THE DISTRIBUTION OF RESIDUARY ESTATE TO SPECIALLY RELATED PERSONS: A NEW INSTITUTION IN THE LAW OF SUCCESSION OF JAPAN

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I. Introduction

A partial revision of Japanese civil code in 1962 brought into existence an entirely new institution called "the distribution of residuary estate to specially related persons".[1] The purpose of this article is to expound the contents and practical application up to the present of this institution.

Under the application of the old provisions of the civil code enacted in 1947 there were few instances that residuary estate of the deceased reverted to the National Treasury in case of the non-existence of heirs-at-law. However, the view then lingered that it would be more desirable for residuary estate to be used more suitable purposes rather than to be reverted to the National Treasury. In view of this the *ad hoc* committee on legal system prepared in 1927 the draft

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1) Different from its counterpart in England Japanese law of succession does not contain such institution as personal representative. Therefore, succession begins immediately after the death of a person (Art. 882 of the civil code) and the heirs-at-law directly succeed the rights and obligations of the deceased. However, when heirs-at-law do not exist the administrator will be appointed by the family court and the liquidation of assets will be conducted by him. Since "specially related persons" in the sense of this article are granted the property after the liquidation of the assets of the deceased, the present writer borrows from Anglo-American law the concept of residuary estate unknown to the Japanese legal mind.

on the law of succession containing the following provision.

> "The administrator may, under the authorization of the family court, give the adequate amount of the residuary estate to the person who made a living by the support of the former head of the family ("*koshu*"), or to the person who had special relations with the former head of the family or the household ("*ie*"), or to temples and shrines or other establishments for public services."

However, the revision itself of the civil code was not effected and the plan as such was not realized.

Being revised after World War II and based on the principles of the modern law of succession, the existing civil code limits heirs-at-law to a comparatively narrow range (*infra*). As the result, there appeared more instances of the non-existence of heirs-at-law than under the application of the old provisions and legislators gave birth to a new institution materializing the above-mentioned draft made forty years ago.

Article 958–3 of the existing civil code provides:

> "In the case of the preceding article (the determination of the non-existence of heirs-at-law), the family court may, when it seems appropriate, give upon petition whole or any part of the residuary estate after liquidation to those who shared the same livelihood with an ancestor (the deceased),[2] those who were engaged in nursing an ancestor, or those who had special relations with an ancestor.
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> The petition of the preceding paragraph shall be made within three months after the expiration of the term provided for in Article 958 (the

2) The word "ancestor" will usually denote ascendant. In the civil code the decceased is expressed as "a man who is succeeded." As will be understood later in this article heirs-at-law are not necessarily confined to the descendants of the deceased, and the deceased, which is the principal topic of this article, has nothing to do with the ascendant-descendant relationship, viz, succession. In the civil code, however, the latter is also expressed as "a man who is succeeded". For the sake of convenience, therefore, the present writer designates in this article "a man who is succeeded," a technical term in the civil code, as an ancestor or the deceased as the case may be.

final public notice for the search of heirs-at-law)."[3]

The purpose of the new institution — which is not necessarily clear and leaves much room for doubts — is considered as this. The disposal of a property, cannot fully be, though it should be by nature, carried out by utilizing a will under the present circumstances in our country that the use of a will is not very often availed of because of its strict formality required and insufficient knowledge among the nation. Thus the institution should be understood as meaning to supplement a will (device or legacy). It should also be strongly denied to bring about by this institution a new type of heirs-at-law. Because it runs counter to the trend of the modern law of succession, according to which the scope of heirs-at-law is to be narrowed. Moreover, a consistent interpretation as to various types of "specially related persons" can only be possible when this institution is understood on the basis of the consideration of the intention of the deceased.

