were to study the structure objectively, one cannot fail to identify the checks-and-balances of a democratic form of government, and that the "Five-Power Constitution" is merely an extension of the three power model, conceived to meet a unique political necessity. The five-power government, as conceived and advocated by Dr. Sun, was intended to install a democracy that is at once efficient and free of corruption.

Unlike the President of the United States, who serves as the head of state as well as the chief of the executive branch, the President of the Republic of China is not the chief of the executive branch. Instead, The President of the Executive Yuan serves as its chief, while the President serves as a coordination center for the aforementioned five branches of government.

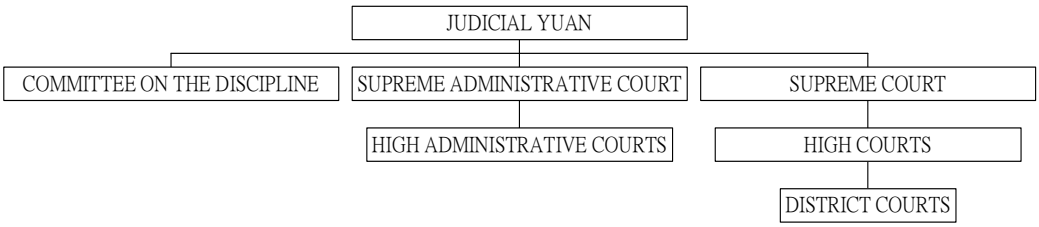
Counterbalancing the five ruling powers wielded by the government are the four political powers held by the electorate, viz. election, recall, initiative, and referendum. The people, through every vote they cast, assert their authority as the master of the government by guiding its course and speed in accordance with their collective vision.

II. THE JUDICIAL ORGANIZATION: A MULTI-TRACK SYSTEM

The present-day judicial system of the Republic of China is rooted in the judicial reform implemented by the Ch'ing Dynasty in its final years. As a last-ditch effort to revitalize the nation, the Imperial court attempted to cast away the legal system that had been practiced since the beginning of Chinese history, and adopt a new Western-style legal system. In 1906, the Imperial court retained Japanese advisors to help it draft new penal and civil codes based on the continental civil law tradition, and planned a Western style court system to be implemented later. After the 1911 revolution, the Republic of China government inherited the new codes and operated on this basis. However, ongoing armed conflicts between the warlords hindered any progress of judicial reform, and it was not until after the successful completion of the KMT-led Northern Expedition to overthrow the self-proclaimed separatist warlords that the National Government could finally press on with the modernization of its judicial system. The Judicial Yuan was established on November 16, 1928, officially marking a new beginning in China's legal history.

The 1947 Constitution laid down the structure of the present-day judicial system. Unlike the court system of the United States and many other nations, that of the Republic of China is a multiple track system. A three-tier court system, composed of the Supreme Court, the High Courts, and the District Courts, was established to handle civil and criminal cases of general jurisdiction; the District Courts have original jurisdiction over civil and criminal cases; the High Courts have appellate jurisdiction over the District Courts, and original jurisdiction for treason cases; the Supreme Court is the court of last resort, and reviews only issues of law. Parallel with these courts of general jurisdiction are the Administrative Court, which reviews legal controversies between the government and the general public, and the Committee on the Discipline of Public Functionaries, which presides over trials of civil servants accused of misconduct. Presiding over this multi-track system is the the Judicial Yuan with the Grand Justices Council as its main body. With the final authority to interpret the Constitution and render uniform review and ruling of the statutes and regulations in case of conflicts, the Grand Justices Council brings the normative force of the Constitution into full effect.

ORGANIC CHART OF THE JUDICIAL YUAN



When the government was initially organized in the early days of the republic, the court system, with the exception of the Supreme Court which was placed under the jurisdiction of the Judicial Yuan, was, as a matter of administrative expediency, administered by the Ministry of Justice, an arm of the Executive Yuan. Consequently, the line separating the judicial and the executive branch was blurred, and the checks and balances intended by the constitution became ambiguous. The Grand Justices Council's Interpretation No. 86 rendered in 1960 condemned this contradiction of the separation of powers. However, the Legislative Yuan was slow to follow through with the interpretation, and it was not until 1980 the court system was finally severed from the administration of the prosecutor's office and returned to the jurisdiction of the Judicial Yuan where it rightfully belongs. Subsequently, clear demarcation existed between judicial and executive powers, and great strides made towards judicial independence and constitutional checks and balances.

III. THE GRAND JUSTICES COUNCIL: ITS ROLE AND FUNCTIONS

1. An Overview of Its Institutional Development

The Grand Justices and Constitutional Court of the Judicial Yuan is the organ charged with exclusive power of judicial review in the Republic of China. Articles 78 and 79 of the Constitution, which provide that the Judicial Yuan shall have a certain number of grand justices to interpret the constitution and to render uniform interpretation of laws and regulations, vest the jurisdiction in the Grand Justices. Pursuant to said

provisions, the Grand Justices Council was established in 1947.

In Article 13 of the 1992 Constitutional Amendment, provision was made for the Grand Justices to constitute a Constitutional Court to declare the dissolution of any political party violating the Constitution. As the result, a new courtroom for the Constitutional Court was constructed within the Judicial Yuan, and the "Grand Justices Council" has been addressed the "Constitutional Court" as well to reflect this newly commissioned authority.

In Article 5 of the 1997 Constitutional Amendment, rules regarding the composition of the Grand Justices and Constitutional Court were significantly revised. The number of grand justices is reduced from seventeen to fifteen, the service term is shortened from nine years to eight years, a limitation of one-term only is imposed, and the terms are staggered on a four-year interval. This new Amendment will be enforced as of October 1, 2003.

As originally designed by the Constitution, the President of the Judicial Yuan couldnot concurrently serve as a member of the Grand Justices. The role he played was as the chief executive officer of the entire judicial system, and as such, was the ex officio chairman for the Plenary Session of the Grand Justices Council, and the rulings and interpretations thereof were declared in his name. Although he could neither participate in the deliberation nor vote in the final ruling of the Grand Justices Council, the President of the Judicial Yuan could cast the tie-breaking vote in the event of a deadlock among the Grand Justices; the power of which, as a matter of history, had never been exercised. In essence, his role was more of an executive nature than a judicial nature. In a strict sense, such a role designated to the highest judicial officer of the nation is inconsistent with the spirit of judicial independence aspired to in Article 80 of the Constitution. Consequently, this situation was rectified in the 1997 Constitutional Amendment, whereupon any future appointment for the President of Judicial Yuan must be chosen among the Grand Justices and can preside as chief justice whenever the Court or Council is in session .

2. The Design of the Judicial Review Process

During the debate stage of the formation of the Republic of China Constitution, a proposal was put forth to have the judicial system be modeled on the United States fed-

eral court system. The Judicial Yuan was to be on a par with the United States Supreme Court. All judges under the Judicial Yuan, including those presiding over inferior courts, would enjoy the power of judicial review. However, eventually the American model was reject ed and the Continental European model was adopted. After all, the Republic of China's legal system was built on the basis of a continental civil law tradition.

Under the Continental European model, a specialized constitutional court is authorized to review the constitutionality of laws in a proceeding that differs from an ordinary trial. No "cases and controversies" is required for this model of judicial review. The function of the Grand Justices Council may be summarized as follows:

1) The abstract control of norms - The Council may render constitutional interpretation upon petition of a governmental agency or the legislators, when (a)the boundary of an agency's constitutional duty is unclear, (b) a constitutional dispute exists between agencies over allocation of authority and responsibility, (c)the constitutionality of a statute or regulation applied by said agency or legislators is unclear. This type of review, in essence, is giving an advisory opinion without reference to a concrete case. Although it may serve as an upper level control of legislators' activities to prevent them straying away from the constitutional path, inevitably this type of review is colored by its legislative nature and sometimes even surpasses the bounds of law-making authority which is exclusively vested in the Legislature by the Constitution.
2) The concrete control of norms - an individual or a legal entity may, upon exhausting all remedies in a lawsuit, petition for review on the constitutionality of the statutes or regulations applied by the court in a particular proceeding. The court may petition the same *sua sponte* during the course of a trial. This type of review is similar to those exercised by the American courts. However, the power of judicial review is centralized in one place and enjoyed by the Grand Justices Council only. Prior to the Interpretation No. 177 rendered in 1982, the Grand Justices Council docket was made up principally by cases of an abstract control type, i.e., cases involving disputes between two branches of the government. This was due to the fact that the decisions of the Grand Justices were not given retroactivity to provide substantial relief for the individual litigants. However, Interpretation No. 177 has changed the picture. It granted the petitioner an opportunity for a new trial if the pertinent statute for decision in a lower court has

been declared unconstitutional. Hence it provided incentives for individual petitioners to make use of the judicial review process. As a result of this change, individual petitioner cases surged after 1980s and the function of the Grand Justices Council as protector of individual rights has become more prominent.

3) Unification of laws, regulations, or decrees an individual, a legal entity, or a governmental agency, may seek a binding uniform interpretation of statutes or regulations, when conflicting opinions causes problems in an administrative measure or legal proceeding, without reference to any constitutional issues. This is not a genuine judicial review in a traditional sense, as it does not involve constitutional review, but it surely helps smooth the enforcement and execution of law and order.

3. A Trend Towards Human Rights Protection

Since its inception in 1948, the Grand Justices Council has gone through half a century and rendered more than six hundred interpretations. Earlier cases were focused on defining the roles and functions of governments, and on settling statutory disputes between agencies. As time progressed, however, the Grand Justices Council's docket began to swell with more and more petitions filed by the citizens concerned with fundamental rights of the individual.

During the war-period with the Chinese Communist Party, the survival of the Republic obviously became major consideration of the Central Government's policymaking. The National Assembly, after being relocated in Taiwan, adopted a Temporary Provisions for Wartime which suspended some part of the Constitution. The primary role of Grand Justices Council was thus to preserve the constitutional structure of the Republic, and to restore law and order. In 1954, the Grand Justices Council rendered Interpretation No. 31 which permitted members of the first-term Legislative Yuan and Control Yuan to remain in office until an election throughout China may be held. Retrospectively, this interpretation in effect created life-time tenure for the first-term central representatives. Again, in Interpretation No. 85 (1960), the Grand Justices Council interpreted the quorum requirement "one-third of the total membership of National Assembly" mandated by the Constitution to be those delegates duly elected according to law and "be able to attend" the meetings of the Assembly. The profound impact of these two interpretations, in conjunction with the enactment of the Temporary Provisions, halted the progress of democracy in the Republic of China for forty years. It was

not until 1994, when faced with the reality of aging legislators that could no longer function, and in concomitance of the constitutional amendments and the abrogation of the Temporary Provisions, the Grand Justices Council issued Interpretation No. 261 to resume national elections.

From the 1950s through the 1970s, under a relatively stable political climate facilitated by the secure, although stagnant, constitutional order, Taiwan strived to achieve substantial economic progress. With a changing socio-political atmosphere brought about by the new wealth, people became more aware, as well as more demanding, of individual's rights. Through the 1980s and beyond, the role of the Grand Justices continued to evolve as it addressed an ever-increasing number of cases concerning the fundamental rights of individuals. An attitude of judicial activism for human rights protection was readily discernible from the panels of the Fifth and Sixth Term Grand Justices, especially the latter paving such a solid foundation on which Taiwan's democratic constitutionalism become a pragmatic reality.

In the tradition of 19th century Continental European legal system, the theory of "Special Power Relationship" abridged the constitutional rights of those groups of people who occupied a submissive, "special power" relationship with the state (e.g. public servants, soldiers, students, and prison inmates). Heavily influenced by German and Japanese jurisprudence of said era, this theory was also adopted by the Republic of China government to legally curtail the rights of certain individuals. Although this legal concept declined in continental Europe after World War II, the court system of Republic of China steadfastly clung to its political appeal. It was not until 1984, when the Grand Justices Council rendered Interpretation No. 187, acknowledging the constitutional right of a public servant to sue for certificate of pension, that this theory began to fall out of favor as a legal concept. In subsequent Interpretations No. 201, No. 243, No. 266, No.298, No. 312, No. 323, No. 338, No. 382, No. 430, No. 436, the full rights of public servants, students, soldiers were repeatedly affirmed, confirming equal protection for people irrespective of sex, religion, race, class, or political party affiliation, as originally mandated by Article 7 of the Constitution. A public servant's right for administrative review in a disciplinary proceeding was elevated further in Interpretation No. 610 (2006) by heightening the notice requirement for administrative appeal pending criminal trial.

In the area of criminal procedure, the Grand Justices also heightened the protection of individual liberty. In 1980, it rendered Interpretation No. 166 condemning the Law for Punishment of Police Offenses for depriving people of freedom without a court trial. A decade later, it reiterated this stand in Interpretation No. 251 (1990) and set a deadline for the revision of said statute. As a result of this directive, the legislators enacted the Law for Maintenance of Social Order to replace the Law for Punishment of Police Offenses. In Interpretation No. 384 declared in 1995, the procedural due process for criminal defendants and their right of confrontation with adverse witness was affirmed. Yet another legal milestone was set that year when the Grand Justices, following a vigorous oral argument in the Constitutional Court, rendered Interpretation No. 392 to nullify the provisions of the Code of Criminal Procedure empowering the prosecutors to detain criminal suspects without a court-issued arrest warrant, reaffirming the construction of habeas corpus provisions contained in Article 8 of the Constitution. This decision fundamentally changed the administration of criminal justice, and elevated the protection of human rights in the Republic of China to par with other mature democratic states.

Thereafter, in Interpretation No. 551 (2002), a provision of Statue for Drug Control requiring that the same punishment for the alleged drug crime be applied to an informant wrongly accused others was deemed excessive punishment not in accord with the constitutional principle of proportionality. In Interpretation No. 556 (2003), the element of crime "continuous participation in criminal organization" for the Statute Governing the Prohibition of Organized Crime was narrowly construed, and a heavy burden of proof was placed on the prosecutor. In Interpretation No. 567 (2003), the Court condemned the previous practice of martial law era prolonging jail term by summary executive order without a trial. The Court insisted that, even in an extraordinary period, personal freedom may not be deprived without due process of law. In Interpretation No. 582 (2004), the Court stated that a defendant's self-incriminatory statement may not be used against the interest of co-defendants without giving right of confrontation.

Personal freedom and the right of privacy is also heavily guarded beyond the administration of criminal justice. In Interpretation No. 558 (2003), the Court stressed that any limitation on freedom of residence and of change of residence shall be made only by legislators or by executive order explicitly authorized by legislators. In Interpretation

No. 559 (2003), the Court declared that the enforcement of a protective order pursuant to Domestic Violence Prevention Act involves disposition of personal freedom, hence must have explicit authority from the legislators. In Interpretation No. 588 (2005), the Court stated that a detention for enforcing administrative monetary obligation is a limitation on the personal freedom guaranteed by Article 8 of the Constitution, and must comply with due process of law. In Interpretation No. 599 (2005), the Court issued an injunction to suspend the finger prints requirement for citizen identification cards, prescribed in the Household Registration Law, as an emergency measure to prevent irreparable injury. Thereafter in Interpretation No. 603 (2005), the Court determined that the finger prints requirement is an unconstitutional invasion of privacy and abolished it.

The Grand Justices have also repeatedly upheld and advanced protection for women and children's rights. In Interpretation No. 365 (1994), it declared Article 1089 of the Civil Code, which afforded the father preferential parental right over the mother in custody battles, to be in violation of Article 7 of the Constitution, which addresses equal right of gender, as well as Article 9 of the Constitutional Amendment, which addresses the elimination of gender bias. As remedy, the Grand Justices ordered the revision of said statute to be completed by the legislature within two years. In the years that followed, Interpretation No. 410 (1996) further heightened the protection of marital property rights for women. In Interpretation No. 552 (2002), the Court stressed the importance of maintaining monogamy for preserving social order. Hence the exculpatory clause of bigamy shall be construed strictly to cases where both spouses made good faith mistake on the termination of prior marriages without fault. The validity of second marriage is recognized by law only on exceptional ground. The Court vowed to eliminate gender discrimination and to achieve gender equality in the matrimony. Consonant with the advance in biotechnology for paternity test, the Court in Interpretation No. 587 (2004) upheld a child's right to know one's own blood lineage for establishing kinship with parents. The Court recognized this as a right of personal dignity and integrity.

