

# *Research on the Conditions and Qualifications for Adopted and Stepchildren to Inherit*

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**Abstract:** The acquisition and qualification of adopted children and stepchildren is a special type of inheritance issue. The Adoption Law of the People's Republic of China stipulates that adopted children refer to children adopted by adoptive parents or adoptive mothers and adoptive fathers, while children born to a husband and his ex-wife or a wife and her ex-husband are called stepchildren. The relationship between stepparents and children is a non-blood relationship formed due to the remarriage of the father or mother. Both of these kinship relationships are one of the more common family relationships in our daily lives, but due to their particularity in blood relationships, there are many disputes about the acquisition of inheritance, qualification identification, inheritance order, etc. This is also a relationship that requires special attention when handling the notarization of inheritance rights.

## **1. Introduction**

The right of inheritance is a basic right granted by the state to citizens. It is the right of the heir to obtain the estate of the deceased according to the law. When an inheritance dispute arises, the notarization of the right of inheritance is the public guarantee of this right. The state notary agency will review the application of the parties to prove which parties have the right to inherit the estate of the deceased, in accordance with relevant legal provisions, and prove the legality and authenticity of the parties' inheritance activities. According to Article 5 of my country's "Inheritance Law": After the inheritance begins, it shall be handled in accordance with statutory inheritance; if there is a will, it shall be handled in accordance with the will inheritance or bequest; if there is a bequest support agreement, it shall be handled in accordance with the agreement. The notary public must strictly review and verify the materials submitted by the parties and determine the identity of those who inherit the private property of the deceased during his lifetime. Among all the heirs, the status of adopted children and stepchildren is relatively special. The determination of their inheritance rights requires the notary public to review them carefully and compare the similarities and differences between the two carefully. The acquisition and qualification of adopted children and stepchildren is a special type of inheritance issue. The Adoption Law of the People's Republic of China stipulates that adopted children refer to children adopted by adoptive parents or adoptive mothers and adoptive fathers, while children born to a husband and his ex-wife or a wife and her ex-husband are called stepchildren. The relationship between stepparents and children is a non-blood relationship

formed due to the remarriage of the father or mother. Both of these kinship relationships are one of the more common family relationships in our daily lives, but due to their particularity in blood relationships, there are many disputes about the acquisition of inheritance, qualification determination, inheritance order, etc. This is also a relationship that needs special attention when handling inheritance rights notarization. Article 10 of the Inheritance Law of China stipulates that the children referred to as the first order in the statutory inheritance order include legitimate children, illegitimate children, adopted children and stepchildren with support relationships. From this we can see that both adopted children and stepchildren can be the first-order heirs in statutory inheritance in the legal provisions. But in real life, adopted children and stepchildren have different specific obligations and rights, and the acquisition and qualification of inheritance rights have different actual results in different cases. The following two cases can well reflect the eligibility determination of adopted children and stepchildren to obtain inheritance.

## **2. Confirmation of the identity of adopted children and stepchildren as the first-order statutory heirs in the recognition of inheritance**

### (1) Case 1

A man named Fan, who lived in the city center, owned a factory in a bee factory. He and his wife had been married for several years but had not been able to have children, so the couple adopted a son. When their son was 5 years old, they adopted a girl from an orphanage. The four of them lived a happy family. Fan's two children married and had children when they grew up. Unfortunately, Fan's adopted son was paralyzed in an accident, and Fan died of illness several years later. As for the inheritance left by Fan, Fan's adopted daughter and grandson were at a stalemate, and both claimed to inherit Fan's factory. [1]

### (2) Case 2

The case was about a dispute over inheritance of property by stepchildren. Jiang was a cadre who had moved south from Shandong to Shaoxing in his early years and was a medical worker. In his hometown, Shandong Province, Jiang and his wife had a son and a daughter. After moving south, his wife died early. And when his daughter was three years old, Jiang married Wu, whom he met in Shaoxing, and gave birth to seven daughters. Twenty years later, the children born to Jiang and his ex-wife have grown up and have each formed their own families. After Jiang's death, his current wife Wu bought a property in the city center. Now that Wu has passed away due to illness, Wu's seven daughters have all claimed to inherit the property under Wu's name. [2]