The civil code designates children (Art. 887, para. 1), lineal ascendants (Art. 889, para. 1), brothers and sisters (Art. 889 paras. 1 and 2), and spouses Art. 890) as heirs-at-law.[4] However, when it is unknown whether the above-men-

3) The model of this institution seems to be an English law, The Administration of Estate Act, 1925, sec. 46 (1) (vi). It provides: "In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as bona vacantia, and in lieu of any right to escheat. The Crown or the said Duchy or the said Duke may (without prejudice to the powers reserved by section nine of the Civil List Act, 1910, or any other powers), out of the whole or any part of the property devolving on them respectively, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision." (Sections 46 to 49 of said Act are amended by the Intestates' Estates Act, 1952, but this provision is not changed.)

Since the materials on the detail of the application of this provision are not available to the present writer, the practice will not be touched upon here. However, in comparison with the foregoing provision of the said Act, this institution of Japan is considered to have wider and more flexible contents.

A similar institution seems to exist also in France. The civil code of that country provides: "A défaut d'héritiers, la succession est acquise à l'État." (Art. 768) However, "Dans divers cas, certaines personnes de droit public (départements, hôpitaux, Caisse nationale de retraites, etc....) sont substituées à l'État pour recueillir certains biens (C. domaine de l'État, 28 déc. 1957, art. 24 à 30). (Julliot de la Morandière, Droit civil, tome IV, 1965, p. 280.)

4) Grandchildren or their descendants, nephews and nieces or their descendants may, in exceptional cases, become heirs-at-law in place of thier ascendants. (Art. 887, paras. 2 and 3).

tioned persons exist, a series of procedure must be taken for the search of heirs-at-law. It runs as follows:

In the event that the existence of heirs is unknown, assets left by the deceased become a legal person (Art. 951). In such an event, the heirs must be searched for according to the following procedure: three public notices must be made, namely, the assignment and the notification of the administrator of assets (Art. 952) (the first notification for the search of heirs), the notification of requesting application of creditors of assets and lagatees (Art. 957) (the second notification for the search of heirs and the beginning of the liquidation of assets) and the final notification for the search of heirs. When no application is made from heirs in a given period, the heirs, and creditors of assets and legatees who are unknown to the administrator are excluded (Art. 958–2). Thus the non-existence of heirs-at-law is determined.

Within three months after the expiration of the term of notification for the search (Art. 958–3, para. 2), those who believe themselves to be "specially related persons" and want to obtain the distribution of the residuary estate concerned may petition the family court for the disposal of the said estate (Family Judgement Law, Art. 9, para. 1, A 32–2). In this case the petitioner shall clarify his special relationship with the deceased (Family Judgement Rule, Art. 119–2). In this way begins the procedure for the distribution of residuary estate.

The answers to the questions all depend on the discretion of the judges of the family court as to whether a petitioner may be regarded as a specially related person; whether the latter may be granted whole or any part of the residuary estate; who may be regarded as specially related persons when several petitioners exist; or to whom among those petitioners and in what portion the residuary estate may be granted. These points will be discussed fully and concretely in the following passages.[5]

II. The scope of "specially related persons"

Unlike heirs-at-law there are no such persons as provided for beforehand

5) Statistics issued by the Supreme Court indicate that 672 petitions for this distribution were presented to the family court during the period from 1962, when this institution came into force, to the end of 1967. This number stands larger than the one expected before its establishment. Cf. M. TANAKA-Y. HITOMI-T. KUKI (*Report*) (SHIHŌ No. 30, p. 185)

in the civil code as specially related persons. Article 958–3 uses the expression, "those who shared the same livelihood with an ancestor, those who were engaged in nursing an ancestor or other persons who had special relations with an ancestor." The first two categories of persons are provided for only as examples and the last one shows itself as an abstract general provision devoid of a clear standard, so that the determination of the scope is left to the discretion of the court. The followings are some cases before the court in which some persons are presumed to be specially related persons.