The Grand Justices also advanced the legitimacy of labor movements by repeated upholding labor rights. Interpretation No. 220 (1987) stated that the decisions of the Labor Disputes Arbitration Commission are appealable to the court system, as guaranteed by Article 16 of the Constitution. Interpretation No. 373 (1995) affirmed the right of educational institution workers to form a labor union, as guaranteed by Article 14 of the Constitution.

The freedom of speech and freedom of association were, above all, the most reverently guarded rights in the Republic. The right of access to media was recognized in Interpretation No. 364 (1994). Academic freedom for universities was upheld in Interpretation No. 380 (1995). The guideline limiting pornography was redefined within Interpretation No. 407 (1996). The subject matter was revisited in Interpretation No. 617 (2006). The Court indicated that sexual expression, notwithstanding protected by the Constitution as a part of the freedom of expression, may be prescribed by properly drafted, unambiguous law. The right of assembly and parade was reviewed in Interpretation No. 445 (1998). In this interpretation, the Grand Justices specifically stated that all political speeches, unless posing a clear and present danger, are protected by Article 11 of the Constitution. It includes the advocacy of communism (support for unification with People's Republic of China) or separatism (support for Taiwan independence). The government is prohibited from censoring, in any context or under any guise, the content or theme of public assembly and parade. It is worthwhile to note that because many dissidents were jailed and persecuted for vocalizing these two antithetical political beliefs during the martial law era, this explicit statement from the Grand Justices affirming tolerance of communism and separatism symbolizes the political maturity and self-confidence of contemporary Republic of China.

4. A New Forum to Settle Important Political Disputes

After the political deconstruction process of the 1980s, no authoritarian strongman could single-handedly dictate the public affairs in the Republic of China. Interpretation No.261 created a genuine representative legislature with newly found strength. Conflicts between the legislative branch and executive branch, as well as conflicts between political parties with different ideologies, became increasingly inevitable. Since Article 5, Paragraph 1, Subparagraph 3, of the Law of Constitutional Interpretation Procedure has provided that any group of legislators, comprising in number of one-third or more of the legislature, may petition the Grand Justices Council for interpretation of the constitutionality of any statute (or bill) at issue governing the legislature's functions and duties, many legislators used this provision as a way to reassert their political position in a different forum. Political factions in the minority found it expedient to resort to the Grand Justices for dispute resolution and to obtain a second chance to overturn the legislative agenda of the majority. As such, many political questions were posed as constitutional questions to the Grand Justices.

Interpretation No. 328 (1993) illustrates a case of this nature, in which the Grand Justices deflected a highly charged political question by invoking the "Political Question Doctrine", and remanded the legislators' query on sovereignty definition to the political arena in which it rightfully belongs. In Interpretation No. 419 (1996), the Grand Justices addressed the political question of whether the Vice President can simultaneously serve as the President of the Executive Yuan by firmly upholding the unambiguous separation of powers. Again in 1999, the Grand Justices were asked to review the validity of a highly charged "Constitutional Amendment" provision by which the members of National Assembly improperly cast ballots to extend their own service term under controversial circumstances. In an unprecedented move, the Grand Justices rendered Interpretation No. 499 (2000) declaring the constitutional amendment as contrary to democratic principles and a breach of the covenant between the constituents and their elected representatives. The executive discretion in "not" spending the budget was reviewed in Interpretation No. 520 (2001). The case involved a highly controversial political dispute for the incoming government to halt the construction of a nuclear power plant approved by the previous administration. In Interpretation No. 613 (2006), the Court declared that the organization law of National Communications Commission, which made the composition of its commissioners controlled by partisan line in the Legislative Yuan, was an invasion of executive power by the legislators. It violated the doctrine of separation of powers and impinged on the freedom of communication. The Court set a time frame for rectifying the unconstitutional provisions.

Although the legislators may have discovered a new arena in which to continue their political battles, the Grand Justices is increasingly at risk of being drawn into the center of a political firestorm. It is imperative, therefore, for the judicial branch to exercise great restraint when dealing with political questions in order to preserve its independence and impartiality.

IV. THE CONSTITUTIONAL COURT AND ITS JURISDICTION

As mentioned *supra*, the Constitutional Court, consisting of members of the Grand Justices Council, was created by Article 13 of the 1992 Constitutional Amendment (the said article has been renumbered Article 5 in the amendments that followed) in

1992 and is vested, in addition to the interpretation and uniform ruling on laws and regulations whenever in conflicts, with an exclusive jurisdiction over the following matters：

1. Dissolution of Political Parties

After martial law was lifted in 1987, new political parties mushroomed in Taiwan. The policies and principles long enforced by the ruling party, KMT on the premise that the ROC government on Taiwan represents the entire China were challenged. Notably, the Democratic Progressive Party (DDP) unambiguously proclaimed that Taiwan is a separate international entity and enacted Taiwan independence as a plank in its party platform. At the time, the matters relating to political parties on whether they should be registered and recognized as such were regulated by the then-enforced Law of Civic Organizations and authoritatively handled by the Ministry of Interior. However, when the DDP became the second largest party in Taiwan, the Ministry of Interior felt uneasy about sanctioning a political party by an executive order. It preferred to elevate this sanction to the constitutional level. Therefore, a proposal was made to setup an institution fashioned after the German constitutional court which has the power to review the loyalty of a political party to the national constitution and to dissolve that party upon a finding of conduct betraying the constitution. The newly-created Constitutional Court is hereby empowered by Article 5 of the Constitutional Amendment to try cases where the conduct of a political party may have exceeded the bounds of the Constitution and to declare the dissolution of such party if its betrayal is substantiated. However, what a political party wishes to carry out remains to be nothing but a plank, such as DPP's, even though it may be in contravention of the intent of the Constitution, is still protected by the freedom of expression under Interpretation No. 445 so far it does not pose a clear and present danger.

2. Trial of President's Impeachment

Article 2 of the 2005 Constitutional Amendment in its paragraph 9 provides that the Legislature may move to impeach the President and/or Vice President, then petition to the Constitutional Court for trial upon passing of the motion. The party so impeached shall be forth with dismissed from the office if the petition is eventually upheld by the Court. The procedure to be followed for the said trial is specified in detail in the newly-drafted law of Constitutional Procedure, which is at time of the writing still pending in the Legislature for final enactment.

3. Case of Constitutional Importance

To a petition submitted for the Court's constitutional relief, which fails to meet the requirements as enumerated in the law of Constitutional Procedure but curries with the complexity of constitutional significance, the Court may exercise its discretionary power to review the case and render an interpretation as it is fully justified under intent of the Constitution.

Except the cases of great urgency, it usually takes a year or so from the filing of petition to the declaration of Court's ruling. Between times, the situation may be drastically changed as to adversely affect the petitioner's interest or the harm caused to the petitioner becomes irreparable even if the relief so sought after is eventually granted by the Court. Thus the question on whether the Court should be empowered to take preventive measures to protect the petitioner's rights did repeatedly come up, and not until 2006, the Court finally reached an affirmative conclusion with rather cautions restraints under Interpretation 599, which states:

> The preventive system used to ensure the effectiveness of the interpretations given or judgments rendered by the judiciary is one of the core functions of the judicial power, irrespective of whether it involves constitutional interpretations or trial, or concerns civil, criminal or administrative litigations. The Grand Justices, in exercising the power of constitutional interpretation, may grant the declaration of a preliminary injunction in the event that the continuance of doubt or dispute as to the constitutional provisions at issue, the application of the law or regulation in dispute, or the enforcement of the judgment for the case at issue may cause irreparable or virtually irreparable harm to any fundamental right of the people, fundamental constitutional principle or any other major public interest, that the granting of a preliminary injunction on the motion of a petitioner prior to the delivery of an interpretation for the case at issue may be imminently necessary to prevent any harm, that no other means is available to prevent such harm, and the disadvantages for not granting the same, the granting of the injunction obviously has more advantages than disadvantages.

CONCLUSION

Since the founding of the Republic of China in 1911, the move towards a modern democratic constitutional state has been a long and arduous trek. The fact that the Republic has endured civil war, foreign invasion, exile, and even elections, is a testament to the Constitution's flexibility and perseverance. The brave new world envisioned by the founding father is never lost to those who have sworn to defend the Republic's democratic principles.

The Grand Justices Council, established in 1947 as the judicial review mechanism, is at the forefront protecting the Constitution. In particular, the early accomplishments of the Grand Justices Council effectively preserved the constitutional order, and laid the solid social foundation upon which the future political and economic success would be built. Since the 1980s, the Grand Justices Council has gradually shifted its agenda to one of judicial activism, whereupon it has blossomed in strenuously affirming the rights of the individuals. This painstaking evolution across the decades is witnessed by the cases herein translated and compiled.

The politically ambiguous situation in which the Republic of China finds itself should have little impact on the future evolution of this democracy. The ideals and principles of the Constitution, when zealously upheld and defended by the faithful, have always remained to be ROC's good effort to promote, and what the Grand Justices Council and Constitutional Count have achieved on the process of democratic constitutionalism and protection of basic human rights surely deserves to be duly recognized.

Appendix II

The Constitution of the Republic of China*

Adopted by the National Assembly on December 25, 1946, promulgated by the national government on January 1, 1947, and effective from December 25, 1947

中華民國憲法

中華民國三十六年十二月二十五日施行

The National Assembly of the Republic of China, by virtue of the mandate received from the whole body of citizens, in accordance with the teachings bequeathed by Dr. Sun Yat-sen for founding of the Republic of China**, and in order to consolidate the sovereignty authority of the State, safeguard the rights of the people, ensure social tranquility, and promote the welfare of the people, does hereby establish this Constitution, to be promulgated throughout the country for faithful and perpetual observance by all.

中華民國國民大會受全體國民之付託，依據 孫中山先生創立中華民國之遺教，為鞏固國權，保障民權，奠定社會安寧，增進人民福利，制定本憲法，頒行全國，永矢咸遵。

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* This English version originally translated by the Government Information Office is reworded in part and added with captions and footnotes by Justice Vincent Sze（施文森）.

** Dr. Sun incorporated the political traditions of ancient China into Montesque's doctrine of the separation powers to form a 'Five-Power Government', vis. Executive, Legislative, Judicial, Examination and Control Yuans. Each Branch of the Government is phonetically called 'Yuan' in Chinese.

Chapter I.
General Provisions

第一章
總　綱

Article 1. (State System)

The Republic of China, founded on the Three Principles of the People[1], shall be a democratic republic of the people, to be governed by the people and for the people.

第一條（國體）

中華民國基於三民主義，為民有民治民享之民主共和國。

Article 2. (Sovereignty)

The sovereignty of the Republic of China shall reside in the whole body of citizens.

第二條（主權在民）

中華民國之主權屬於國民全體。

Article 3. (Citizenship)

Persons possessing the nationality of the Republic of China shall be citizens of the Republic of China.

第三條（國民）

具中華民國國籍者為中華民國國民。

Article 4. (Territory)

The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly[2].

第四條（國土）

中華民國領土，依其固有之疆域，非經國民大會之決議，不得變更之。

Article 5. (Equality)

There shall be equality among the

第五條（民族平等）

中華民國各民族一律平等。

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1 Namely Principle of Nationalism (or of the People), Principle of Democracy (or by the people), and Principle of People's Livelihood (or for the People)

2 Restricted from being applicable Article 1 of the Amendment, *infra*.

various racial groups in the Republic of China.

Article 6. (National Flag)

The national flag of the Republic of China shall be of red ground with a blue sky and a white sun at the upper left corner.

第六條（國旗）

中華民國國旗定為紅地，左上角青天白日。

Chapter II.
Rights and Duties of the People

第二章
人民之權利義務

Article 7. (Right of Equality)

All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.

第七條（平等權）

中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等。

Article 8. (Personal Freedom)

Personal freedom shall be guaranteed to the people. Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment which is not in accordance with the procedure prescribed by law may be resisted.

第八條（人身自由）

人民身體之自由應予保障。除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程序，不得逮捕拘禁。非由法院依法定程序，不得審問處罰。非依法定程序之逮捕、拘禁、審問、處罰，得拒絕之。

When a person is arrested or detained on suspicion of having committed a crime, the organ making the arrest or detention shall in writing inform the said person, and his designated relative or friend, of the grounds for his arrest or detention, and shall, within 24 hours, turn him over to a competent court for trial. The said person, or any other person, may petition the competent court that a writ be served within 24 hours on the organ making the arrest for the surrender of the said person for trial.

人民因犯罪嫌疑被逮捕拘禁時，其逮捕拘禁機關應將逮捕拘禁原因，以書面告知本人及其本人指定之親友，並至遲於二十四小時內移送該管法院審問。本人或他人亦得聲請該管法院，於二十四小時內向逮捕之機關提審。

The court shall not reject the petition mentioned in the preceding paragraph, nor shall it order the organ concerned to make an investigation and report first. The organ concerned shall not refuse to execute, or delay in executing, the writ of the court for the surrender of the said person for trial.

法院對於前項聲請，不得拒絕，並不得先令逮捕拘禁之機關查覆。逮捕拘禁之機關，對於法院之提審，不得拒絕或遲延。

When a person is unlawfully arrested or detained by any organ, he or any other person may petition the court for an investigation. The court shall not reject such a petition, and shall, within 24 hours, investigate the action of the organ concerned and deal with the matter in accordance with law.

人民遭受任何機關非法逮捕拘禁時，其本人或他人得向法院聲請追究，法院不得拒絕，並應於二十四小時內向逮捕拘禁之機關追究，依法處理。

Article 9. (Immunity from Trial by Military Tribunal)

Except those in active military service, no person shall be subject to trial by a military tribunal.

第九條（人民不受軍事審判）

人民除現役軍人外，不受軍事審判。

Article 10. (Freedom of Residence)

The people shall have freedom of residence and of change of residence.

第十條（居住、遷徙自由）

人民有居住及遷徙之自由。

Article 11. (Freedom of Speech)

The people shall have freedom of speech, teaching, writing and publication.

第十一條（表現自由）

人民有言論、講學、著作及出版之自由。

Article 12. (Right of Privacy)

The people shall have freedom of privacy of correspondence.

第十二條（私密通訊自由）

人民有秘密通訊之自由。

Article 13. (Freedom of Religious Belief)

The people shall have freedom of religious belief.

第十三條（信教自由）

人民有信仰宗教之自由。

Article 14. (Freedom of Assembly)

The people shall have freedom of assembly and association.

第十四條（集會結社自由）

人民有集會及結社之自由。

Article 15. (Right of Existence, Work and Property)

The right of existence, the right of work, and the right of property shall be guaranteed to the people.

第十五條（生存權、工作權、財產權）

人民之生存權、工作權及財產權，應予保障。

Article 16. (Right of Filing Suits and Complaints)

The people shall have the right of presenting petitions, lodging complaints, or instituting legal proceedings.

第十六條（請願、訴願及訴訟權）

人民有請願、訴願及訴訟之權。

Article 17. (Right of Suffrage)

The people shall have the right of election, recall, initiative and referendum.

第十七條（參政權）

人民有選舉、罷免、創制及複決之權。

Article 18. (Right of Taking Civil Service Exam)

The people shall have the right of taking civil service examinations and of holding public offices.

第十八條（應考試、服公職權）

人民有應考試服公職之權。

Article 19. (Duty of Paying Tax)

The people shall have the duty of paying taxes in accordance with law.

第十九條（納稅義務）

人民有依法律納稅之義務。

Article 20. (Duty of Performing Military Service)

The people shall have the duty of performing military service in accordance with law.

第二十條（兵役義務）

人民有依法律服兵役之義務。

Article 21. (Right and Duty of Receiving Education)

The people shall have the right and the duty of receiving citizens* education.

第二十一條（受教育之權義）

人民有受國民教育之權利與義務。

Article 22. (Other Freedoms and Rights)

All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.

第二十二條（基本人權保障）

凡人民之其他自由及權利，不妨害社會秩序公共利益者，均受憲法之保障。

Article 23. (Restriction on Human Rights)

All the freedoms and rights enumerated in the preceding Article shall not be restricted by law except by such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare.