In the first case, the parties are a son and a daughter adopted by Mr. Fan and his wife. According to Article 15 of China's "Adoption Law", adoption shall be registered with the civil affairs department of the people's government at or above the county level. The adoption relationship is established from the date of registration. From the date of the establishment of the adoption relationship, the rights and obligations between adoptive parents and adopted children shall be subject to the provisions of the law on the relationship between parents and children. The rights and obligations between adopted children and their biological parents and other close relatives are eliminated due to the establishment of the adoption relationship. From this, we can conclude that the rights and obligations of adopted children are equivalent to those of biological parents and children, that is, the rights and obligations of Mr. Fan and his adopted children are equivalent to those of his biological father and children. For Mr. Fan's estate, even if his adopted daughter has no blood relationship with Mr. Fan, the law stipulates that Mr. Fan's adopted daughter is the first-order statutory heir of the estate, and Mr. Fan's grandson is the second-order statutory heir. In terms of estate inheritance, adopted children are the first-order statutory heirs equivalent to biological children. According to the legal presumption of succession, the heirs who should be given priority

should be adopted children. From the second case, we can know that after Jiang's ex-wife passed away, the children born to Jiang lived with Jiang and his wife Wu. According to Article 27 of China's Marriage Law, the rights and obligations between stepfathers or stepmothers and stepchildren raised and educated by them shall be subject to the relevant provisions of this law on the relationship between parents and children. From this, we can determine that when a foster relationship has been formed between stepparents and their children, the rights and obligations of both parties are exactly the same as those between biological parents and children. In case 2, the son and daughter born to Jiang and his ex-wife were both under 18 years old when Jiang remarried. They lived with Wu for a period of time and were taken care of by Wu for a period of time. Therefore, Wu formed a foster relationship with them, and they have the same rights as those between biological parents and children. Therefore, in handling the dispute over Wu's estate, the son and daughter born to Jiang and his ex-wife have the same inheritance qualifications as Wu's seven biological daughters. They should all be regarded as first-order heirs.

It is not difficult to find that in the above two cases, although the conditions for their establishment are different, both adopted children and stepchildren can become the first-order heirs of inheritance in the legal provisions. If the two parties form an adoption relationship, then the adopted children will have the right of inheritance. Similarly, if the two parties form a foster relationship, then the stepchildren will also have the right of inheritance. However, if the children of both parents are adults and have the ability to live independently when they remarry, then there will be no foster relationship between the two parties, and the stepchildren will not have the right of inheritance. In addition, adopted children and stepchildren are not necessarily limited to inheriting the inheritance of their adoptive parents and stepparents in terms of the acquisition and qualification of the inheritance. According to Article 19 of the "Opinions on the Inheritance Law", if the adopted person has fulfilled the obligation to support the adoptive parents and has provided more support to the biological parents, in addition to inheriting the inheritance of the adoptive parents in accordance with Article 10 of the Inheritance Law, he can also inherit the appropriate inheritance of the biological parents in accordance with Article 14 of the Inheritance Law. And Article 21 of the "Opinions on the Inheritance Law" stipulates that stepchildren can inherit the inheritance of their stepparents and their biological parents at the same time. The two do not conflict and do not affect each other. According to the above laws and regulations, we can conclude that in the acquisition and recognition of inheritance, for the inheritance of biological parents, adopted children can only inherit the inheritance of biological parents appropriately after they have fulfilled more of their support obligations to their biological parents or with the consent of their biological parents. In the inheritance of biological parents' inheritance, stepchildren will not be affected or restricted. They can inherit the inheritance in full and are the first-order heirs of their biological parents' inheritance.

### **3. Determination of the inheritance rights of adopted children and stepchildren in succession by subrogation**

In succession by subrogation, a common inheritance relationship in daily life, the law also makes corresponding provisions for the acquisition of inheritance rights by adopted children and stepchildren. Whether it is the biological children of adopted children or the biological children of stepchildren who have formed a foster relationship, they can exercise the right of succession by subrogation; as for the biological children of the deceased, their adopted children can also obtain the qualification of succession by subrogation; and the adopted children of the adopted children of the deceased can also be substituted. Among the stepchildren, if the stepchildren of the deceased have formed a foster relationship with the deceased, then the adopted children of the stepchildren can also have the qualification of succession by subrogation, and they can have the right to inherit the

share that their parents should inherit. If we take the case 1 in the above text as an example, we can get that if Fan's adopted son dies before Fan due to illness, then the inheritance share that should belong to Fan's adopted son should be inherited by his adopted son's biological son. Although Fan's adopted daughter is the first-order heir, because after the death of the adopted son, his biological son has the right of succession by subrogation, he will be the first-order heir together with Fan's adopted daughter. In succession by subrogation, our country's laws stipulate that the methods of obtaining inheritance rights and determining qualifications for stepchildren and adopted children who have formed a support relationship are the same, and they both have the right of succession by subrogation.