A. The example of "those who shared the same livelihood with an ancestor"

Persons of various relations come to the scene as the first examples of those who shared the same livelihood with an ancestor. Most of them are the relatives (cosenage and affinity) or quasi-relatives.[6]

First, the most typical is a husband or a wife who is not legally married.[7]

> The petitioner (X) had lived as a *de facto* wife of the deceased (Y) without being legally married since 1923. Y died in April of 1954 with neither children nor any other heirs-at-law. X, then, as the only person near him, did everything like conducting the funeral or performing religious rites for him. The house which was the estate left by Y had originally been in the possesion of A, and was rented by Y who lived with X. But the ownership of the house was transferred from A, the original owner of the house, to the State in 1949 as the object of tax payment in kind. Then Y bought the house from the State in February of 1951. He had paid half the price in installments by the time of his death. After that, X paid the remainder and finished the payment in March of 1955. X continued to live in the house in question after Y's death.
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> The court admitted the distribution of the house to X.[8]

6) Although such a concept as quasi-relatives is not found in Japanese civil code, it is used for denoting spouses *de facto* and others which will be described later. In addition, the concept of spouses, together with the concepts of cosenage and affinity, is included in the concept of "relatives" (Art. 725).

7) They are commonly called NAIEN in Japan. Cf. T. KUKI "NAIEN : One Problem in Japanese Marriage Law" Osaka University Law Review, No. 12, 1964.

8) Tokyo Family Court, 1963. 10. 7.

The above-mentioned is the first published case concerning a wife not legally married. The legistrators are said to have in mind that one of the purposes of this institution was nothing but to relieve such persons who are not heirs-at-law.

Next case concerns a *de facto* adopted son.[9]

The ancestor (Y) had early come to the region where he worked as a servant for A, a landowner. Eventually he built a house where he co-habited with his non-legal wife and worked as a farmer or a day-laborer. In the meantime, after his wife's death in 1944, his means of support became extremely limited due to his old age of over seventy without any children. The petitioner X, after his second marriage, became Y's *de facto* adopted son by the advice of his neighbor and lived with and served to Y while cultivating Y's field. Then, Y, after being taken care of by X and his wife for about a month, died of old age leaving the field after him in 1954.

The court admitted the distribution of the field to X.[10]

The following is some other concrete instances recognized by the court as falling in the same category of persons: a husband not legally married,[11] a stepchild,[12] a stepmother,[13] an uncle,[14] an aunt,[15] a cousin,[16] an illegitimate child without recognition of father,[17] the wife of a deceased son[18] and so forth.

It is recognized as to any one of the foregoing persons that they shared the same livelihood with an ancestor. And it goes without saying that when such

9) In opposition to the legislations in foreign countries, adults may also be adopted under the system of Japanese civil code.

10) Maehashi Fam. C., 1964. 4. 1.

11) Chiba Fam. C., 1963. 6. 24.

12) Osaka Fam. C., 1965. 12. 18.

13) Osaka Fam. C., 1964. 11. 16.

14) Okayama Fam. C. Tamanode Branch, 1963. 11. 7.

15) Osaka Fam. C. 1964. 3. 28.

16) Niigata Fam. C. Sanjo Branch, 1963. 11. 25.

17) Urawa Fam. C., 1966. 9. 13.

18) Kyoto Fam. C., 1964. 12. 24.

a fact is found, other non-relatives than those can also be regarded as specially related persons.

B. The examples of "those who were engaged in nursing an ancestor"

What are in the mind of the legislators as "the persons who were engaged in nursing an ancestor" are such persons as relatives or acquaintances without sharing the same livelihood. Only a few decisions of the court, however, clearly show such elements. Because those falling in the first category often engage in nursing an ancestor at the same time, and a few persons fall in this category pure and simple. Among a few instances the following cases may be cited.

> The ancestor (Y), above sixty-year-old woman, had lived near the petitioner (X) (female) and made her living by working at the ticket office of a movie theater and later received assistance from X, a district welfare officer, because of her old age. X often took care of Y at her home and sent her to the hospital. While Y was in the hospital X sometimes visited her and did washings and other things for her. When Y died, X conducted her funeral. Y's asset was forty centiare of home lots.
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> The court approved of the distribution of the lots to X.[19]

Since X and Y are entirely unrelated persons, the above-cited case falling in the category of "those who were engaged in nursing an ancestor" can be said to be one of the typical examples of the specially related persons.