第二十三條（基本人權之限制）

以上各條列舉之自由權利，除為防止妨礙他人自由、避免緊急危難、維持社會秩序，或增進公共利益所必要者外，不得以法律限制之。

Article 24. (Public Functionary's Responsibility and Torts Claim)

Any public functionary who, in violation of law, infringes upon the freedom or right of any person shall, in addition to being subject to disciplinary measures in accordance with law, be held responsible under criminal and civil laws. The injured person may, in accordance with law, claim compensation from the State for damage sustained.

第二十四條（公務員責任及國家賠償責任）

凡公務員違法侵害人民之自由或權利者，除依法律受懲戒外，應負刑事及民事責任。被害人民就其所受損害，並得依法律向國家請求賠償。

Chapter III.
The National Assembly[3]

第三章
國民大會

Article 25. (National Assembly)

The National Assembly (hereinafter referred as "Assembly") shall, in accordance with the provisions of this Constitution, exercise political powers on behalf of the whole body of citizens.

第二十五條（國民大會之地位）

國民大會依本憲法之規定，代表全國國民行使政權。

Article 26. (Assembly Delegates)

The Assembly shall be composed of the following delegates:

1. One delegate shall be elected from each hsien[4], municipality, or area of equivalent status. In case its population exceeds 500,000, one additional delegate shall be elected for each additional 500,000. Areas equivalent to hsien or municipalities shall be prescribed by law;
2. Delegates to represent Mongolia shall be elected on the basis of four for each league and one for each special banner[5];
3. The number of delegates to be elected from Tibet shall be pre-

第二十六條（國大代表之名額）

國民大會以左列代表組織之：

一、每縣市及其同等區域各選出代表一人，但其人口逾五十萬人者，每增加五十萬人，增選代表一人。縣市同等區域以法律定之。

二、蒙古選出代表，每盟四人，每特別旗一人。

三、西藏選出代表，其名額以法律定之。

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[3] Whole chapter is replaced *en masse* by Article 1 of the Amendment, *infra*.

[4] The basic unit of local government, politically a self-government body, see Article 9, para.1 of the Amendment and the Law of Local Systems. According to the statistics made at the time of promulgation of the Constitution, there were 2,023 Hsiens in China.

[5] A local unit in Mongolia, an equivalent of hsien, designated by a special flag or banner.

scribed by law;

4. The number of delegates to be elected by various racial groups in frontier regions shall be prescribed by law;

四、各民族在邊疆地區選出代表，其名額以法律定之。

5. The number of delegates to be elected by Chinese citizens residing abroad shall be prescribed by law;

五、僑居國外之國民選出代表，其名額以法律定之。

6. The number of delegates to be elected by occupational groups shall be prescribed by law; and

六、職業團體選出代表，其名額以法律定之。

7. The number of delegates to be elected by women's organizations shall be prescribed by law.

七、婦女團體選出代表，其名額以法律定之。

Article 27. (Function of Assembly)

The function of the Assembly shall be as follows:

第二十七條（國大職權）

國民大會之職權如左：

1. To elect the President and the Vice President;

一、選舉總統、副總統。

2. To recall the President and the Vice President;

二、罷免總統、副總統。

3. To amend the Constitution; and

三、修改憲法。

4. To vote on proposed Constitutional amendments submitted by the Legislative Yuan by way of referendum.

四、複決立法院所提之憲法修正案。

With respect to the rights of initiative and referendum, except as is provided in Subpara. 3 and Subpara. 4 of the preceding paragraph, the Assembly shall make

關於創制複決兩權，除前項第三、第四兩款規定外，俟全國有半數之縣市曾經行使創制複決兩項政權時，由國民大會制定辦法並行使之。

regulations pertaining thereto and put them into effect, after the abovementioned two political rights shall have been exercised in one-half of the hsien and municipalities of the whole country.

Article 28. (Delegates' Term)

Delegates to the Assembly shall be elected every six years.

The term of office of the delegates to each Assembly shall terminate on the day on which the next Assembly convenes.

No incumbent government official shall, in the electoral area where he holds office, be elected delegate to the Assembly.

第二十八條（國大代表任期、資格之限制）

國民大會代表每六年改選一次。

每屆國民大會代表之任期，至次屆國民大會開會之日為止。

現任官吏不得於其任所所在地之選舉區當選為國民大會代表。

Article 29. (Convocation of Assembly)

The Assembly shall be convoked by the President to meet 90 days prior to the date of expiration of each presidential term.

第二十九條（國大常會之召集）

國民大會於每屆總統任滿前九十日集會，由總統召集之。

Article 30. (Extraordinary Session)

An extraordinary session of the Assembly shall be convoked in any of the following circumstances:

1. When, in accordance with the provisions of Article 49 of this Constitution, a new President and/or

第三十條（國大臨時會之召集）

國民大會遇有左列情形之一時，召集臨時會：

一、依本憲法第四十九條之規定，應補選總統、副總統時。

a new Vice President are to be elected;

2. When, by resolution of the Control Yuan (hereinafter referred as 'Control'), an impeachment of the President and / or the Vice President is instituted;

二、依監察院之決議，對於總統、副總統提出彈劾案時。

3. When, by resolution of the Legislative Yuan (hereinafter referred as 'Legislature'), an amendment to the Constitution is proposed; and

三、依立法院之決議，提出憲法修正案時。

4. When a meeting is requested by not less than two-fifths of the delegates to the Assembly.

四、國民大會代表五分之二以上請求召集時。

When an extraordinary session is to be convoked in accordance with Subpara. 1 or Subpara. 2 of the preceding paragraph, the President of the Legislature (hereinafter referred as 'Chief Legislator') shall issue the notice of convocation; when it is to be convoked in accordance with Subpara. 3 or Subpara. 4, it shall be convoked by the President of the Republic.

國民大會臨時會，如依前項第一款或第二款應召集時，由立法院院長通告集會。依第三款或第四款應召集時，由總統召集之。

Article 31. (Venue of Assembly)

The Assembly shall meet at the seat of the Central Government.

第三十一條（國大開會地點）

國民大會之開會地點在中央政府所在地。

Article 32. (Privilege of Immunity)

No delegate to the Assembly shall be held responsible outside the Assembly for

第三十二條（言論免責權）

國民大會代表在會議時所為之言論及表決，對會外不負責任。

opinions expressed and/or votes cast at meetings of the Assembly.

Article 33. (Privilege of Insusceptibility to Arrest or Detention)

While the Assembly is in session, no delegate to the Assembly shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the Assembly.

第三十三條（不逮捕特權）

國民大會代表除現行犯外，在會期中，非經國民大會許可，不得逮捕或拘禁。

Article 34. (Election, Recall, and Function)

The organization of the Assembly, the election and recall of delegates to the Assembly, and the procedure whereby the Assembly is to carry out its functions, shall be prescribed by law.

第三十四條（組織、選舉罷免及行使職權程序之法律）

國民大會之組織，國民大會代表之選舉罷免及國民大會行使職權之程序，以法律定之。

Chapter IV.
The President

第四章
總　統

Article 35. (Head of State)

The President shall be the head of the State and shall represent the Republic of China in foreign relations.

第三十五條（總統地位）

總統為國家元首，對外代表中華民國。

Article 36. (Supreme Commander)

The President shall have supreme command of the land, sea and air forces of the whole country.

第三十六條（總統統帥權）

總統統率全國陸海空軍。

Article 37. (Promulgation of Law and Ordinaces[6])

The President shall, in accordance with law, promulgate laws and issue ordinances with the counter-signature of the President of the Executive Yuan (hereinafter referred as "Premier") or with the counter-signatures of both the Premier and the Ministers or Chairmen of Commissions concerned.

第三十七條（總統公布法令權）

總統依法公布法律，發布命令，須經行政院院長之副署，或行政院院長及有關部會首長之副署。

Article 38. (Power of Concluding Treaties and Declaring War)

The President shall, in accordance with the provisions of this Constitution, exercise the powers of concluding treaties, declaring war and making peace.

第三十八條（總統行使締約、宣戰、媾和權）

總統依本憲法之規定，行使締結條約及宣戰媾和之權。

Article 39. (Declaring Martial Law)

The President may, in accordance with law, declare martial law with the approval of, or subject to confirmation by, the Legislature. When the Legislature deems it necessary, it may by resolution request the President to terminate martial law.

第三十九條（總統宣布戒嚴權）

總統依法宣布戒嚴，但須經立法院之通過或追認。立法院認為必要時，得決議移請總統解嚴。

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6 In applicable under Article 2, Para.2 of the Amendment, *infra*.

Article 40. (Power of Granting Amnesty and Pardon)

The President shall, in accordance with law, exercise the power of granting amnesties, pardons, remission of sentences and restitution of civil rights.

第四十條（總統行使赦免權）

總統依法行使大赦、特赦、減刑及復權之權。

Article 41. (Appointment and Removed of Officers)

The President shall, in accordance with law, appoint and remove civil and military officers.

第四十一條（總統任免官員權）

總統依法任免文武官員。

Article 42. (Conferring Honors)

The President may, in accordance with law, confer honors and decorations.

第四十二條（總統授與榮典權）

總統依法授與榮典。

Article 43. (Issuance of Emergence Decree[7])

In case of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures, the President, during the recess of the Legislature, may, by resolution of the Executive Yuan Council (hereinafter referred as 'Cabinet'), and in accordance with the Law on Emergency Decrees, issue emergency decrees, proclaiming such measures as may be necessary to cope with the situation. Such decrees shall, within one

第四十三條（總統發布緊急命令權）

國家遇有天然災害、癘疫或國家財政經濟上有重大變故，須為急速處分時，總統於立法院休會期間，得經行政院會議之決議，依緊急命令法，發布緊急命令，為必要之處置，但須於發布命令後一個月內提交立法院追認。如立法院不同意時，該緊急命令立即失效。

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[7] Replaced by Article 2, Para.3 of the Amendment, *infra*.

month after issuance, be presented to the Legislature for confirmation; in case the Legislature withholds confirmation, the said decrees shall forthwith cease to be valid.

Article 44. (Meeting of Consultation)

In case of disputes among two or more Yuans (hereinafter referred as 'Branches') except as otherwise provided by the Constitution, the President may call a meeting of the Chiefs of the Branches concerned for consultation with a view to reaching a solution.

第四十四條（權限爭議處理權）

總統對於院與院間之爭執，除本憲法有規定者外，得召集有關各院院長會商解決之。

Article 45. (Eligibility)

Any citizen of the Republic of China who has attained the age of 40 years may be elected President or Vice President.

第四十五條（被選舉資格）

中華民國國民年滿四十歲者，得被選為總統、副總統。

Article 46. (Election)

The election of the President and the Vice President shall be prescribed by law.

第四十六條（選舉方法）

總統、副總統之選舉，以法律定之。

Article 47. (Term of President[8])

The President and the Vice President shall serve a term of six years. They may be re-elected for a second term.

第四十七條（總統、副總統任期）

總統、副總統之任期為六年，連選得連任一次。

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[8] Ceased to be applicable by Article 2, Para.6 of the Amendment, *infra*.

Article 48. (Inaugural Oath)

The President shall, at the time of assuming office, take the following oath:

"I do solemnly and sincerely swear before the people of the whole country that I will observe the Constitution, faithfully perform my duties, promote the welfare of the people, safeguard the security of the State, and will in no way betray the people's trust. Should I break my oath, I shall be willing to submit myself to severe punishment by the State. This is my solemn oath."

第四十八條（總統就職宣誓）

總統應於就職時宣誓，誓詞如左：

「余謹以至誠，向全國人民宣誓，余必遵守憲法，盡忠職務，增進人民福利，保衛國家，無負國民付託。如違誓言，願受國家嚴厲之制裁。謹誓」

Article 49. (Succession and Election of Succession[9])

In case the office of the President should become vacant, the Vice President shall succeed until the expiration of the original presidential term. In case the office of both the President and the Vice President should become vacant, the Premier shall act for the President; meantime, an extraordinary session of the Assembly shall be convoked in accordance with the provision of Article 30 supra for the election of a new President and a new Vice President, who shall hold office until the completion of the terms left unfinished by the predecessors. In case the President

第四十九條（繼任及代行總統職權）

總統缺位時，由副總統繼任，至總統任期屆滿為止。總統、副總統均缺位時，由行政院院長代行其職權，並依本憲法第三十條之規定，召集國民大會臨時會，補選總統、副總統，其任期以補足原任總統未滿之任期為止。總統因故不能視事時，由副總統代行其職權。總統、副總統均不能視事時，由行政院院長代行其職權。

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[9] Suspended from its application by Article 2, Para.8 of the Amendment, *infra*.

should be unable to attend to office due to any cause, the Vice President shall act for the President. In case both the President and Vice President should be unable to attend to office, the Premier shall act for the President.

Article 50. (To Act for President)

The President shall be relieved of his functions on the day on which his term of office expires. If by that time the succeeding President has not yet been elected, or if the President-elect and the Vice-President-elect have not yet assumed office, the Premier shall act for the President.

第五十條（代行總統職權）

總統於任滿之日解職，如屆期次任總統尚未選出，或選出後總統、副總統均未就職時，由行政院院長代行總統職權。

Article 51. (Period of the Premier's Acting for President)

The period during which the Premier may act for the President shall not exceed three months.

第五十一條（行政院院長代行職權之期限）

行政院院長代行總統職權時，其期限不得逾三個月。

Article 52. (Immunity from Criminal Prosecution)

The President shall not, without being recalled or discharged, be subject to criminal prosecution unless he is charged with having committed an act of rebel lion or treason.

第五十二條（刑事豁免權）

總統除犯內亂或外患罪外，非經罷免或解職，不受刑事上之訴究。

Chapter V.
Administration

第五章
行　政

Article 53. (Executive Body)

The Executive Yuan (hereinafter referred as 'Executive') shall be the highest administrative organ of the State.

第五十三條（最高行政機關）

行政院為國家最高行政機關。

Article 54. (Principal Officers)

The Executive shall have a Premier, a Vice Premier, a certain number of Ministers and Chairmen of Commissions, and a certain number of Ministers without Portfolio.

第五十四條（行政院組織）

行政院設院長、副院長各一人，各部會首長若干人，及不管部會之政務委員若干人。

Article 55. (Appointment of Premier[10])

The Premier shall be nominated and, upon confirmation of the Legislature, appointed by the President of the Republic.

If, during the recess of the Legislature, the Premier should resign or if his office should become vacant, his functions shall be exercised by the Vice Premier, acting on his behalf, but the President of the Republic shall, within 40 days, request a meeting of the Legislature to confirm his nominee for the vacancy. Pending such confirmation, the Vice Premier shall pro tempore exercise the functions of the Premier.

第五十五條（行政院院長之任命及代理）

行政院院長由總統提名，經立法院同意任命之。

立法院休會期間，行政院院長辭職或出缺時，由行政院副院長代理其職務，但總統須於四十日內咨請立法院召集會議，提出行政院院長人選徵求同意。行政院院長職務，在總統所提行政院院長人選未經立法院同意前，由行政院副院長暫行代理。

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[10] Ceased to be applicable by Article 3, Para.1 of the Amendment, *infra*.

Article 56. (Appointment of Principal Officers)

The Vice Premier, Ministers and Chairmen of Commissions, and Ministers without Portfolio shall, upon the recommendation of the Premier, be appointed by the President of the Republic.

第五十六條（副院長、部會首長及政務委員之任命）

行政院副院長、各部會首長及不管部會之政務委員，由行政院院長提請總統任命之。

Article 57. (Responsibilities Towards Legislature[11])

The Executive shall be responsible to the Legislature in accordance with the following provisions:

1. The Executive has the duty to present to the Legislature a statement of its administrative policies and a report on its administration. While the Legislature is in session, Members of the Legislature shall have the right to interpellate the Premier and Principal Officers of his Cabinet.
2. If the Legislature does not concur in any important policy of the Executive, it may, by resolution, re quest the Executive to alter such apolicy. With respect to such resolution, the Executive may, upon the approval of the President of the Republic, request the Legislature

第五十七條（行政院對立法院負責）

行政院依左列規定，對立法院負責：

一、行政院有向立法院提出施政方針及施政報告之責。立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權。

二、立法院對於行政院之重要政策不贊同時，得以決議移請行政院變更之。行政院對於立法院之決議，得經總統之核可，移請立法院覆議。覆議時，如經出席立法委員三分之二維持原決議，行政院院長應即接受該決議或辭

[11] Ceased to be applicable by Article 3, Para.2 of the Amendment, *infra*.

for reconsideration. If, after reconsideration, two-thirds of the Members of the Legislature present at the meeting uphold the original resolution, the Premier shall either abide by the same or resign from office.