#### **4. Situations in which adopted children and stepchildren lose their inheritance rights**

Adopted children and stepchildren have the right to inherit the estate of both parents, but the law stipulates that under certain circumstances, the inheritance rights of adopted children and stepchildren may also be lost and disqualified. The behavior stipulated in Article 1,125 of the Civil Code of the People's Republic of China, regardless of whether the parents and children are related by blood, will definitely lose the qualification to inherit the estate as long as it is violated. As for the conditions for the loss of inheritance qualifications of adopted children and stepchildren, our country's laws also have other provisions. If the adoption relationship between the adoptive parents and the adopted children has been terminated, then regardless of whether the adopted children are adults, their inheritance rights with the adoptive parents will be immediately eliminated, but at the same time, their inheritance rights with their biological parents will be restored automatically. According to laws and regulations, the adoption relationship between the adoptive parents and the adopted children has been terminated, but if the adoptive parents have lost their ability to work and the adopted children have fulfilled their obligation to support the adoptive parents, after the adoptive parents who have severed the adoption relationship have passed away, the adopted children can be given appropriate care when the estate is divided. It is also possible to give appropriate care when the estate is divided, but this type of property division no longer falls within the scope of inheritance and acquisition of the estate. The inheritance of estate between stepparents and stepchildren is related to the support relationship. According to Chinese law, in a divorce, if one of the stepparents clearly states that he will not continue to support the stepchild, it means that the support relationship between the stepchild and the stepparent should be regarded as from then on, and the agreement will be terminated. This means that from this moment on, when the stepparent passes away, the stepchild has terminated the support relationship with the stepparent. At this time, if the stepchild claims the statutory inheritance of the stepparent's estate on the grounds of "stepchildren with support relationship" stipulated in the inheritance law, the People's Court of China will not support it. From this we can see that the support relationship is a prerequisite for stepchildren to obtain estate and obtain inheritance qualifications. Even if the child and his parents have formed a support relationship before, if the support relationship and the kinship relationship have been terminated when the inheritance occurs, then the stepchild will lose the right to inherit the stepparent's estate. The following cases can help us better understand this situation. Case 3: When the stepfather and the stepson no longer live together after the divorce, can they have the right of inheritance?[3] In this case, the plaintiff's attorney argued that the stepfather and the stepson did have a foster relationship and a fictitious blood relationship, but the stepson no longer lived with the stepfather before he came of age, and after the divorce of the stepparents, the stepson and the stepfather had little contact. In fact, the blood relationship had been severed long ago, and after the stepson came of age, he did not fulfill any obligation to support or take care of his stepfather. Therefore, it can be determined that the foster relationship between the stepfather and the

stepson had already ended, and the stepson had not fulfilled his obligation to support. Therefore, the lawyer concluded that when the inheritance occurred in this case, there was no foster relationship between the two parties in the legal sense. In this case, the stepson should not have the right of inheritance. In the final judgment, the court also adopted the opinion of the plaintiff's attorney and supported all the plaintiff's claims in the judgment. From this case, we can clearly see that the support relationship is an important factor in whether one can be qualified to inherit the step-parents' estate. In addition, this case also provides us with another direction for expansion and thinking dimension. The support relationship should not be one-way, just the support of parents for their children. In the future, the support of children for their parents should also be taken into consideration. If children are directly supported for a short period of time but do not fulfill their support obligations, then whether they are adopted children or step-children, their inheritance rights and qualifications should be subject to scrutiny.

## **5. The way to reasonably determine the eligibility and circumstances of inheritance**

In the family inheritance affairs, the qualification of inheritance is a crucial part. Among them, the maintenance relationship identification of adopted children and stepchildren is particularly critical, because it involves the confirmation of their legal inheritance rights. However, in real life, the legal status of adopted children and stepchildren and their supporting relationship with their parents are often dynamic, and traditional identification methods may be difficult to fully meet the actual needs[4]. Therefore, it is necessary to introduce dynamic system theory as a new perspective and methodology basis. Dynamic system theory emphasizes the interaction and influence among the various components of the whole system, which is especially suitable for analyzing complex and diversified family relations. In the identification of foster children and stepchildren, dynamic system theory can help us to understand the role change and emotional development of foster children and stepchildren in the family more comprehensively[5].

The role of dynamic systems theory in family relations should not be underestimated. The family is a highly dynamic and complex system, and the relationships between family members change over time. In such cases, traditional static identification methods may not adequately reflect the true relationship between adopted and stepchildren and their parents. Dynamic system theory can help us to better grasp this process of change, and help us to accurately grasp the status and support relationship of adopted children and stepchildren in the family.

In practice, the application of dynamic system theory also brings a new perspective and methodological basis for the identification of inheritance qualification. The core concept of dynamic systems theory emphasizes the interaction and linkage between the elements within the system, which is of great significance to our understanding of the inheritance rights of adopted children and stepchildren[6]. In the legal community, we can use the dynamic systems theory to look at the relationship between foster children and stepchildren and parents and the identification of inheritance rights, so as to provide a more reasonable and comprehensive solution.