Housekeepers and nurses will be added to the above category of persons and will be considered to be able to petition the distribution of residuary estate even if they receive adequate pay. However, no petitions seem to have so far been made from such persons.

C. The examples of other specially related persons than those indicated in A and B.

Various kinds of persons will be considered to form the third category; "those who had special relations with an ancestor." This category of persons are very abstract and unclear and are left to be decided by the court. It is a great problem, therefore, to recognize what kind of persons belong to this

19) Maehashi Fam. C., 1964. 10. 29.

category. And this recognition itself has bearings upon the substance of this institution.

The following case is the one between entirely unrelated persons:

> The petitioner (X) had friendly relations with the deceased (Y), because X and his parents lived in the neighborhood of Y and her mother. Their relations became closer for Y was the teacher in charge when X entered school. After graduation X used to spend his holidays at Y's house and talk together with Y who then led very lonely life. During World War II X lost his store in the fire, but continued his business at a corner of Y's house which he rented by Y's kindness. In the meantime, since Y's house was also burnt down, X had his acquaintance build a shack for Y and X himself continued his business there. When Y was ill in bed, X cooperated with Y's relatives in helping her with relieving nature and nursing her. After Y's death he managed all the miscellaneous business necessary for the funeral. X actually administered the property left by Y and constructed her tomb.
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> "Thus X and Y had maintained for more than fifty years the relation of pupil and teacher at school or of the young and old in the neighborhood. After grown up X often helped Y who led a solitary life without any kith and kin. In the serious events in Y's latter years such as war damage, illness, disposition of important property, etc., X concerned himself with Y's life as an adviser and conforted her solitude. In the economic phase of life, too, X and Y helped each other and as the result Y's life was economically stabilized. Adding to all these the fact that X took much warmer care of her at her death than that extended by her relatives (he attended Y's deathbed), the relations between X and Y must be said to be *a strange fate of life.*"[20]
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> The court distributed to X 400,000 yen in cash out of Y's residuary estate.

During the deliberation of the legislative process the question was raised whether legal persons as well as natural persons could be specially related per-

20) Osaka Fam. C., 1963. 12. 23.

sons. In spite of the opposition made by a part of scholars, legislators interpreted it in the affirmative. There is no active reason to exclude a legal person out of the category concerned. Moreover it must be said that the affirmative answer is in accord with the purposes of the institution. As precedents concerning a legal person the following examples will be cited: a home for the aged established by a local government where deceased was received[21] and a religious organization as the family temple of the deceased.[22] The court further pronounced "the qualification of specially related persons should also be given to corporations or foundations without legal personality (*Vereine ohne Rechtsfähigkeit*) but with representatives or administrators."[23]

We have so far took a look at the scope of specially related persons with emphasis on judicial precedents. A few points must be noted in view of the illustrations of "same livelihood" and "nursing" provided for in the civil code (cited also above A and B): what is most important in determining special relations is that the standard of appreciation must be not only the existence or propinquity of abstract relationship but the proximity of the concrete and substantial relations between the deceased and the petitioner. It may also be noted that some scholars maintain the necessity to recognize positively not only the fact of living together but the fact of their cooperation with the deceased or of their dependance on the assets of the deceased.

D. Doubtful Cases

From the viewpoint of the purpose of the instituion there are a few doubtful cases among those formerly recognized by the court as falling in the category of the specially related persons.