職。

3. The Executive, if deeming a resolution on a statutory, budgetary, or treaty bill passed by the Legislature difficult of execution, may, upon the approval of the President of the Republic and within ten days after its transmission to the Executive, request the Legislature to reconsider the said resolution. If after reconsideration, two-thirds of the Members of the Legislature present at the meeting uphold the original resolution, the Premier shall either abide by the same or resign from office.

三、行政院對於立法院決議之法律案、預算案、條約案，如認為有窒礙難行時，得經總統之核可，於該決議案送達行政院十日內，移請立法院覆議。覆議時經出席立法委員三分之二維持原案，行政院院長應即接受該決議或辭職。

Article 58. (Cabinet Meeting)

The Executive shall have an Executive Yuan Council (or Cabinet Meeting), to be composed of its Premier, Vice Premier, Principal Officers of the Several Departments and Ministers without Portfolio, with its Premier as Chairman.

第五十八條（行政院會議）

行政院設行政院會議，由行政院院長、副院長、各部會首長及不管部會之政務委員組織之，以院長為主席。

Statutory or budgetary bills or bills concerning martial law, amnesty, declaration

行政院院長、各部會首長，須將應行提出於立法院之法律案、預算案、

of war, conclusion of peace or treaties, and other important affairs, all of which are to be submitted to the Legislature, as well as matters that are of common concern to the several Ministries and Commissions, shall be presented by the Premier and Principal Officers so concerned to the Cabinet Meeting for decision.

戒嚴案、大赦案、宣戰案、媾和案、條約案及其他重要事項，或涉及各部會共同關係之事項，提出於行政院會議議決之。

Article 59. (Budgetary Bill)

The Executive shall, three months before the beginning of each fiscal year, present to the Legislature the budgetary bill for the following fiscal year.

第五十九條（預算案之提出）

行政院於會計年度開始三個月前，應將下年度預算案提出於立法院。

Article 60. (Final Accounts of Revenues and Expenditures)

The Executive shall, within four months after the end of each fiscal year, present final accounts of revenues and expenditures to the Control Yuan (hereinafter referred as ‘Control’).

第六十條（決算之提出）

行政院於會計年度結束後四個月內，應提出決算於監察院。

Article 61. (Organization)

The organization of the Executive shall be prescribed by law.

第六十一條（行政院組織法之制定）

行政院之組織，以法律定之。

Chapter VI.
Legislation

第六章
立　法

Article 62. (Legislature and Legislators)

The Legislature shall be the highest legislative organ of the State, to be constituted of members (or Legislators) elected by the people. It shall exercise legislative power on behalf of the people.

第六十二條（最高立法機關）

立法院為國家最高立法機關，由人民選舉之立法委員組織之，代表人民行使立法權。

Article 63. (Powers)

The Legislature shall have the power to decide by resolution upon statutory or budgetary bills or bills concerning martial law, amnesty, declaration of war, conclusion of peace or treaties, and other important affairs of the State.

第六十三條（立法院職權）

立法院有議決法律案、預算案、戒嚴案、大赦案、宣戰案、媾和案、條約案及國家其他重要事項之權。

Article 64. (Electing of Legislators[12])

Members of the Legislature shall be elected in accordance with the following provisions:

1. Those to be elected from the provinces and by the municipalities under the direct jurisdiction of the Executive shall be five for each province or municipality with a population of not more than 3,000,000, one additional member

第六十四條（立委選舉）

立法院立法委員依左列規定選出之：

一、各省、各直轄市選出者，其人口在三百萬以下者五人，其人口超過三百萬者，每滿一百萬人增選一人。

[12] Replaced by Article 4, Para.1 of the Amendment, *infra*.

shall be elected for each additional 1,000,000 in a province or municipality whose population is over 3,000,000;

2. Those to be elected from Mongolian Leagues and Banners;
3. Those to be elected from Tibet;
4. Those to be elected by various racial groups in frontier regions;
5. Those to be elected by Chinese citizens residing abroad; and
6. Those to be elected by occupational groups.

The election of Members of the Legislature and the number of those to be elected in accordance with Subpara. 2 to Subpara. 6 of the preceding paragraph shall be prescribed by law. The number of women to be elected under the various Subparagraphs enumerated in the preceding paragraph shall be prescribed by law.

二、蒙古各盟旗選出者。

三、西藏選出者。

四、各民族在邊疆地區選出者。

五、僑居國外之國民選出者。

六、職業團體選出者。

立法委員之選舉及前項第二款至第六款立法委員名額之分配，以法律定之。婦女在第一項各款之名額，以法律定之。

Article 65. (Legislators' Term[13])

Members of the Legislature shall serve a term of three years, and may be re-elected term by term. The election of Legislators shall be completed within three months prior to the expiration of each term.

第六十五條（立委任期）

立法委員之任期為三年，連選得連任，其選舉於每屆任滿前三個月內完成之。

[13] Replaced by Article 4, Para.1 of the Amendment, *infra*.

Article 66. (Chief and Deputy Legislators)

The Legislature shall have a President (or Chief Legislator) and a Vice President (or Deputy-Chief Legislator), who shall be elected by and from among the fellow-Members.

第六十六條（正副院長之選舉）

立法院設院長、副院長各一人，由立法委員互選之。

Article 67. (Committees and Invitees)

The Legislature may set up various committees.

The committees may invite government officials and private citizens concerned to be present at their meetings to answer questions (proposed by the Legislators).

第六十七條（委員會之設置）

立法院得設各種委員會。

各種委員會得邀請政府人員及社會上有關係人員到會備詢。

Article 68. (Sessions)

The Legislature shall assemble sua sponte at least twice in every year, the first session shall last from February to the end of May, and the second, from September to the end of December. The session may be prolonged for such a time whenever necessary.

第六十八條（常會）

立法院會期，每年兩次，自行集會，第一次自二月至五月底，第二次自九月至十二月底，必要時得延長之。

Article 69. (Extraordinary Session)

The Legislature may hold an extraordinary session under one of the following circumstances:

1. At the request of the President of

第六十九條（臨時會）

立法院遇有左列情事之一時，得開臨時會：

一、總統之咨請。

the Republic;

2. Upon the request of not less than one-fourth of its Members.

二、立法委員四分之一以上之請求。

Article 70. (Expenditures Increase)

The Legislature shall not make proposals for an increase in the expenditures in the budgetary bill presented by the Executive.

第七十條（增加支出預算提議之限制）

立法院對於行政院所提預算案，不得為增加支出之提議。

Article 71. (Presence of Branch Chiefs)

At the meetings of the Legislature, the Chiefs of other Branches concerned and their Principal Officers may be present to express their views.

第七十一條（關係院首長列席）

立法院開會時，關係院院長及各部會首長得列席陳述意見。

Article 72. (Promulgation of Law)

Statutory bills passed by the Legislature shall be presented to the President of the Republic and to the Executive. The President shall, within ten days after receipt thereof, have them to be promulgated as such; or he may deal with them in accordance with the provisions of Article 57 of the Constitution.

第七十二條（公布法律）

立法院法律案通過後，移送總統及行政院，總統應於收到後十日內公布之，但總統得依照本憲法第五十七條之規定辦理。

Article 73. (Privilege of Immunity)

No Member of the Legislature shall be held responsible outside the Legislature for opinions expressed and/or votes

第七十三條（論免責權）

立法院委員在院內所為之言論及表決，對院外不負責任。

cast within the Legislature.

Article 74. (rivilege of Insusceptibility to Arrest or Detention[14])

No Member of the Legislature shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the Legislature.

第七十四條（不逮捕特權）

立法委員除現行犯外，非經立法院許可，不得逮捕或拘禁。

Article 75. (Prohibition)

No Member of the Legislature shall concurrently hold a government post.

第七十五條（立委兼任官吏之禁止）

立法委員不得兼任官吏。

Article 76. (Organization)

The organization of the Legislature shall be prescribed by law.

第七十六條（法院組織法之制定）

立法院之組織，以法律定之。

Chapter VII.
Judiciary

第七章
司　法

Article 77. (Scope of Authority)

The Judicial Yuan (hereinafter referred as 'Judiciary') shall be the highest judicial organ of the State in charge of the trial of civil, criminal, and administrative cases, and imposition of disciplinary measures against public functionaries.

第七十七條（司法院之地位及職權）

司法院為國家最高司法機關，掌理民事、刑事、行政訴訟之審判，及公務員之懲戒。

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[14] Ceased to be applicable by Article 4, Para.8 of the Amendment, *infra*.

Article 78. (Authority to Interpret)

The Judiciary shall interpret the Constitution and shall have the authority to unify the interpretation of laws and orders.

第七十八條（司法院之法律解釋權）

司法院解釋憲法，並有統一解釋法律及命令之權。

Article 79. (Justices[15])

The Judiciary shall have a President (or Chief Justice) and a Vice President (or Deputy-Chief Justice), to be nominated and, upon the confirmation of the Control, appointed by the President of the Republic.

The Judiciary shall have a certain number of Grand Justices (or Justices) who take charge of matters specified in Article 78 of the Constitution, and shall be nominated and, upon the confirmation of the Control, appointed by the President of the Republic.

第七十九條（正副院長及大法官之任命）

司法院設院長、副院長各一人，由總統提名，經監察院同意任命之。

司法院設大法官若干人，掌理本憲法第七十八條規定事項，由總統提名，經監察院同意任命之。

Article 80. (Independent Trial)

Judges shall be above partisanship and shall, in accordance with law and free from any interference, hold trials independently.

第八十條（法官依法獨立審判）

法官須超出黨派以外，依據法律獨立審判，不受任何干涉。

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15 Replaced by Article 5, Para.1 of the Amendment, *infra*.

16 Specially excluded from its application to the Justice who is not possessed of qualification as a judge transferred from the bench by Article 5, Para.1 of the Amendment, *infra*.

Article 81. (Lifetime Tenure[16])

Judges shall hold office for life. No judge shall be removed from office unless is found guilty of a criminal offense, subjected to disciplinary measure, or declared to be under interdiction. No judge shall, except in accordance with law, be suspended or transferred or have his salary reduced.

第八十一條（法官之保障）

法官為終身職，非受刑事或懲戒處分，或禁治產之宣告，不得免職。非依法律，不得停職、轉任或減俸。

Article 82. (Organization)

The organization of the Judiciary and of the law courts of various instance shall be prescribed by law.

第八十二條（法院組織法之制定）

司法院及各級法院之組織，以法律定之。

Chapter VIII.
Examination

第八章
考　試

Article 83. (Scope of Authority[17])

The Examination Yuan (hereinafter referred as 'Examination') shall be the highest examination organ of the State and in charge of matters relating to examination, employment, registration, service rating, scale of salaries, promotion and transfer, tenure protection, commendation, pecuniary aid in case of death, retirement and old age pension.

第八十三條（考試院之地位及職權）

考試院為國家最高考試機關，掌理考試、任用、銓敘、考績、級俸、陞遷、保障、褒獎、撫卹、退休、養老等事項。

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[17] Replaced by Article 6, Para.1 of the Amendment, *infra*.

Article 84. (Examiner[18])

The Examination shall have a President (or Chief Examiner) and a Vice President (or Deputy-Chief Examiner) and a certain number of Members (or Examiners), to be nominated and, upon the confirmation of the Control, appointed by the President of the Republic.

第八十四條（正副院長及考試委員之任命）

考試院設院長、副院長各一人，考試委員若干人，由總統提名，經監察院同意任命之。

Article 85. (Selection of Public Functionary)

For selection of public functionaries, a system of open competitive examination shall be set up and put into operation. A prescribed number of persons shall be selected according to various provinces and regions thru the examination to be held in different parts of nation.[19] No person shall be appointed to a public office unless he is qualified by passing the examination.

第八十五條（公務員之考選）

公務人員之選拔，應實行公開競爭之考試制度，並應按省區分別規定名額，分區舉行考試。非經考試及格者，不得任用。

Article 86. (Qualification)

The following qualifications must be determined by passing the examination held by the Examination in accordance with law:

第八十六條（應受考銓之資格）

左列資格，應經考試院依法考選銓定之：

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[18] Replaced by Article 6, Para.2 of the Amendment, *infra*.

[19] The provision regarding the selection of public functionaries based upon the province or region, namely the second sentence of the Article, is ceased to be applicable by Article 6, Para.3 of the Amendment, *infra*.

1. Qualification for appointment as public functionaries; and
2. Qualification for practice in specialized professions or as technicians.

一、公務人員任用資格。

二、專門職業及技術人員執業資格。

Article 87. (Statutory Bill)

The Examination may, with respect to matters under its charge, present statutory bills to the Legislature.

第八十七條（法律案之提出）

考試院關於所掌事項，得向立法院提出法律案。

Article 88. (Fulfillment of Duties)

The Examiners shall be above partisanship and independently fulfill their duties in accordance with law.

第八十八條（依法獨立行使職權）

考試委員須超出黨派以外，依據法律獨立行使職權。

Article 89. (Organization)

The organization of the Examination shall be prescribed by law.

第八十九條（考試院組織法之制定）

考試院之組織，以法律定之。

Chapter IX.
Control

第九章
監　察

Article 90. (Powers[20])

The Control shall be the highest control organ to be vested with the powers of confirmation, impeachment, censure and

第九十條（監察院之地位與職權）

監察院為國家最高監察機關，行使同意、彈劾、糾舉及審計權。

[20] The Provision regarding impeachment is partially replaced by Article 4, Para.7 of the Amendment, infra, and thus inapplicable in case of impeachment of the President and Vice President; the Provision regarding confirmation is totally replaced by Article 5, Para.1 and Article 6, Para.2 of the Amendment, infra, and thus inapplicable in case of confirmation of the Justices and Ombudsmen.

auditing.

Article 91. (Election of Ombudsman[21])

The Control shall be composed of Members (hereinafter referred as 'Ombudsmen') to be elected by Provincial and Municipal Councils, the local Councils of Mongolia and Tibet, and Chinese citizens residing abroad. Their numbers shall be determined in accordance with the following provisions:

1. Five from each province;
2. Two from each municipality under the direct jurisdiction of the Executive;
3. Eight from Mongolian Leagues and Banners;
4. Eight from Tibet; and
5. Eight from Chinese citizens residing abroad.

第九十一條（監委之選舉）

監察院設監察委員，由各省市議會、蒙古西藏地方議會及華僑團體選舉之。其名額分配，依左列之規定：

一、每省五人。
二、每直轄市二人。
三、蒙古各盟旗共八人。
四、西藏八人。
五、僑居國外之國民八人。

Article 92. (Election of Chief and Deputy Chief[22])

The Control shall have a President (or Chief Ombudsman) and a Vice President (or Deputy-Chief Ombudsman), to be elected by and from among the fellow-Ombudsmen.

第九十二條（正副院長之選舉）

監察院設院長、副院長各一人，由監察委員互選之。

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21 Ibid.
22 Ibid.

Article 93. (Term[23])

The Ombudsmen shall serve a term of six years and may be re-elected term by term.

第九十三條（監委任期）

監察委員之任期為六年，連選得連任。

Article 94. (Power of Confirmation[24])

When the Control exercises the power of confirmation in accordance with the Constitution, it shall do so by resolution of a majority of the Ombudsmen present at the meeting.

第九十四條（同意權之行使）

監察院依本憲法行使同意權時，由出席委員過半數之議決行之。

Article 95. (Power of Investigation)

The Control may, in the exercise of its powers of control, request the Executive and its Ministries and Commissions to submit to it for perusal the original orders issued by them and all other relevant documents.