Based on the perspective of dynamic system theory, we can also put forward some suggestions for law reform. For example, more flexible and diversified criteria for the identification of inheritance rights can be designed in response to the dynamic changes in the maintenance relationship of foster children and stepchildren to better protect their legitimate rights and interests. In addition, the application research and practice of dynamic system theory in inheritance affairs should be strengthened to promote a more just and objective inheritance identification practice.

In general, dynamic system theory provides a new perspective and methodological basis for the identification of foster child and stepchild maintenance relationship and inheritance right. In legal practice, we should learn from the idea of dynamic system theory to bring new ideas and

opportunities for inheritance affairs, so as to promote the fairness and justice of family inheritance affairs. It is hoped that there will be more research and practice on the application of dynamic systems theory in this field in the future, which will bring more positive changes to inheritance affairs.

## **6. Differences in inheritance legislation and practice in different countries**

The legislation and practice on inheritance rights of adopted children and stepchildren differ greatly in different legal systems and countries. Different countries have different standards for the legal status of adopted children and stepchildren and their supporting relationship with their parents, which leads to significant differences in the protection of rights in terms of inheritance rights[7].

In some civil law countries, such as France and Germany, there are certain guarantees for the inheritance rights of adopted children and stepchildren. In these countries, the inheritance rights of adopted children and stepchildren are usually protected through statutory succession and testamentary succession. Under legal succession, adopted children and stepchildren can enjoy a certain degree of inheritance rights according to the law, but usually subject to restrictions, such as limits on the share of legal inheritance. Under the testamentary succession method, parents can determine the inheritance share of adopted children and stepchildren through the will, which is more flexible. In contrast, in some common law countries, such as the United Kingdom and the United States, the inheritance rights of adopted children and stepchildren are relatively limited. In these countries, only legal children are generally entitled to full succession rights, and adopted and stepchildren usually need to secure their succession rights through a will or family agreement. Because the common law system pays more attention to the principle of testamentary freedom, the protection of inheritance rights of adopted children and stepchildren is relatively less, and more emphasis is placed on the embodiment of individual will. In addition, in East Asia, such as China, Japan and South Korea, there are also some differences in the protection of the inheritance rights of adopted children and stepchildren. In these countries, family values and the authority of elders are often valued, so the inheritance rights of adopted children and stepchildren are also defined according to family circumstances and traditional customs, and may sometimes be influenced by the attitudes and opinions of family members.

On the whole, there are great differences in the legislation and practice of the inheritance right of adopted children and stepchildren between different legal systems and countries. In civil law countries, the inheritance rights of adopted children and stepchildren are usually protected to a certain extent, while in common law countries, more attention is paid to the principle of freedom of will and the embodiment of individual will. In East Asia, the emphasis is more on family values and traditional customs. These differences not only reflect the different legal traditions and cultural backgrounds of countries, but also bring challenges to the protection of the inheritance rights of adopted children and stepchildren. More cross-country comparisons and discussions are needed to promote more just and reasonable legal systems and practices.

## **7. Conclusion**

The inheritance and qualification of adopted children and stepchildren are common inheritance issues in our daily lives. Whether they have the qualification of the first-order statutory heirs to inherit the estate, or the rights and application of succession by subrogation, whether adopted children and stepchildren can inherit the estate of their biological parents, and the inability to inherit after losing the adoption relationship and the raising relationship, and the author believes that supporting parents should be considered in the consideration of inheritance and inheritance qualification. Various factors affecting family life and family status, the background of family

members and the extent to which parents and children get along should be fully considered. We should conduct a comprehensive analysis, and make clear and unified standards for inheritance and qualification.

## References

- [1] Wu Xiaofang. *Application of Law* [M]. Legal Publishing House. 2010.
- [2] Zhang Yang. *Insurance Era* [M]. Commercial Press. 2018.
- [3] The Ministry of Justice issued a case for lawyers' work guidance - Civil Judgment No. Ji 0207 Minchu 1 of the People's Court of Fengnan District, Tangshan City, 2020.
- [4] Li Na. *Identification of Inheritors' Qualifications in Inheritance* [J]. *Reference of Middle School Political Teaching*, 2011, (08):37-38.
- [5] Xue Kailei. *Determination of common heir enroach on inheritance* [D]. East China university of political science and law, 2021.
- [6] Zhang Jiquan. *Research on the provisions of China's property inheritance Law and inheritance qualification* [J]. *Guangdong Sericulture*, 2017, 51(03):99-100.
- [7] Ren Fangyuan. *Comparison of marital inheritance rights between China and Foreign countries and improvement of Chinese legislation* [J]. *Legal Review*, 2015,(21):52+51.