The most problematical is how to deal with the relations after the death of the deceased. Doubtful precedents have been continuously present up to date since the beginning of the institution. The following two cases will be cited as examples:

> The petitioner (X) was the wife of a son of a brother (A) of Y's (of the deceased) father (B). That is, X was the wife of a cousin of Y. B

21) Kumamoto Fam. C., 1964. 3. 31.
22) Tokyo Fam. C., 1965. 8. 12.
23) Nagasaki Fam. C., 1966. 4. 8.

was once given by A a housing lot, a house and a piece of field. At the death of B, Y succeeded to the house. After Y went to war, A actually administered and leased the above-mentioned property. Subsequently Y also died in the war. Y had no heirs-at-law. Since no one lived in Y's house, A let X and her husband live in the house as *de facto* sucessors of Y. After that they lived there and performed religious rites. After X's husband died in 1951 Y's relatives after consultation requested X to do rites and maintain property as before. Meanwhile X broke up the house because it was worn out and built a new house and has lived there up to the present.[24]

Both the deceased (Y) and the petitioner (X) were born at the same village. Since X was about seventeen years younger than Y, the latter doted upon young X and intended to adopt him. Y often went working at some remote places but came home because of his illness in 1935. Since then he lived there and engaged in lumbering, but died in 1941. On the other hand X lived at his home place until 1939 and engaged in lumbering, sometimes with Y, but moved to a remote place in the same year. Before Y's death X had neither lived with him nor nursed him. In fact Y was attended to by an old woman who then lived next to him and his funeral was conducted by the village people. After that X accepted the request of a sole relative of Y (a cousin) to succeed Y's family line. Then X sent first his wife and children to Y's house in 1944 and next year he himself came to live there. Since then X lived in the said house, administered the property left by Y, payed tax and other public charges, prayed Y's mortuary tablet and held ritual services for him.[25]

It is clear from the two cases cited above that the court recognized the petitioners as specially related persons basing the recognition upon the circumstances after the death of the deceased. In both cases the court recognized X as the specially related person on account of the fact that he administered Y's property and conducted family rites as a *de facto* successor of Y. Such appreciation (attaching importance to the relations after death) leaves much room for doubt from the following reasons.

24) Yokohama Fam. C., 1962. 10. 29.
25) Matsuyama Fam. C. Saijo Branch, 1965. 8. 5.

Firstly, it is not considered that civil code intends to provide for the existence of the relations after death. The provision of Article 958–3 clearly presupposes the existence of the relations with the deceased while in life (see the expression "those who *had* relations").

Secondly, it no more than intends to revive substantially the notion of "succession to a house" or especially "succession by selection" which was lost in oblivion with the abolishment of the family system. "Succession by selection" is a form of "succession to a house" according to which an heir is chosen by the father (or mother) of the deceased or by family council in case of the non-existence of heirs-at-law or heirs designated by the deceased. And the range of potential heirs goes finally to non-relatives. It goes without saying that the notion of "succession by selection" was based upon the family system of which the highest moral was to continue and maintain "a house" ("*ie*"). Such notion must of course be denied under the existing civil law which gives importance to the modern nuclear family and regards succession as succession of property only.

The third doubt is whether above-mentioned instances are related with succession of religious rites (hereinafter called "ritual succession") for an ancestor. The existing civil code denies the notion of such a kind of succession which adhered closely to the old notion of "succession to a house".[26] Today it is not only to be denied under the legal system to pay regard to the rites but it will be right to say that the rites "do not concern law."[27] It must strongly be warned from the preceding second and third viewpoints, *inter alia*, that the old notion which must have been denied with the abolishment of the old provisions should not be revived under the cloak of the new institution.

III. Some questions concerning "appropriateness" of the distribution

A. Correlation in the case of multi-related persons

The petition for claiming distribution shall be made within a given period of time (Art. 958–3, para. 2) and the court shall await all the petitions to be made

26) However, since the civil code still contains the provision concerning ritual instruments (Art. 897) tranchant critisisms are directed to this provision.