第九十五條（調查權之行使）

監察院為行使監察權，得向行政院及其各部會調閱其所發布之命令及各種有關文件。

Article 96. (Setting up Committees)

The Control may, taking into account the Functions of the Executive and its various Ministries and Commissions, set up a number of committees to investigate their activities with a view to ascertaining whether or not any law is violated or any duty neglected.

第九十六條（委員會之設置）

監察院得按行政院及其各部會之工作，分設若干委員會，調查一切設施，注意其是否違法或失職。

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23 Ibid.
24 Ibid.

Article 97. (Exercise of Impeachment, Censure and Audit)

The Control may, based upon its committee's investigations and resolutions, propose corrective measures to the Executive and its Ministries and Commissions concerned, for their attention to effecting improvements so proposed.

The Control, whenever finding that a public functionary either in the Central Government or in a local government neglects his duty or violates the law, may propose corrective measures or institute an impeachment (against the said public functionary). If it involves a criminal offense, the case shall be turned over a court of law.

第九十七條（糾正權、糾舉權及彈劾權之行使）

監察院經各該委員會之審查及決議，得提出糾正案，移送行政院及其有關部會，促其注意改善。

監察院對於中央及地方公務人員，認為有失職或違法情事，得提出糾舉案或彈劾案，如涉及刑事，應移送法院辦理。

Article 98. (Impeachment Against Public Functionary[25])

Impeachment by the Control against a public functionary either in the Central Government or in a local government shall only be instituted upon the proposal of one or more than one Ombudsman and the decision reached by a committee composed of not less than nine Ombudsmen after their due deliberation.

第九十八條（彈劾權之提出）

監察院對於中央及地方公務人員之彈劾案，須經監察委員一人以上之提議，九人以上之審查及決定，始得提出。

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[26] Replaced by Article 7, Para.3 of the Amendment, *infra*.

Article 99. (Impeachment Against the Judiciary and Examination Personnel[26])

In case of impeachment by the Control against the personnel of the Judiciary or of the Examination on the ground of their neglect of duty or violation of law, the provisions of Articles 95, 97 and 98 of the Constitution shall be applicable.

第九十九條（司法考試人員之彈劾）

監察院對於司法院或考試院人員失職或違法之彈劾，適用本憲法第九十五條、第九十七條及第九十八條之規定。

Article 100. (Impeachment Against President and Vice President[27])

Impeachment by the Control Against the President or the Vice President of the Republic shall be instituted upon the proposal of not less than one-fourth of the whole body of the Ombudsmen, and the resolution reached by the majority of the whole body of the Ombudsmen after their due deliberation, then having the same to be presented to the Assembly.

第一百條（總統、副總統之彈劾）

監察院對於總統、副總統之彈劾案，須有全體監察委員四分之一以上之提議，全體監察委員過半數之審查及決議，向國民大會提出之。

Article 101. (Privilege of Immunity[28])

No Member of the Control shall be held responsible outside the Control for opinions expressed and/or votes cast within the Control.

第一百零一條（言論免責權）

監察委員在院內所為之言論及表決，對院外不負責任。

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26 Ibid.

27 Replaced by Article 2, Para.10 and Article 4, Para.7 of the Amendment, *infra*.

28 Ceased to be applicable by Article 7, Para.6 of the Amendment, *infra*.

Article 102. (Privilege of Insusceptibility to Arrest and Detention[29])

No Member of the Control shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the Control.

第一百零二條（不逮捕特權）

監察委員除現行犯外，非經監察院許可，不得逮捕或拘禁。

Article 103. (Prohibition)

No Member of the Control shall concurrently hold a public office or engage in any profession.

第一百零三條（監委兼職之禁止）

監察委員不得兼任其他公職或執行業務。

Article 104. (Auditor General)

The Control shall have an Auditor General, who is nominated and, upon the confirmation of the Legislature, appointed by the President of the Republic.

第一百零四條（審計長之任命）

監察院設審計長，由總統提名，經立法院同意任命之。

Article 105. (Auditing Report)

The Auditor General shall, within three months after presentation by the Executive of the final accounts of revenues and expenditures, complete the auditing thereof in accordance with law, and submit an auditing report to the Legislature.

第一百零五條（決算之審核及報告）

審計長應於行政院提出決算後三個月內，依法完成其審核，並提出審核報告於立法院。

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29 Ibid.

Article 106. (Organization)

The organization of the Control shall be prescribed by law.

第一百零六條（監察院組織法之制度）

監察院之組織，以法律定之。

Chapter X.
Powers of the Central and Local Governments

第十章
中央與地方之權限

Article 107. (Jurisdiction of Central Government)

The matters over which the Central Government shall have exclusive jurisdiction, including but not limited to the power of legislation and administration, are as follows:

1. Foreign affairs;
2. National defense and military affairs concerning national defense;
3. Nationality law and criminal, civil and commercial law;
4. Judicial system;
5. Aviation, national highways, state-owned railways, navigation, postal and telegraph service;
6. Central Government finance and national revenues;
7. Demarcation of national, provincial and hsien revenues;
8. State-operated economic enterprises;
9. Currency system and state banks;

第一百零七條（中央立法並執行事項）

左列事項，由中央立法並執行之：

一、外交。
二、國防與國防軍事。
三、國籍法、及刑事、民事、商事之法律。
四、司法制度。
五、航空、國道、國有鐵路、航政、郵政及電政。
六、中央財政與國稅。
七、國稅與省稅、縣稅之劃分。
八、國營經濟事業。
九、幣制及國家銀行。

10. Weights and measures;
11. Foreign trade policies;
12. Financial and economic matters affecting foreigners or foreign countries; and
13. Other matters relating to the Central Government as provided by the Constitution.

十、度量衡。
十一、國際貿易政策。
十二、涉外之財政經濟事項。
十三、其他依本憲法所定關於中央之事項。

Article 108. (Jurisdiction of Central Government)

The matters over which the Central Gov-ernment shall have jurisdiction, including but not limited to the power of legislation and administration, or may have the power of administration to be delegated to the provincial and hsien governments, are as follows:

1. General principles of provincial and hsien self-government[30];
2. Division of administrative areas;
3. Forestry, industry, mining and commerce;
4. Educational system;
5. Banking and exchange system;
6. Shipping and deep-sea fishery;
7. Public utilities;
8. Cooperative enterprises;
9. Water and land communication and transportation covering two

第一百零八條（中央立法事項）

左列事項，由中央立法並執行之，或交由省縣執行之：

一、省縣自治通則。
二、行政區劃。
三、森林、工礦及商業。
四、教育制度。
五、銀行及交易所制度。
六、航業及海洋漁業。
七、公用事業。
八、合作事業。
九、二省以上之水陸交通運輸。

[30] Restricted from its application by Article 9 of the Amendment, *infra*.

or more provinces;

10. Water conservancy, waterways, agriculture and pastoral enterprises covering two or more provinces;

十、二省以上之水利、河道及農牧事業。

11. Registration, employment, supervision, and security of tenure of officials in Central and local governments;

十一、中央及地方官吏之銓敘、任用、糾察及保障。

12. Land legislation;

十二、土地法。

13. Labor legislation and other social legislation;

十三、勞動法及其他社會立法。

14. Eminent domain;

十四、公用徵收。

15. Census-taking and compilation of population statistics for the whole country;

十五、全國戶口調查及統計。

16. Immigration and land reclamation;

十六、移民及墾殖。

17. Police system;

十七、警察制度。

18. Public health;

十八、公共衛生。

19. Relief, pecuniary aid in case of death and aid in case of unemployment; and

十九、振濟、撫卹及失業救濟。

20. Preservation of ancient books and articles and relics of cultural value.

二十、有關文化之古籍、古物及古蹟之保存。

With respect to the various items enumerated in the preceding paragraph, the provinces may enact separate rules and regulations, provided these are not in conflict with national laws.

前項各款，省於不牴觸國家法律內，得制定單行法規。

Article 109. (Jurisdiction of Province[31])

The matters over which the provinces shall have jurisdiction, including the power of legislation and administration, or have the power of administration to be delegated to the hsien, are as follows:

1. Provincial education, public health, industries and communications;
2. Management and disposal of provincial property;
3. Administration of municipalities under provincial jurisdiction;
4. Province-operated enterprises;
5. Provincial cooperative enterprises;
6. Provincial agriculture, forestry, water conservancy, fishery, animal husbandry and public works;
7. Provincial finance and revenues;
8. Provincial debts;
9. Provincial banks;
10. Provincial police administration;
11. Provincial charitable and public welfare works; and
12. Other matters delegated to the provinces in accordance with national laws.

第一百零九條（省立法事項）

左列事項，由省立法並執行之，或交由縣執行之：

一、省教育、衛生、實業及交通。

二、省財產之經營及處分。

三、省市政。

四、省公營事業。

五、省合作事業。

六、省農林、水利、漁牧及工程。

七、省財政及省稅。

八、省債。

九、省銀行。

十、省警政之實施。

十一、省慈善及公益事項。

十二、其他依國家法律賦予之事項。

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31 Restricted from its application by Article 9 of the Amendment, *infra*.

Except as otherwise provided by law, any of the matters enumerated in thevarious items of the preceding paragraph, in so far as it covers two or more provinces, may be undertaken jointly by the provinces concerned.

前項各款，有涉及二省以上者，除法律別有規定外，得由有關各省共同辦理。

The province, in undertaking matters listed in any of the items of the first paragraph, and finding no sufficient funds may request, by resolution of the Legislature, for subsidies from the National Treasury.

各省辦理第一項各款事務，其經費不足時，經立法院議決，由國庫補助之。

Article 110. (Jurisdiction of Hsien)

The matters over which the hsien shall have jurisdiction, including the power of legislation and administration, are as follows:

1. Hsien education, public health, industries and communications;
2. Management and disposal of hsien property;
3. Hsien-operated enterprises;
4. Hsien cooperative enterprises;
5. Hsien agriculture and forestry, water conservancy, fishery, animal husbandry and public works;
6. Hsien finance and revenues;
7. Hsien debts;
8. Hsien banks;
9. Administration of hsien police and defense;

第一百十條（縣立法並執行事項）

左列事項，由縣立法並執行之：

一、縣教育、衛生、實業及交通。
二、縣財產之經營及處分。
三、縣公營事業。
四、縣合作事業。
五、縣農林、水利、漁牧及工程。
六、縣財政及縣稅。
七、縣債。
八、縣銀行。
九、縣警衛之實施。

10. Hsien charitable and public welfare works; and
11. Other matters delegated to the hsien in accordance with national laws and provincial Self-Government Regulations.

Except as otherwise provided by law, any of the matters enumerated in the various items of the preceding paragraph, in so far as it covers two or more hsiens, may be undertaken jointly by the hsiens concerned.

十、縣慈善及公益事業。

十一、其他依國家法律及省自治法賦予之事項。

前項各款，有涉及二縣以上者，除法律別有規定外，得由有關各縣共同辦理。

Article 111. (Matters Reserved)

Any matter not enumerated in Articles 107, 108, 109 and 110 above shall fall within the jurisdiction of the Central Government, if it is national in nature; of the province, if it is provincial in nature; and of the hsien, if it merely concerns the hsien. In case of dispute, it shall be settled by the Legislature.

第一百十一條（中央與地方權限分配）

除第一百零七條、第一百零八條、第一百零九條及第一百十條列舉事項外，如有未列舉事項發生時，其事務有全國一致之性質者屬於中央，有全省一致之性質者屬於省，有一縣之性質者屬於縣。遇有爭議時，由立法院解決之。

Chapter XI.
System of Local Government
Section 1. The Province

第十一章
地方制度
第一節　省

Article 112. (Provincial Assembly[32])

A province may convoke a provincial

第一百十二條（省民代表大會之組織與權限）

省得召集省民代表大會，依據省縣

[32] Restricted from its application by Article 9, Para.1 of the Amendment, *infra*.

assembly to enact, in accordance with the General Principles of Provincial and Hsien Self-Government, regulations, provided the said regulations are not in conflict with the Constitution.

自治通則，制定省自治法，但不得與憲法牴觸。

The organization of the provincial assembly and the election of its delegates shall be prescribed by law.

省民代表大會之組織及選舉，以法律定之。

Article 113. (Provincial SelfGovernment Regulation[33])

第一百十三條（省自治法與立法權）

The Provincial Self-Government Regulation shall include the following provisions:

省自治法應包含左列各款：

1. The province shall have a council, the members of which shall be elected by the people of the province.

一、省設省議會，省議會議員由省民選舉之。

2. The province shall have a government with a governor to be elected by the people of the province.

二、省設省政府，置省長一人。省長由省民選舉之。

3. Relationship between the prov ince and the hsien.

三、省與縣之關係。

The legislative power of the province shall be exercised by the Provincial Council.

屬於省之立法權，由省議會行之。

Article 114. (Review by Judiciary[34])

第一百十四條（省自治法之司法審查）

The Provincial Self-Government

省自治法制定後，須即送司法

[33] Ibid.
[34] Ibid.

Regulation shall, after enactment, be forthwith submitted to the Judiciary. The Judiciary, if it finds any part thereof unconstitutional, shall declare null and void as to the said part.

院。司法院如認為有違憲之處，應將違憲條文宣布無效。

Article 115. (Committee for Solution[35])

In case any article or articles of the Provincial Self-Government Regulations are found to be difficult in enforcement, the Judiciary shall first summon the parties concerned to present their views; and thereupon the presidents of the Executive, Legislature, Judiciary, Examination and Control shall form a Committee, with the president of the Judiciary as Chairman, to propose a formula for solution.

第一百十五條（自治法施行中障礙之解決）

省自治法施行中，如因其中某條發生重大障礙，經司法院召集有關方面陳述意見後，由行政院院長、立法院院長、司法院院長、考試院院長及監察院院長組織委員會，以司法院院長為主席，提出方案解決之。

Article 116. (Validity of Provincial Regulation)

Provincial rules and regulations in conflict with national laws shall be null and void.

第一百十六條（省法規與國家法律之關係）

省法規與國家法律牴觸者無效。

Article 117. (Interpretation)

When doubt arises as to whether or not there is a conflict between provincial rules or regulations and national laws, it

第一百十七條（省法規牴觸法律之解釋）

省法規與國家法律有無牴觸發生疑義時，由司法院解釋之。

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35 Ibid.

shall be petitioned to the Judiciary for interpretation.

Article 118. (Special Municipality)

The self-government of municipalities under the direct jurisdiction of the Executive shall be prescribed by law.

第一百十八條（直轄市之自治）

直轄市自治，以法律定之。

Article 119. (Mongolian Banners)

The local self-government system of the Mongolian Leagues and Banners shall be prescribed by law.

第一百十九條（蒙古盟旗之自治）

蒙古各盟旗地方自治制度，以法律定之。

Article 120. (Self-Government of Tibet)

The self-government system of Tibet shall be safeguarded.

第一百二十條（西藏自治之保障）

西藏自治制度，應予以保障。

Section 2. The Hsien

第二節　縣

Article 121. (Self-Government of Hsien)

The self-government system shall be enforced in hsien.

第一百二十一條（縣自治）

縣實行縣自治。

Article 122. (Hsien Self-Government Regulation[36])

A hsien may convoke a hsien assembly to enact, in accordance with the Gen-

第一百二十二條（縣民代表大會與縣自治法之制度）

縣得召集縣民代表大會，依據縣自治通則，制定縣自治法，但不得與憲法

[36] Ibid.

eral Principles of Provincial and Hsien Self-Government, hsien self-government regulation, provided the said regulation is not in conflict with the Constitution or the provincial self-government regulation.

及省自治法牴觸。

Article 123. (Rights of Initiative and Referendum)

The people of the hsien shall, in accordance with law, exercise the rights of initiative and referendum in matters within the scope of hsien self-government, and shall, in accordance with law, exercise the rights of election and recall of the magistrate and other hsien self-government officers.

第一百二十三條（縣民參政權）

縣民關於縣自治事項，依法律行使創制複決之權，對於縣長及其他縣自治人員，依法律行使選舉罷免之權。

Article 124. (Hsien Council)

The hsien shall have a council, the members of which shall be elected by the people of the hsien.

