## 研究結果報告書

日本は現在、家族の多様化と流動化が進展している一方、人口の高齢化が進み、世界一の長寿・高齢大国となっている。結果として家族内の財産承継、すなわち相続もまた、自然に社会の変化と共に変わりつつある。台湾を含む東アジア諸国においても日本に類似する人口・家族形態の変貌が見らており、先んじて超高齢社会に突入した日本の、これに対応する相続法における判例と学説は、他の高齢化進展中の国々にとって参照する価値を有する貴重なものと考えられる。

本研究はこの文脈において、注目すべき日本法の進展を二点提示しておきたい。まず高齢化に伴い介護の問題が顕在化しており、たたためでない子の間に不平等が生じたたけの面倒をみた子により多い遺産を承継させるべきという「扶養相の財産がある。そこで昭和55(1980)年に高齢分の財産が新設され、相続人が被相続人に療養看護により被相続人の財産のがまたは増加に特別な寄与をした場合に、相続法では本制度によりの維持または増加に特別な。次に、相続法でも、年老いた配側をみた子にが確実に増加になる。次に、は自分の面倒をみた子にが確実に増加いる。とれに従い、遺言意思、処分の効果、遺留分との関係等、いる。それに従い、遺言意思、処分の効果、遺留分との関係等、いる遺言法の充実も進んでいる。

現在の台湾社会の高齢化と家族連帯の弛緩の傾向が日本に類似しているのに鑑み、相続法上の対応として、寄与分制度の導入と遺言法の再検討は、十分ありうる方向であるといえよう。なお、具体的に法律を解釈・適用する際に、他の法制度(例えば、物権変動の要件、遺産共有の形態)との整合性も全般的に考えなければならないとされ、この点を今後の研究課題としたい。

## 研究成果の公表について(予定も含む)

口頭発表 (題名・発表者名・会議名・日時・場所等)

- 1.[英語] Sieh-chuen Huang. The Transformation of Family and Inheritance in East Asia. In *ALIN* (Asia Legal Information Network) International Conference, September 28, 2011, 1st Conference Room of College of Law, NTU.
- 2. [中国語] 黄詩淳,高齡社會與繼承法,「1990年代後社會變遷與民法修訂及適用」 學術研討會(一) 身分法與物權法,2011年10月7日,臺灣大學法律學院霖澤館3樓 多媒體教室。
- 3. 黄詩淳、台湾における社会の変遷と家族法、流通経済大学法学部開設10周年記念・学術研究会、2011年11月5日、流通経済大学法学部。

論文 (題名・発表者名・論文掲載誌・掲載時期等)

- 1.[中国語] 黄詩淳, 遺產繼承之圖像與原理解析 ,《臺大法學論叢》,40卷4期(2011年12月),頁2185-2247。
- 2. 黄詩淳、台湾における障害者・高齢者支援の信託、実践成年後見41号(2012年4月)95~102頁。

書籍 (題名・著者名・出版社・発行時期等)

## COMPLETION REPORT

By the increasing diversity and mobility on family structure and population aging, Japan becomes a country with the most aging population in the world. The transfer of wealth within family, that is, inheritance, also varies in accordance with the changes in Japanese society. Since the population and family structure in East Asian countries, including Taiwan, starts to show similar trend as that in Japan, the cases and legal theori es regarding inheritance in Japan may provide us with valuable experiences and hints.

This study mentions two points to be taken into consideration in Japanese Law. Firstly, with population aging, the care of elders becomes an inevitably heavy burden to their children. Hence, it is not difficult to understand that the idea claiming the child who exerts more efforts on the care of parents should be entitled to a greater portion of the inheritance may gain more supports gradually. As a result, contributory portion is admitted in Japanese Civil Code in 1980. Namely, if one of the heirs has made a special contribution to the maintenance or increase of the decedent's property through the provision of nursing or other means, such contribution will be paid back upon division of the estate. Secondly, in order to protect surviving spouse or show gratitude to the child who exerts the most efforts on nursing care, more and more elders choose to draft wills in which the estate is divided by rules different from default intestate rules. Therefore, issues such as mental capacity, the effect of wills, the conflicts between wills and reserved portion, began to attract scholars' attention in Japan.

Since Taiwan appears the same aging and family diversification as Japan, this research concludes that the introduction of contributory portion and reconsideration on testament will be significant to Taiwan. Indeed, there are differences between property and inheritance laws in Japan and Taiwan. Thus, new

rules and theories under Taiwanese law should be carefully designed, and further study on details will be required.

Verbal Presentation (Date, Venue, Name of Conference, Title of Presentatio

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- 1. Sieh-chuen Huang. The Transformation of Family and Inheritance in Ea
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- 2. Sieh-chuen Huang. Aged Soceity and Inheritance. In *Social Change after* 1990s and the Revision of Civil Code Conference: in the Fields of Family Law and Property, October 7, 2011, Multimedia Conference Room of Colleg e of Law, NTU.
- 3. Sieh-chuen Huang. Social Change and Family Law in Taiwan. In *the Me morial Speech of 10<sup>th</sup> Anniversary of Faculty of Law,* November 5, 2011, R yutsu Keizai University.

Thesis (Name of Journal and its Date, Title and Author of Thesis, etc.)

- 1. Huang, Sieh-chuen (2011), An Analysis on the Images and Principles of Succession, 40 National Taiwan University Law Journal. 2185-2247.
- 2. Huang, Sieh-chuen (2012), Trusts Supporting Handicapped and Elders in Taiwan, 40 Practical Guardianship. 95-102.

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