27) Tokyo High C., 1953. 9. 4.

without commencing the procedure of adjudication until the expiry of the term (Family Judgement Rule, Art. 119–4, para. 1). In case of the petitions being made by several persons the procedure of adjudication and decision shall be made together (Family Judgement Rule, Art. 119–4, para. 2). Thus it cannot be foreseen how many persons petition for claiming distribution at each case.

The court adjudges to grant distribution when it recognizes the petitioner as a specially related and appropriate person. (The court is authorized to grant distribution to one or several petitioners even when it recognized all of them as specially related persons. There are some instances.) However, when distribution is made to all of the several petitioners the civil code contains no provision as to what standard should be applied to the determination. Therefore, all depend upon the discretion of the court. With regard to the determination of "appropriateness" in general including the above question it is considered that the stadard will be set by investigating and referring to such elements as the substance, propinquity or degree of the connection; sex, age, occupation and education of the specially related persons; the nature, amount, condition and the place of the residuary estate; and all the other circumstances.

In most cases of adjudication it is not necessarily clear why the court granted such distribution. In the following case, however, the intention of the court is comparatively clear.

> The petitioner (X^1) is an uncle of the deceased (Y) and the petitioner (X^2) is a son of X^1. Both petitioners have been engaged in agriculture and have brought up Y from his childhood. After Y's death in the war they continued cultivating the fields which Y had left, but at present X^2 is in charge of doing it because of X^1's old age.
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> In this case the court declared that it was appropriate to distribute to X^1 home lots, house, etc. and to X^2 farmland such as fields or a plain, etc..[28)]

B. The amount of distribution to the specially related persons — whole or any part?

In certain occasions the court grants the distribution of only a part of the residuary estate. The rest of the residuary estate, therefore, belongs eventually

28) 16, *supra.*

to the National Treasury. It thus becomes a question in what occasions whole or any part of the residuary estate is to be distributed. This is, however, part of the whole problem of "appropriateness" and depends upon the discretion of the court, thus making it difficult to present a clearcut standard for it. In analyzing some cases before the court some problematical points will be noticed.

In the adjudication of distribution claims high percentage of the decisions is to the effect of granting them (93% in the statistics until 1965). It is further presumed that in most cases the distribution was granted for the whole residuary estate. On the other hand in the case of partial distribution many cases were brought before the court by the petitioners who are either acquaintances without blood-relations with the deceased or the distant relatives, say, in the sixth degree. For instance, they are:

(1) the religious organization as the family temple of the deceased (335,000 yen out of the residuary estate of over 12,000,000 yen — this payment seems substantially to be made in advance as the ritual fee),[29] (2) the person who had relations with the deceasd for more than fifty years as teacher and pupil ("*a strange fate of life*", *supra*) (400,000 yen out of 2,120,000 yen — additional 800,000 yen was discharged to the petitioner during the liquidation procedure),[30] (3) the acquaintance who "helped implicitly and explicitly the unmarried person with few relatives" (500,000 out of 890,000 yen — additional 200,000 yen as a fee of the administration of the property left),[31] (4) a kindred (a girl) in the sixth degree who nursed the deceased for thirteen days (only!) by her father's command (the residuary estate included land, house, etc., but 300,000 yen was distributed in cash).[32]

Among these cases the first and forth are considered to be appropriate. In comparison with many other cases, however, in which the whole of a large amount of the residuary estate is fairly easily destributed, it is not neccessarily easy to understand why in the second and third of the above-cited cases only a part of the residuary estate was distributed. If such measures are based upon the consideration that the whole distribution is granted to the relatives (cosenage

29) 22, *supra.*
30) 20, *supra.*
31) Osaka Fam. C., 1964. 7. 28.
32) Tokyo Fam. C., 1965. 7. 1.

or affinity) and the partial distribution to the non-relatives, then such differentiation is clearly incorrect. Whether they are relatives or non-relatives, it must be said that they are of the same character as specially related persons. It must be denied, therefore, that in the appreciation of "appropriateness" the notion of blood-relation is regarded upon as an element.