The legislative power of the hsien shall be exercised by the hsien council.

第一百二十四條（縣議會組成及職權）

縣設縣議會，縣議會議員由縣民選舉之。

屬於縣之立法權，由縣議會行之。

Article 125. (Validity of Hsien Regulation)

Hsien rules and regulations in conflict with national laws or provincial rules and regulations, shall be null and void.

第一百二十五條（縣規章與法律或省法規之關係）

縣單行規章，與國家法律或省法規牴觸者無效。

Article 126. (Government and Magistrate)

The hsien shall have a government with a magistrate to be elected by the people of the hsien.

第一百二十六條（縣長之選舉）

縣設縣政府，置縣長一人。縣長由縣民選舉之。

Article 127. (Powers of Magistrate)

The hsien magistrate shall have charge of hsien self-government and administer matters delegated to the hsien by the central or provincial government.

第一百二十七條（縣長之職權）

縣長辦理縣自治，並執行中央及省委辦事項。

Article 128. (To apply *mutatis mutandis*)

The provisions governing the hsien shall apply *mutatis mutandis* to the municipality.

第一百二十八條（市自治）

市準用縣之規定。

Chapter XII.
Election, Recall, Initiative and Referendum

第十二章
選舉、罷免、創制、複決

Article 129. (Direct Suffrage)

The various kinds of elections prescribed in this Constitution, except as otherwise provided by the Constitution, shall be by universal, equal, and direct suffrage and by secret ballot.

第一百二十九條（選舉之方法）

本憲法所規定之各種選舉，除本憲法別有規定外，以普通、平等、直接及無記名投票之方法行之。

Article 130. (Right of Election and/or Being Elected)

Any citizen of the Republic of China who has attained the age of 20 years shall have the right of election in accordance with law. Except as otherwise provided by this Constitution or by law, any citizen who has attained the age of 23 years shall have the right of being elected in accordance with law.

第一百三十條（選舉及被選舉年齡）

中華民國國民年滿二十歲者，有依法選舉之權。除本憲法及法律別有規定者外，年滿二十三歲者，有依法被選舉之權。

Article 131. (Open Campaign)

All candidates in the various kinds of elections prescribed in this Constitution shall openly campaign for their election.

第一百三十一條（競選公開原則）

本憲法所規定各種選舉之候選人，一律公開競選。

Article 132. (Intimidation and Inducement)

Intimidation or inducement shall be strictly forbidden in elections. Suits arising in connection with elections shall be tried by the court of law.

第一百三十二條（選舉公正之維護）

選舉應嚴禁威脅利誘。選舉訴訟，由法院審判之。

Article 133. (Recall)

A person elected may, in accordance with law, be recalled by his constituency.

第一百三十三條（罷免權）

被選舉人得由原選舉區依法罷免之。

Article 134. (Pre-Determined Number of Women)

In the various kinds of elections, the number of women to be elected shall be pre-determined, and measures pertaining

第一百三十四條（婦女名額保障）

各種選舉，應規定婦女當選名額，其辦法以法律定之。

thereto shall be prescribed by law.

Article 135. (The Number of Delegates to the Assembly[37])

The number of delegates to the Assembly and the manner of their election from people in inland areas, who have their own conditions of living and habits, shall be prescribed by law.

第一百三十五條（內地生活習慣特殊國代之選舉）

內地生活習慣特殊之國民代表名額及選舉，其辦法以法律定之。

Article 136. (Right of Initiative and Referendum)

The exercise of the rights of initiative and referendum shall be prescribed by law.

第一百三十六條（創制、複決權之行使）

創制複決兩權之行使，以法律定之。

Chapter XIII.
Fundamental National Policies
Section 1. National Defense

第十三章
基本國策
第一節　國防

Article 137. (Defense Objection)

The national defense of the Republic of China shall have as its objective the safeguarding of national security and the preservation of world peace.

The organization of national defense shall be prescribed by law.

第一百三十七條（國防目的及組織）

中華民國之國防，以保衛國家安全，維護世界和平為目的。國防之組織，以法律定之。

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[37] Replaced by Article 1 of the Amendment, *infra*.

Article 138. (Armed Forces)

The land, sea and air forces of the whole country shall be above personal, regional, or party affiliations, shall be loyal to the state, and shall protect the people.

第一百三十八條（軍隊國家化－軍人超然）

全國陸海空軍，須超出個人、地域及黨派關係以外，效忠國家，愛護人民。

Article 139. (Use of Armed Forces)

No political party and no individual shall make use of armed forces as an instrument in a struggle for political powers.

第一百三十九條（軍隊國家化－軍隊不干政）

任何黨派及個人不得以武裝力量為政爭之工具。

Article 140. (No Civil Office)

No military man in active service may concurrently hold a civil office.

第一百四十條（軍人兼任文官之禁止）

現役軍人不得兼任文官。

Section 2. Foreign Policy

第二節　外交

Article 141. (Objective of Foreign Policy)

The foreign policy of the Republic of China shall, in a spirit of independence and initiative and on the basis of the principles of equality and reciprocity, cultivate good-neighborliness with other nations, and respect treaties and the Charter of the United Nations, in order to protect the rights and interests of Chinese citizens residing abroad, promote inter-national

第一百四十一條（外交宗旨）

中華民國之外交，應本獨立自主之精神，平等互惠之原則，敦睦邦交，尊重條約及聯合國憲章，以保護僑民權益，促進國際合作，提倡國際正義，確保世界和平。

cooperation, advance international justice and ensure world peace.

Section 3. National Economy

第三節 國民經濟

Article 142. (Principle of People Livelihood)

National economy shall be based on the Principle of the People's Livelihood and shall seek to effect equalization of land ownership and restriction of private capital in order to attain a well-balanced sufficiency in national wealth and people's livelihood.

第一百四十二條（國民經濟基本原則）

國民經濟應以民生主義為基本原則，實施平均地權，節制資本，以謀國計民生之均足。

Article 143. (Land Policy)

All land within the territory of the Republic of China shall belong to the whole body of citizens. Private ownership of land, acquired by the people in accordance with law, shall be protected and its use restricted by law. Privately-owned land shall be liable to taxation according to its value, and the Government may purchase such land according to its value.

Mineral deposits which are embedded in the land, and natural power which may, for economic purposes, be utilized for the public benefit shall belong to the State, regardless of the fact that private individuals may have acquired ownership over such land.

第一百四十三條（土地改革）

中華民國領土內之土地屬於國民全體。人民依法取得之土地所有權，應受法律之保障與限制。私有土地應照價納稅，政府並得照價收買。

附著於土地之礦，及經濟上可供公眾利用之天然力，屬於國家所有，不因人民取得土地所有權而受影響。

If the value of a piece of land has increased, not through the exertion of labor or the employment of capital, the State shall levy thereon an increment tax, the proceeds of which shall be enjoyed by the people in common.

土地價值非因施以勞力資本而增加者，應由國家徵收土地增值稅，歸人民共享之。

In the distribution and readjustment of land, the State shall in principle assist self-tilling land-owners and persons who make use of the land by themselves, and shall also regulate their appropriate areas of operation.

國家對於土地之分配與整理，應以扶植自耕農及自行使用土地人為原則，並規定其適當經營之面積。

Article 144. (Public Utilities)

Public utilities and other enterprises of a monopolistic nature shall, in principle, be under public operation. In cases permitted by law, they may be operated by private citizens.

第一百四十四條（獨占性企業公營原則）

公用事業及其他有獨佔性之企業，以公營為原則，其經法律許可者，得由國民經營之。

Article 145. (Encouragement to Cooperative and Productive Enterprise)

With respect to private wealth and privately-operated enterprises, the State shall restrict them by law if they are deemed detrimental to a balanced development of national wealth and people's livelihood.

第一百四十五條（私人資本之節制與扶助）

國家對於私人財富及私營事業，認為有妨害國計民生之平衡發展者，應以法律限制之。

Cooperative enterprises shall receive encouragement and assistance from the State.

合作事業應受國家之獎勵與扶助。

Private citizens' productive enterprises and foreign trade shall receive encouragement, guidance and protection from the State.

國民生產事業及對外貿易，應受國家之獎勵、指導及保護。

Article 146. (Development of Resources)

第一百四十六條（發展農業）

The State shall, by the use of scientific techniques, develop water conservancy, increase the productivity of land, improve agricultural conditions, plan for the utilization of land, develop agricultural resources and hasten the industrialization of agriculture.

國家應運用科學技術，以興修水利，增進地力，改善農業環境，規劃土地利用，開發農業資源，促成農業之工業化。

Article 147. (Aid to Province and Hsien)

第一百四十七條（地方經濟之平衡發展）

The Central Government, in order to attain a balanced economic development among the provinces, shall give appropriate aid to needy or underpro-ductive provinces.

中央為謀省與省間之經濟平衡發展，對於貧瘠之省，應酌予補助。

The provinces, in order to attain a balanced economic development among the hsien, shall give appropriate aid to needy or underproductive hsien.

省為謀縣與縣間之經濟平衡發展，對於貧瘠之縣，應酌予補助。

Article 148. (Unobstructed Transportation of Goods)

Within the territory of the Republic of China, all goods shall be permitted to move freely from place to place.

第一百四十八條（貨暢其流）

中華民國領域內，一切貨物應許自由流通。

Article 149. (Financial Institutions)

Financial institutions shall, in accordance with law, be subject to State control.

第一百四十九條（金融機構之管理）

金融機構，應依法受國家之管理。

Article 150. (Job to the Indigent)

The State shall extensively establish financial institutions for the indigent people, with a view to relieving them of unemployment .

第一百五十條（普設平民金融機構）

國家應普設平民金融機構，以救濟失業。

Article 151. (Aid to Oversea Chinese)

With respect to Chinese citizens residing abroad, the State shall assist and protect them for the development of their economic enterprises.

第一百五十一條（發展僑民經濟事業）

國家對於僑居國外之國民，應扶助並保護其經濟事業之發展。

Section 4. Social Security

第四節　社會安全

Article 152. (Job Opportunity)

The State shall provide suitable job opportunity for the people who are able to work.

第一百五十二條（人盡其才）

人民具有工作能力者，國家應予以適當之工作機會。

Article 153. (Law and Policy for the Underprivileged)

The State, in order to improve the livelihood of laborers and farmers and to improve their productive skill, shall enact laws therefore and carry out policies for their protection.

Women and children engaged in labor shall, according to their age and physical condition, be accorded special protection.

第一百五十三條（勞工及農民之保護）

國家為改良勞工及農民之生活，增進其生產技能，應制定保護勞工及農民之法律，實施保護勞工及農民之政策。

婦女兒童從事勞動者，應按其年齡及身體狀態，予以特別之保護。

Article 154. (Relation Between Capital and Labor)

Capital and labor shall, in accordance with the principle of harmony and cooperation, promote productive enterprises. Conciliation and arbitration of disputes between capital and labor shall be prescribed by law.

第一百五十四條（勞資關係）

勞資雙方應本協調合作原則，發展生產事業。勞資糾紛之調解與仲裁，以法律定之。

Article 155. (Social Insurance and Relief)

The State, in order to promote social welfare, shall establish a social insurance system. To the aged and the infirm who are unable to earn a living, and to victims of unusual calamities, the State shall give appropriate assistance and relief.

第一百五十五條（社會保險與救助之實施）

國家為謀社會福利，應實施社會保險制度。人民之老弱殘廢，無力生活，及受非常災害者，國家應予以適當之扶助與救濟。

Article 156. (Protection to Women and Children)

The State, in order to consolidate the foundation of national existence and development, shall protect motherhood and carry out the policy of promoting the welfare of women and children.

第一百五十六條（婦幼福利政策之實施）

國家為奠定民族生存發展之基礎，應保護母性，並實施婦女兒童福利政策。

Article 157. (Medical Service)

The State, in order to improve national health, shall establish extensive services for sanitation and health protection, and a system of public medical service.

第一百五十七條（衛生保健事業之推行）

國家為增進民族健康，應普遍推行衛生保健事業及公醫制度。

Section 5. Education and Culture

第五節　教育文化

Article 158. (Objective of Education)

Education and culture shall aim at the development among the citizens of the national spirit, the spirit of self-government, national morality, good physique, scientific knowledge, and the ability to earn a living.

第一百五十八條（教育文化之目標）

教育文化，應發展國民之民族精神，自治精神，國民道德，健全體格，科學及生活智能。

Article 159. (Equal Education)

All citizens shall have equal opportunity to receive an education.

第一百五十九條（教育機會平等原則）

國民受教育之機會，一律平等。

Article 160. (Free Education)

All children of school age from six to 12 years shall receive free primary education. Those from poor families shall be supplied with books by the Government.

All citizens above school age who have not received primary education shall receive supplementary education free of charge and shall also be supplied with books by the Government.

第一百六十條（基本教育與補習教育）

六歲至十二歲之學齡兒童，一律受基本教育，免納學費。其貧苦者，由政府供給書籍。

已逾學齡未受基本教育之國民，一律受補習教育，免納學費，其書籍亦由政府供給。

Article 161. (Scholarship to Good Students)

The national, provincial, and local governments shall extensively establish scholarships to assist students of good scholastic standing and exemplary conduct who lack the means to continue their school education.

第一百六十一條（獎學金之設置）

各級政府應廣設獎學金名額，以扶助學行俱優無力升學之學生。

Article 162. (Supervision of Educational Institution)

All public and private educational and cultural institutions in the country shall, in accordance with law, be subject to State supervision.

第一百六十二條（教育文化機關之監督）

全國公私立之教育文化機關，依法律受國家之監督。

Article 163. (Balanced Development of Education)

The State shall pay due attention to the balanced development of education in

第一百六十三條（教育文化事業之推動）

國家應注重各地區教育之均衡發展，並推行社會教育，以提高一般國民

different regions, and shall promote social education in order to raise the cultural standard of the citizens in general. Grants from the National Treasury shall be made to frontier regions and economically underdeveloped areas to help them meet their educational and cultural expenses. The Central Government may either itself enter into the more important educational and cultural undertakings in such regions or give them financial assistance.

之文化水準，邊遠及貧瘠地區之教育文化經費，由國庫補助之。其重要之教育文化事業，得由中央辦理或補助之。

Article 164. (Minimum Educational Expenditures)

Expenditures of educational programs, scientific studies and cultural services shall not be, in respect of the Central Government, less than 15 percent of the total national budget; in respect of each province, less than 25 percent of the total provincial budgets; and in respect of each municipality or hsien, less than 35 percent of the total municipal or hsien budget. Educational and cultural foundations established in accordance with law shall, together with their property, be protected.

第一百六十四條（教育、科學、文化經費之比例與專款之保障）

教育、科學、文化之經費，在中央不得少於其預算總額百分之十五，在省不得少於其預算總額百分之二十五，在市縣不得少於其預算總額百分之三十五，其依法設置之教育文化基金及產業，應予以保障。

Article 165. (Protection of Educator, Scientist and Artist)

The State shall safeguard the lively-

第一百六十五條（教育、科學、藝術工作者之保障）

國家應保障教育、科學、藝術工作

hood of those who work in the fields of education, sciences and arts, and shall, in accordance with the development of national economy, increase their remuneration from time to time.

者之生活，並依國民經濟之進展，隨時提高其待遇。

Article 166. (Protection of Invention and Relics)

The State shall encourage scientific discoveries and inventions, and shall protect relics and articles of historical, cultural or artistic value.

第一百六十六條（科學發明與創造之保障、古蹟古物之保護）

國家應獎勵科學之發明與創造，並保護有關歷史文化藝術之古蹟古物。

Article 167. (Encouragement to Educators and Inventors)

The State shall give encouragement or subsidies to the following enterprises or individuals:

1. Educational enterprises in the country which have been operated with good standing by private individuals;
2. Educational enterprises which have been operated with good standing by Chinese citizens residing abroad;
3. Persons who have made discoveries or inventions in the fields of learning and technology; and

第一百六十七條（教育文化事業之獎助）

國家對於左列事業或個人，予以獎勵或補助：

一、國內私人經營之教育事業成績優良者。

二、僑居國外國民之教育事業成績優良者。

三、於學術或技術有發明者。

4. Persons who have rendered long and meritorious services in the field of education.

四、從事教育久於其職而成績優良者。

Section 6. Frontier Regions

第六節　邊疆地區

Article 168. (Protection of Racial Groups)

The State shall accord to the various racial groups in the frontier regions legal protection of their status and shall give them special assistance in their local self-government undertakings.