IV. Conclusion

The creation of the institution of the distribution of residuary estate to the specially related persons had the greatest significance in the revision of the civil code in 1962. It is true on the one hand that the new institution won fairly profound admirations and raised great expectations. On the other hand, however, there is no denying that it faced considerable criticisms and excited no little apprehension for its future application. In concluding the present article it may be of some use to look back some of the problems it contains.

The most noteworthy criticism is that the new institution results in creating the novel category of heirs-at-law. It can surely be maintained that this form of distribution of residuary estate is not, theoretically speaking, succession in the sense that it does not succeed to obligations of the deceased. In substance, however, it has a facit which is not illogical to be regarded as almost succession. The legislators themselves explained: "it (the establishment of this institution) is an important revision which in a sense touches on the essence of succession. No doubt specially related persons are only those who receive distribution of the residuary estate but not successors *per se*. But it may not be unable to be said that the revision is in substance the modification of the institution of succession in the respect that it comes to admit other persons than heirs-at-law to obtain the residuary estate." Also in the deliberation at the Diet some inconsistent remarks were made on "specially related persons", namely, on the one hand, "they have such special relations with the deceased as he wanted to give them his property, if he had an opportunity, by will," or, on the other, "they are the persons who may in fact be considered to be heirs-at-law as such." Such inconsitancies in the attitudes of the legislators have long been sharply pointed out.[33] In other words, when specially related persons are regarded

33) M. TAKANASHI, "The Revision of Law of Succession and Non-modernization of Heirs-at-law" (Nihon-Hōgaku vol. 28 No. 5) (in Japanese).

as "those to whom a property would have been left", it is the disposition by the deceased's free will, but when they are regarded as "those identified with heirs-at-law", it is the expansion of blood-relations. The latter, then, is "to be locked up in the modern law without being expected to develop any further and is rather to be reduced." It must be said that great significance and danger inherent in this institution lie in the fact that these two views are confused, though they should not be. Furthermore, the new types of heirs actually make their appearance, and they are similar to the selected heirs under the old institution who had a close connection with ritual succession.

It has long been pointed out that the words "specially related persons" and "appropriateness" provided for in general terms in Article 958–3 are in danger of being unduly enlarged and misused, because their interpretation and application are entirely in the hands of the family courts. As has been seen in the present article the ambiguity of the concepts of these words seems to have rather rapidly widened the range of specially related persons and made liberal the interpretation of appropriateness. Under these circumstances have appeared the color of "succession by selection" and that of ritual succession tied strongly with the former. In other words, the principle of the modern law of succession limits the range of heirs-at-law to the relatives very close to a deceased and completely denies the idea of "succession by selection" which was then the means for the succession of "a house" and enabled also non-relatives to be successors. It has been confirmed, however, that the institution of distributing residuary estate to specially related persons plays exactly a role similar to the old "succession by selection". In concert with it the situation has been brought about that ritual succession appears in making use of this institution. It is indeed noteworthy that, in spite of the circumstances that the concept of ritual succession is to begin with incompatible with the modern law of succession and should be denied to be incorporated in it, it is tied up with the succession of property and comes to the scene with, so to speak, a good cause of the distribution of residuary estate to specially related persons. As was referred to above the cases are abundant that those who conduct the funeral of the deceased and performed the religious rites for him are made specially related persons. It can be imagined that there are not a few instances that the relationship of a person with the deceased during the latter's lifetime is transferred to make him conduct the funeral. In spite of the opposition from scholars, however, the

judgements of courts tend to look upon this point and do not take any negative attitude toward the relations after death. Thus the tendency of ritual succession seems to be accelerated.

It will be true that this institution gave a helping hand to certain people. Fundamentally, however, the reform of the institution of succession or will must first be intended. While fruitful solution can be expected by making use of this institution, viz., the distribution of residuary estate, it cannot be denied that some evil practices will possibly be present. In this sense this institution is exactly a two-bladed sword and is strongly desired to be applied prudently in the future.