第一百六十八條（邊疆民族地位之保障）

國家對於邊疆地區各民族之地位，應予以合法之保障，並於其地方自治事業，特別予以扶植。

Article 169. (Development for Racial Groups)

The State shall, in a positive manner, undertake and foster the development of education, culture, communications, water conservancy, public health, and other economic and social enterprises of the various racial groups in the frontier regions. With respect to the utilization of land, the State shall, after taking into account the climatic conditions, the nature of the soil and the life and habits of the people, adopt measures to protect the land and to assist in its development.

第一百六十九條（邊疆事業之扶助）

國家對於邊疆地區各民族之教育、文化、交通、水利、衛生及其他經濟、社會事業，應積極舉辦，並扶助其發展，對於土地使用，應依其氣候、土壤性質，及人民生活習慣之所宜，予以保障及發展。

Chapter XIV.
Enforcement and Amendment of the Constitution

第十四章
憲法之施行及修改

Article 170. (Definition of Law)

The term "Law" as used in the Constitution, shall denote any legislative bill that shall have been passed by the Legislature and promulgated by the President of the Republic.

第一百七十條（法律之定義）

本憲法所稱之法律，謂經立法院通過，總統公布之法律。

Article 171. (Validity of Law)

Laws that are in conflict with the Constitution shall be null and void.

When doubt arises as to whether or not a law is in conflict with the Constitution, it shall be petitioned to the Judiciary for interpretation.

第一百七十一條（法律之位階性）

法律與憲法牴觸者無效。

法律與憲法有無牴觸發生疑義時，由司法院解釋之。

Article 172. (Validity of Ordinance)

Ordinances, Regulations, or Rules that are in conflict with the Constitution or with laws shall be null and void.

第一百七十二條（法律之位階性）

命令與憲法或法律牴觸者無效。

Article 173. (Interpretation of Constitution)

The Constitution shall be interpreted by the Judiciary.

第一百七十三條（憲法之解釋）

憲法之解釋，由司法院為之。

Article 174. (Amendment Procedure[38])

Amendments to the Constitution shall be made in accordance with one of the following procedures:

1. Upon the proposal of one-fifth of the total number of the delegates to the Assembly and by a resolution of three-fourths of the delegates present at a meeting having a quorum of two-thirds of the entire Assembly, the Constitution may be amended.
2. Upon the proposal of one-fourth of the Members of the Legislature and by a resolution of three-fourths of the Members present at a meeting having a quorum of three-fourths of the total Members of the Legislature, an amendment may be drawn up and submitted to the Assembly by way of referendum. Such a proposed amendment to the Constitution shall be publicly published half a year before the Assembly convenes.

第一百七十四條（修憲程序）

憲法之修改，應依左列程序之一為之：

一、由國民大會代表總額五分之一之提議，三分之二之出席，及出席代表四分之三之決議，得修改之。

二、由立法院立法委員四分之一之提議，四分之三之出席，及出席委員四分之三之決議，擬定憲法修正案，提請國民大會複決。此項憲法修正案，應於國民大會開會前半年公告之。

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38 Restricted from being applicable by Article 1 of the Amendment, *infra*.

Article 175. (Enforcement Procedure)

Enforcement procedures in regard to any matters prescribed in this Constitution shall be separately provided by law, whenever necessary.

The preparatory procedures for the enforcement of this Constitution shall be decided upon by the same Assembly which establishes the Constitution.

第一百七十五條（憲法實施程序與準備程序之制定）

本憲法規定事項，有另定實施程序之必要者，以法律定之。

本憲法施行之準備程序，由制定憲法之國民大會議定之。

Appendix III

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE REPUBLIC OF CHINA*

To meet the needs of the nation prior to national unification, and pursuant to Article 27, Paragraph 1, Subparagraph 3, and Article 174, Subparagraph 1 of the Constitution, Articles 1, 2, 4, 5 and 8 of the Constitutional Amendment, with addition of Article 12 thereto, as proposed and announced by the Legislative Yuan on August 26, 2004, adopted by the Fourth National Assembly on June 7, 2005, and promulgated by the President on June 10, 2005 are hereby to amend the Constitution:

為因應國家統一前之需要，依照憲法第二十七條第一項第三款及第一百七十四條第一款之規定，增修本憲法條文如左：

Article 1. (Amendment of Constitution and Alteration of Territory)

The electors of the free area[1] of the Republic of China shall cast ballots at a

第一條（修憲、領土變更案之複決）

中華民國自由地區選舉人於立法院提出憲法修正案、領土變更案，經

* Hereinafter referred as "Amendment" or "Constitutional Amendment". This English version originally translated by the Government Information Office is reworded in part and added with footnotes and captions by Justice Vincent Sze（施文森）.

[1] It means Taiwan, Kinmen, Matsu and the Penghu, over which the ROC now exclusively exercises its sovereignty.

referendum within three months upon the expiration of a six-month period following the public announcement of a proposal passed by the Legislative Yuan[2] on the amendment of the Constitution or alteration of the national territory. The provisions of Article 4 and Article 174 of the Constitution shall not apply.

公告半年，應於三個月內投票複決，不適用憲法第四條、第一百七十四條之規定。

The provisions of Articles 25 through 34 and Article 135 of the Constitution shall cease to apply.

憲法第二十五條至第三十四條及第一百三十五條之規定，停止適用。

Article 2. (Election, Recall and Impeachment of President)

The President[3] and the Vice President shall be directly elected by the entire populace of the free area of the Republic of China. This shall be effective from election for the ninth-term President and Vice President in 1996. The Presidential and the Vice Presidential candidates shall register jointly and be listed as a pair on the ballot. The pair that receives the highest number of votes shall be elected. Citizens of the free area of the Republic of China residing abroad may return to the ROC to exercise their electoral rights and

第二條（總統、副總統之選舉、罷免及彈劾）

總統、副總統由中華民國自由地區全體人民直接選舉之，自中華民國八十五年第九任總統、副總統選舉實施。總統、副總統候選人應聯名登記，在選票上同列一組圈選，以得票最多之一組為當選。在國外之中華民國自由地區人民返國行使選舉權，以法律定之。

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2 Hereinafter refered as “Legislature”.

3 The “President” in capital letter denotes the President of the Republic, while the “president” in small letter means the chiefs of five branches of the Government. However, to avoid misunderstanding, this revised version tries not to use the word of “president” to the branch chief unless other substitute term seems not possible.

this shall be stipulated by law.

Presidential orders to appoint or remove from office the president of the Executive Yuan[4] or personnel appointed with the confirmation of the Legislature Yuan in accordance with the Constitution, and to dissolve the Legislature, shall not require the countersignature of the president of the Executive Yuan. The provisions of Article 37 of the Constitution shall not apply.

總統發布行政院院長與依憲法經立法院同意任命人員之任免命令及解散立法院之命令，無須行政院院長之副署，不適用憲法第三十七條之規定。

The President may, by resolution of the Executive Yuan Council, issue emergency decrees and take all necessary measures to avert imminent danger affecting the security of the State or of the people or to cope with any serious financial or economic crisis, the restrictions in Article 43 of the Constitution notwithstanding. However, such decrees shall, within ten days of issuance, be presented to the Legislature Yuan for ratification. Should the Legislative Yuan withhold ratification, the said emergency decrees shall forthwith cease to be valid.

總統為避免國家或人民遭遇緊急危難或應付財政經濟上重大變故，得經行政院會議之決議發布緊急命令，為必要之處置，不受憲法第四十三條之限制。但須於發布命令後十日內提交立法院追認，如立法院不同意時，該緊急命令立即失效。

To determine major policies for national security, the President may establish a national security council and a subsidiary national security bureau. The organization of the said organs shall be

總統為決定國家安全有關大政方針，得設國家安全會議及所屬國家安全局，其組織以法律定之。

[4] Hereinafter referred as “Premier”.

stipulated by law.

The President may, within ten days following passage by the Legislature of a no-confidence vote against the Premier, declare the dissolution of the Legislature Yuan after consulting with its Speaker[5]. However, the President shall not dissolve the Legislature while martial law or an emergency decree is in effect. Following the dissolution of the Legislature, an election for legislators shall be held within 60 days. The new Legislature shall convene *sua sponte* within ten days after the results of the said election have been confirmed, and the term of the said Legislature Yuan shall be reckoned from that date.

總統於立法院通過對行政院院長之不信任案後十日內，經諮詢立法院院長後，得宣告解散立法院。但總統於戒嚴或緊急命令生效期間，不得解散立法院。立法院解散後，應於六十日內舉行立法委員選舉，並於選舉結果確認後十日內自行集會，其任期重新起算。

The terms of office for both the President and the Vice President shall be four years. The President and the Vice President may only be re-elected to serve one consecutive term; and the provisions of Article 47 of the Constitution shall not apply.

總統、副總統之任期為四年，連選得連任一次，不適用憲法第四十七條之規定。

Should the office of the Vice President become vacant, the President shall nominate a candidate(s) within three months, and the Legislature shall elect a new vice president, who shall serve the remainder of the original term until its

副總統缺位時，總統應於三個月內提名候選人，由立法院補選，繼任至原任期屆滿為止。

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5 It means the president of Legislature.

expiration.

Should the offices of both the President and the Vice President become vacant, the Premier shall exercise the official powers of the President and the Vice President. A new President and a new Vice President shall be elected in accordance with paragraph 1 of this article and shall serve out each respective original term until its expiration. The pertinent provisions of Article 49 of the Constitution shall not apply.

總統、副總統均缺位時，由行政院院長代行其職權，並依本條第一項規定補選總統、副總統，繼任至原任期屆滿為止，不適用憲法第四十九條之有關規定。

For recall of the President and/or the Vice President, a motion shall be initiated by one-fourth of total number of the Legislators, endorsed by two-thirds of total number of the Legislators, and finally must be passed by more than one-half of valid ballots in a vote in which more than one-half of the electorate in the free area of the Republic of China takes part.

總統、副總統之罷免案，須經全體立法委員四分之一之提議，全體立法委員三分之二之同意後提出，並經中華民國自由地區選舉人總額過半數之投票，有效票過半數同意罷免時，即為通過。

Should a motion to impeach the President or the Vice President initiated by the Legislature and petitioned to the grand justices of the Judicial Yuan for adjudication be upheld by the Constitutional Court, the party so impeached shall forthwith be dismissed from office.

立法院提出總統、副總統彈劾案，聲請司法院大法官審理，經憲法法庭判決成立時，被彈劾人應即解職。

Article 3. (Appointment, Acting Pro Tempore, and Responsibilities of the Premier)

The Premier shall be appointed by the President. Should the Premier resign or the office thereof become vacant, the Vice Premier shall act pro tempore as the Premier pending appointment of new Premier by the President. The provision of Article 55 of the Constitution shall be suspended from its application.

The Executive Yuan (hereinafter referred as "Executive") shall be responsible to the Legislature in accordance with the provision enumerated as follows in substitute for Article 57 of the Constitution which shall be suspended from its application:

1. The Executive shall present to the Legislature a report on its administrative policies and how to enforce these policies. The Legislators, while the Legislature is in session, have right to interpellate the Premier and the principal officers of his Cabinet;
2. The Executive may, if deeming a statutory, budgetary, or treaty bill passed by the Legislature difficult to execute, upon with the approval of the President and within ten days of the bill's submission to the

第三條（行政院院長之任命、代理及行政院對立法院負責）

行政院院長由總統任命之。行政院院長辭職或出缺時，在總統未任命行政院院長前，由行政院副院長暫行代理。憲法第五十五條之規定，停止適用。

行政院依左列規定，對立法院負責，憲法第五十七條之規定，停止適用：

一、行政院有向立法院提出施政方針及施政報告之責。立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權。

二、行政院對於立法院決議之法律案、預算案、條約案，如認為有窒礙難行時，得經總統之核可，於該決議案送達行政院十日內，移請立法院覆議。立法院對於行政院移

Executive, request the Legislature to reconsider the bill. The Legislature shall reach a resolution on the returned bill within 15 days after its receipt. Should the Legislature be in recess, it shall convene *sua sponte* within seven days and reach a resolution within 15 days after the commencement of session. Should the Legislature forthwith not reach a resolution within said period of time, the original bill shall become void *ab initio*. Should more than one-half of total number of Legislators uphold the original bill, the Premier shall immediately accept as such.

請覆議案，應於送達十五日內作成決議。如為休會期間，立法院應於七日內自行集會，並於開議十五日內作成決議。覆議案逾期未議決者，原決議失效。覆議時，如經全體立法委員二分之一以上決議維持原案，行政院院長應即接受該決議。

3. With endorsement of more than one-third of the total number of Legislators, the Legislature may move for a no-confidence vote against Premier. Seventy-two hours after the no-confidence motion is made, an open-ballot vote shall be taken within 48 hours. Should more than one-half of the total number of Legislators approve the motion, the Premier shall tender his resignation within ten days, and at the same time may request that the President dissolves the Legislature. Should the no-

三、立法院得經全體立法委員三分之一以上連署，對行政院院長提出不信任案。不信任案提出七十二小時後，應於四十八小時內以記名投票表決之。如經全體立法委員二分之一以上贊成，行政院院長應於十日內提出辭職，並得同時呈請總統解散立法院；不信任案如未獲通過，一年內不得對同一行政院院長再提不信任案。

confidence motion fail, the Legislature may not move for another no-confidence motion against the same Premier within one year.

Guidelines may be forth by law for all state organs' set-up procedure, their duties and responsibilities, and total number of personnel.

國家機關之職權、設立程序及總員額，得以法律為準則性之規定。

The organization, infrastructure, and number of personnel of each state organ shall be based upon the policies or needs of operation of each state organ in accordance with the law as referred to in the preceding paragraph.

各機關之組織、編制及員額，應依前項法律，基於政策或業務需要決定之。

Article 4. (Election and Number of Legislators)

第四條（立法委員之人數及分配）

Beginning with the Seventh Legislature, the Legislature shall have 113 Legislators, who shall serve a term of four years, which is renewable if re-elected. The election of the Legislators for the seats allocated as follows shall be completed within three months prior to the expiration of each term, in accordance with the following provisions, the restrictions in Article 64 and Article 65 of the Constitution notwithstanding:

立法院立法委員自第七屆起一百一十三人，任期四年，連選得連任，於每屆任滿前三個月內，依左列規定選出之，不受憲法第六十四條及第六十五條之限制：

1. Seventy-three seats from the Special Municipalities, counties, and cities in the free area. At least one member shall be elected from each

一、自由地區直轄市、縣市七十三人。每縣市至少一人。

each county and city.

2. Three seats each from among the lowland and highland aborigines in the free area.
3. A total of thirty-four seats from the nationwide constituency and among citizens residing abroad.

二、自由地區平地原住民及山地原住民各三人。

三、全國不分區及僑居國外國民共三十四人。

The number of seats set forth in Subparagraph 1 of the preceding paragraph shall be determined in proportion to the population of each Special Municipality, county, or city, which shall be divided into electoral constituencies equal in number to the number of Legislators to be elected. The number of seats set forth in Subparagraph 3 shall be determined from the lists of political parties in proportion to the number of votes won by each party that obtains at least 5 percent of the total votes, and the number of elected female members on each party's list shall not be less than one-half of the total number.

前項第一款依各直轄市、縣市人口比例分配，並按應選名額劃分同額選舉區選出之。第三款依政黨名單投票選舉之，由獲得百分之五以上政黨選舉票之政黨依得票比率選出之，各政黨當選名單中，婦女不得低於二分之一。

When the Legislature convenes each year, it may hear a report on the state of the nation by the President.

立法院於每年集會時，得聽取總統國情報告。

Following the dissolution of the Legislature by the President and prior to the inauguration of its newly-elected Legislators, the Legislature shall be regarded as in recess.

立法院經總統解散後，在新選出之立法委員就職前，視同休會。

The territory of the Republic of China, defined by its existing national bounda-

中華民國領土，依其固有疆域，非經全體立法委員四分之一之提議，

ries, shall not be altered unless initiated upon the proposal of one-fourth of the total number of the Legislators, passed by at least three-fourths of the Legislator present at a meeting attended by at least three-fourths of the total number of the Legislators, and approved by electors in the free area of the Republic of China at a referendum held upon expiration of a six-month period of public announcement of the proposal, wherein the number of valid votes in favor exceeds one-half of the total number of electors.

全體立法委員四分之三之出席，及出席委員四分之三之決議，提出領土變更案，並於公告半年後，經中華民國自由地區選舉人投票複決，有效同意票過選舉人總額之半數，不得變更之。

Should the President issue an emergency decree after dissolving the Legislature, the Legislature shall convene *sua sponte* within three days to vote on the ratification of the decree within seven days after the session begins. However, should the emergency decree be issued after the election of new Legislators, the new Legislators shall vote on the ratification of the decree only after their inauguration. Should the Legislature withhold ratification, the emergency decree shall forthwith be void.

總統於立法院解散後發布緊急命令，立法院應於三日內自行集會，並於開議七日內追認之。但於新任立法委員選舉投票日後發布者，應由新任立法委員於就職後追認之。如立法院不同意時，該緊急命令立即失效。

Impeachment of the President or the Vice President by the Legislature shall be initiated upon the proposal of more than one-half of the total number of the Legislators and passed by more than two-thirds of the total number of the Legislator,

立法院對於總統、副總統之彈劾案，須經全體立法委員二分之一以上之提議，全體立法委員三分之二以上之決議，聲請司法院大法官審理，不適用憲法第九十條、第一百條及增修條文第七條第一項有關規定。

whereupon it shall be presented to the Grand Justices of the Judicial Yuan for adjudication. The provisions of Article 90 and Article 100 of the Constitution and Article 7, Paragraph 1 of the Constitutional Amendment shall not apply.

Except in case of *flagrante delicto*, no Legislator may be arrested or detained without the permission of the Legislature, when that body is in session. The provisions of Article 74 of the Constitution shall cease to apply.

立法委員除現行犯外，在會期中，非經立法院許可，不得逮捕或拘禁。憲法第七十四條之規定，停止適用。

Article 5. (Nomination, Appointment, and Term of Office of Chief Justice, Deputy-Chief Justice, and Justices, Organization of Constitutional Court, Definition of Unconstitutionality, and Budget)

第五條（司法院院長、副院長、大法官之提名、任命、任期、憲法法庭之組成、違憲之定義及概算之不得刪減）

The Judicial Yuan (hereinafter referred as "Judiciary") shall have 15 grand justices (hereinafter referred as "Justice"). The 15 Justices, including a Chief and a Deputy-Chief to be selected from amongst them, shall be nominated and, appointed upon confirmation of the Legislature by the President. This shall take effect from the year of 2003, and Article 79 of the Constitution shall be suspended from its application accordingly. Except the one possessed of qualification as a judge and

司法院設大法官十五人，並以其中一人為院長、一人為副院長，由總統提名，經立法院同意任命之，自中華民國九十二年起實施，不適用憲法第七十九條之規定。司法院大法官除法官轉任者外，不適用憲法第八十一條及有關法官終身職待遇之規定。

transferred from the bench, the Justice shall enjoy no lifetime tenure protection as provided in Article 81 of the Constitution and other pertinent regulations.

Each Justice shall serve a term of eight years, the time of which be measured on an individual basis regardless of when appointed, and may not be reappointed for a consecutive term. However the Justices who be elected as Chief Justice and Deputy-Chief Justice shall not enjoy an eight-year term protection.

司法院大法官任期八年，不分屆次，個別計算，並不得連任。但並為院長、副院長之大法官，不受任期之保障。

Among the Justices nominated by the President in the year of 2003, eight members of those, including the Chief Justice and Deputy-Chief Justice, shall serve for four years, the remaining shall serve for eight years. The provision of the preceding paragraph regarding term of office shall not apply.

中華民國九十二年總統提名之大法官，其中八位大法官，含院長、副院長，任期四年，其餘大法官任期為八年，不適用前項任期之規定。

The Justices shall, in addition to discharging their duties in accordance with Article 78 of the Constitution, form a Constitutional Court to adjudicate matters relating to the impeachment of President and Vice President, and dissolution of political parties violating the Constitution.

司法院大法官，除依憲法第七十八條之規定外，並組成憲法法庭審理總統、副總統之彈劾及政黨違憲之解散事項。

A political party shall be considered unconstitutional if its goals or activities endanger the existence of the Republic of China or the nation's free and democratic constitutional order.

政黨之目的或其行為，危害中華民國之存在或自由民主之憲政秩序者為違憲。

The proposed budget submitted annually by the Judiciary may not be eliminated or reduced by the Executive; however, the Executive may indicate its opinions thereon and include it in the central government's proposed budgetary bill for submitting to the Legislature for deliberation and approval.

司法院所提出之年度司法概算，行政院不得刪減，但得加註意見，編入中央政府總預算案，送立法院審議。

Article 6. (Powers and Responsibilities of the Examination Yuan, Nomination and Confirmation of Chief Examiner, Deputy-Chief Examiner, and Examiners)

第六條（考試院之職權、院長、副院長、考試委員之提名及同意權之行使等）

The Examination Yuan (hereinafter referred as "Examination") shall be the highest examination body of the State and responsible for the matters enumerated as follows; and the provision of Article 83 of the Constitution shall be suspended from its application:

1. Holding of civil tests;
2. Matters relating to civil servants' qualification screening, tenure protection, retirement, pension, and death compensation;
3. Legal matters relating to civil servants' employment, discharge, performance evaluation, salary scale, promotion, transfer, commendation and award.

考試院為國家最高考試機關，掌理左列事項，不適用憲法第八十三條之規定：

一、考試。

二、公務人員之銓敘、保障、撫卹、退休。

三、公務人員任免、考績、級俸、陞遷、褒獎之法制事項。

The Examination shall have a president (hereinafter referred as "Chief Examiner"), a vice president (hereinafter referred as "Deputy-Chief Examiner"), and a number of Examiners, all of whom shall be nominated and appointed, upon confirmation of the Legislators, by the President; and the provision of Article 84 of the Constitution shall be suspended from its application.

考試院設院長、副院長各一人，考試委員若干人，由總統提名，經立法院同意任命之，不適用憲法第八十四條之規定。

The provisions of Article 85 of the Constitution concerning the holding of civil tests in different region, with prescribed numbers of persons to be selected according to various provinces and regions, shall cease to apply.

憲法第八十五條有關按省區分別規定名額，分區舉行考試之規定，停止適用。

Article 7. (Powers and Responsibilities of Control Yuan; Nomination of Chief Ombudsman, Deputy-Chief Ombudsman and Ombudsmen; Exercise of Impeachment)

第七條（監察院之職權、院長、副院長、監察委員之產生及彈劾權之行使）

The Control Yuan (hereinafter referred as "Control") shall be the highest control body of the State and exercise the powers of impeachment[6], censure and audit; and the pertinent provisions of Article 90 and Article 94 of the Constitution

監察院為國家最高監察機關，行使彈劾、糾舉及審計權，不適用憲法第九十條及第九十四條有關同意權之規定。

[6] The provision is inapplicable to the impeachment of the President and / or the Vice President, see Article 4, Para. 7 of the Amendment, supra.

concerning the exercise of the power of confirmation shall be suspended from their application.

The Control shall have 29 members (hereinafter referred as "Ombudsmen"), including a president (hereinafter referred as "Chief Ombudsman") and a vice president (hereinafter referred as "Deputy-Chief Ombudsman"), all of whom shall serve a term of six years. The Ombudsmen shall be nominated and, upon confirmation of Legislature, appointed by the President. The provisions of Article 91 through Article 93 of the Constitution shall cease to apply.

監察院設監察委員二十九人，並以其中一人為院長、一人為副院長，任期六年，由總統提名，經立法院同意任命之。憲法第九十一條至第九十三條之規定停止適用。

The Control's impeachment proceedings against a public functionary in central government, or local governments, or against personnel of the Judiciary or the Examination, shall be initiated by two or more Ombudsmen, and be investigated and voted upon by a committee of not less than nine Ombudsmen, the restrictions specified in Article 98 of the Constitution notwithstanding.

監察院對於中央、地方公務人員及司法院、考試院人員之彈劾案，須經監察委員二人以上之提議，九人以上之審查及決定，始得提出，不受憲法第九十八條之限制。

In case of impeachment against the Control's own personnel on ground of dereliction of duty or violation of the law, the provisions of Article 95 and Article 97, Paragraph 2 of the Constitution, as well as the preceding paragraph, shall apply.

監察院對於監察院人員失職或違法之彈劾，適用憲法第九十五條、第九十七條第二項及前項之規定。

The Ombudsmen shall be beyond party affiliation and independently exercise their powers and fulfilling their duties in accordance with the law.

監察委員須超出黨派以外，依據法律獨立行使職權。

The provisions of Article 101 and Article 102 of the Constitution shall cease to apply.

憲法第一百零一條及第一百零二條之規定，停止適用。

Article 8. (Remuneration for Legislators and Assembly Delegates)

第八條（立委之報酬、待遇之訂定）

The remuneration or pay for the Legislators shall be regulated by law. Except for general annual adjustments, any unilateral increase of remuneration or pay initiated by the Legislature shall only take effect as of its subsequent term.

立法委員之報酬或待遇，應以法律定之。除年度通案調整者外，單獨增加報酬或待遇之規定，應自次屆起實施。

Article 9. (Establishment of Self-Governing System for Provinces and Counties)

第九條（省、縣地方制度之訂定）

The system of self-government in the provinces and counties, which shall be established by the enactment of appropriate laws, shall include the following provisions, the restrictions in Article 108, Paragraph 1, Subparagraph 1; Article 109; Article 112 through Article 115; and Article 122 of the Constitution notwithstanding:

省、縣地方制度，應包括左列各款，以法律定之，不受憲法第一百零八條第一項第一款、第一百零九條、第一百十二條至第一百十五條及第一百二十二條之限制：

1. A province shall have a provincial government composed of nine

一、省設省政府，置委員九人，其中一人為主席，均由行政

members,one of whom shall be the governor. All members shall be nominated by the Premier and appointed by the President.

院院長提請總統任命之。

2. A province shall have an advisory council made up of a number of advisors, who shall be nominated by the Premier and appointed by the President.

二、省設省諮議會，置省諮議會議員若干人，由行政院院長提請總統任命之。

3. A county shall have a county council, members of which shall be directly elected by the people of the said county.

三、縣設縣議會，縣議會議員由縣民選舉之。

4. The legislative powers vested in a county shall be exercised by the county council of the said county.

四、屬於縣之立法權，由縣議會行之。

5. A county shall have a county government headed by a magistrate who shall be elected by the people of the said county.

五、縣設縣政府，置縣長一人，由縣民選舉之。

6. The relationship between the central government and the provincial and county governments.

六、中央與省、縣之關係。

7. A province shall execute the orders of the Executive and supervise the counties on their self-Governing matters.

七、省承行政院之命，監督縣自治事項。

The modifications of the functions, operations, and organization of the Taiwan Provincial Government may be specified by law.

台灣省政府之功能、業務與組織之調整，得以法律為特別之規定。

Article 10. (Economic Development, Assistance to Small and Medium-Sized Enterprises)

第十條（經濟發展、中小企業之扶助、金融機構企業化經營、婦女之保障、全民健保、身心障礙者之保障、原住民之保障等）

The State shall encourage the development and investment in science and technology, facilitate industrial upgrading, promote modernization of agriculture and fishery, emphasize exploitation and utilization of water resources, and strengthen international economic cooperation.

國家應獎勵科學技術發展及投資，促進產業升級，推動農漁業現代化，重視水資源之開發利用，加強國際經濟合作。

Environmental and ecological protection shall be given equal consideration with economic and technological development.

經濟及科學技術發展，應與環境及生態保護兼籌並顧。

The State shall assist and protect the survival and development of private small and medium-sized enterprises.

國家對於人民興辦之中小型經濟事業，應扶助並保護其生存與發展。

The State shall manage government-run financial organizations in accordance with the principles of business administration. The management, personnel, proposed budgets, final budgets, and audits of the said organizations may be specified by law.

國家對於公營金融機構之管理，應本企業化經營之原則；其管理、人事、預算、決算及審計，得以法律為特別之規定。

The State shall promote national health insurance and promote the research and development of both modern and traditional medicines.

國家應推行全民健康保險，並促進現代和傳統醫藥之研究發展。

The State shall protect the dignity of women, safeguard their personal safety,

國家應維護婦女之人格尊嚴，保障婦女之人身安全，消除性別歧視，促

eliminate sexual discrimination, and further substantive gender equality.

進兩性地位之實質平等。

The State shall guarantee availability of insurance, medical care, obstacle-free environments, education and training, vocational guidance, and support and assistance in everyday life for physically and mentally handicapped persons, and shall also assist them to attain independence and to develop (their potentials).

國家對於身心障礙者之保險與就醫、無障礙環境之建構、教育訓練與就業輔導及生活維護與救助，應予保障，並扶助其自立與發展。

The State shall emphasize social relief and assistance, welfare services, employment for citizens, social insurance, medical and health care, and other social welfare services. Priority shall be given to funding social relief and assistance, and employment for citizens.

國家應重視社會救助、福利服務、國民就業、社會保險及醫療保健等社會福利工作，對於社會救助和國民就業等救濟性支出應優先編列。

The State shall prize military servicemen for their contributions to society, and to retired servicemen guarantee their medical care, and livelihood or furnish them opportunities to be educated or employed if so desired.

國家應尊重軍人對社會之貢獻，並對其退役後之就學、就業、就醫、就養予以保障。

Priority shall be given to funding education, science, and culture, and in particular funding for compulsory education, the restrictions specified in Article 164 of the Constitution notwithstanding.

教育、科學、文化之經費，尤其國民教育之經費應優先編列，不受憲法第一百六十四條規定之限制。

The State takes cultural pluralism as her pride and shall actively preserve and foster the development of aboriginal languages and cultures.

國家肯定多元文化，並積極維護發展原住民族語言及文化。

The State shall, in accordance with the will of the ethnic groups, safeguard the status and political participation of the aborigines. The State shall also guarantee and provide assistance and encouragement for aboriginal education, culture, transportation, water conservation, health and medical care, economic activity, land, and social welfare, measures for which shall be established by law. The same protection and assistance shall be given to the people of the Penghu, Kinmen, and Matsu areas.

國家應依民族意願，保障原住民族之地位及政治參與，並對其教育文化、交通水利、衛生醫療、經濟土地及社會福利事業予以保障扶助並促其發展，其辦法另以法律定之。對於澎湖、金門及馬祖地區人民亦同。

The State shall accord to nationals of the Republic of China residing overseas protection of their rights of political participation.

國家對於僑居國外國民之政治參與，應予保障。

Article 11. (Rights and Obligations between the People of Free Area and Chinese Mainland Area)

第十一條（兩岸人民關係法之制定）

Rights and obligations between the people of free area and those of Chinese mainland area, and the disposition of other related affairs may be specially prescribed by law.

自由地區與大陸地區間人民權利義務關係及其他事務之處理，得以法律為特別之規定。

Article 12. (Procedure to Amend Constitution)

第十二條（憲法修改之程序）

Amendment of the Constitution shall be initiated upon the proposal of one- fourth

憲法之修改，須經立法院立法委員四分之一之提議，四分之三之出席，

of the total numbers of the Legislators, passed by at least three-fourths of the Legislators present at a meeting attended by at least three-fourths of the total Legislators of the Legislature, and approved by electors in the free area of the Republic of China at a referendum held upon expiration of a six-month period of public announcement of the proposal, wherein the number of valid votes in favor exceeds one-half of the total number of electors. The provisions of Article 174 of the Constitution shall not apply.

及出席委員四分之三之決議，提出憲法修正案，並於公告半年後，經中華民國自由地區選舉人投票複決，有效同意票過選舉人總額之半數，即通過之，不適用憲法第一百七十四條之規定。

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