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## Comparative Research on China and Taiwan's Legal Systems: From the View of the Agent Right of Daily Household Matters

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### Abstract

The agent right of household matters is one of an important aspect of personal rights and also a personal interest that cannot be ignored. As early as in late Qing dynasty, Chinese legal workers had paid attention on the agent right of household matters. Related legislations can be found in Civil Law Draft of Qing Dynasty (Family Chapter) and the Civil Law Draft of the Republic of China. Due to the social traditions at that time, these laws just stipulated wife's agent right but not the husband's. Until in the 1930 Civil Law issued by Nanking National Government, the provisions governing spouses' rights were transplanted from foreign civil laws and the system of agent right of household matters was first time established. However, because China followed Soviet's legal mode after the founding of the state, the agent right of household matters was replaced by marital property regime. Ever since that time Taiwan and Chinese mainland's legal provisions on this right differs. The main aim of this paper is to provide some useful research for settling continuous disputes in modern society through comparative study on China and Taiwan's agent right of household matters legislation emphasis, subjects, limitations, and burdens.

**Key words:** China; Taiwan; Spouse; Agent right

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### INTRODUCTION

People's daily life is full of trivial things. In order to reduce unnecessary troubles, husband or wife may make decisions to establish a legal relationship with a third person alone. Such kind of behavior in most countries is recognized as the agent right of household matters.

### 1. OVERVIEW OF THE AGENT RIGHT OF HOUSEHOLD MATTERS

#### 1.1 Origin of the Agent Right of Household Matters

The agent right of household matters is an ancient legal regime which derives from Roman law and gets recognition by most Western countries later on. In early Roman society, the civil law of the Roman state provides that man has the right to control his wife after getting married while woman loses her independent personality at the mean time. The wife cannot carry out legal behaviors independently and also does not have independent property.

Due to continuous economic development in Justinian period, husband, the head of a family, cannot do anything for the family by himself due to time and experience limits. Such situation has created living space for commission and agency system. In order to meet the needs of economic development, ancient Roman judges established many kinds of just claims through legislation so that to resolve conflicts between parents, family members, or slaves and the third person.

Since modern times, due to the promotion of feminism, the status of women gradually increased, more and more women are involved in work, and the equality between men and women in the family has become increasingly

obvious. Along with social progress, every country has been improving legislations to gradually give wife the same rights as husbands in dealing with household matters and makes the spouses as daily household matters' agents.

In ancient China, as a result of the feudal society's pursuit of the Confucianism, the relationship between the husband and the wife is dominated by the husband, the husband is everything of the wife, all things should be given priority to the husband, and the wife shall not defy her husband. The wife does not have independent personality and property after marriage and the wife and the husband are recognized as a unit at that time. But in Chinese people's habits and customs, the husband and wife exercise as each other's housework agency to deal with a third person is not an exception. Its official recognition by legal norms is relatively late. For example, the Draft of Qing Dynasty Civil Law (Relatives) and Beiyang government's China Civil Law Draft both give provisions on the agent right of household matters. However, the agent right in the two drafts is only limited to the Wife's agent right for the husband. Only in 1930, the Nanking government first truly established the agent right of daily household matters in its Civil Code (Relatives).

At the beginning of the founding of the People's Republic of China everything is waiting for established and recovering. Because China and the Soviet Union are all socialist countries at that time, the national conditions of the two countries are very similar. Since the Soviet Union was in the leading position in international environment at that time, after comprehensive considerations, China has chosen in mainland China to abolish the current civil code. At this point, the agent right of daily housework matters only exists in Taiwan. China Mainland area followed the Soviet Union's marital property system instead of the agent right of daily household matters regime.

## 1.2 Definition of the Agent Right of Daily Household Matters

The agent right of daily household matters, in theory, should be part of the conjugal rights. Many studies have been made on its definition in China and all of them can generally be divided into two types: one point of view thinks that the agent right of daily household matters means when the husband or the wife makes certain legal behavior with a third party in daily household matters, they can be each other's agent and shall be jointly responsible for the debt happened in daily household matters. The other point of view thinks that the legal behaviors made by one party of the spouses with a third party shall be recognized as the spouses' common intention and the spouses must be liable for the debt created by such behavior. The difference between the two points of views is whether the agent behavior can be recognized as common intention of the spouses.

Article 1003 Paragraph 1 of the Taiwan Civil Code stipulates: "in daily household matters, the husband and the wife act as agents for each other." Therefore, it can be seen that Taiwan Civil Code explicitly recognizes the agent right of the husband or the wife in dealing with daily household matters as one of the agency rights.

The common understanding on the agent right of household matters in China mainland theoretical field is that it belongs to the agency right not a common intention of the spouses.

In China mainland legal system, Article 17 Paragraph 2 of 2001 Marriage Law provides: "Husband and wife shall enjoy equal rights to the disposition of their jointly possessed property." Further explanation on Article 17 Paragraph 2 of the 2001 Marriage Law can be found in Article 17 Paragraph 1 of the Judicial Interpretations on Marriage Law (Part 1) by the Supreme People's Court that "the husband and the wife shall enjoy equal rights to the disposition of their jointly possessed property. Any party of the spouses has the right to dispose their jointly possessed property due to daily household matters." The above rules are all about the affiliation, management and use, interests, disposal, and responsibilities of spouses' jointly possessed property. The agent right of household matters is a system about whether the legal relationship between the husband or the wife in daily housework matters establishes and effective. The relation of the two aspects is the martial property regime is the foundation and reflection of the agent right of daily household matters and the agent right of daily household matters is the content of martial property regime. They both have the attribute of property right and personality right.

In the history of China's marriage law, Article 24 of 1950 Marriage Law provides:

Divorce shall be granted if husband and wife both desire it. Both parties shall apply to the marriage registration office for divorce. The marriage registration office, after clearly establishing that divorce is desired by both parties and that appropriate arrangements have been made for the care of any children and the disposition of property, shall issue the divorce certificates without delay.

The 1950 Marriage Law is established on the basis of common general marital property system, so the husband's and wife's common debts shall be paid by their common property. The agent right of daily household matters does not have its value of existence.

1980 amended Marriage Law add the agreed husband's and wife's property system comparing to the 1950 Marriage Law and also stipulates that when there is no agreement between the spouses, statutory property regime shall be applied. At that time, the agreed property system was only applied in a few families and the disputes related to such system are even fewer, therefore, there is no space for the application of the agent right of daily household matters.

Because there is no rule governing conjugal rights in 2001 Marriage Law, the agent right of daily household matters is still in study. However, with the development of economics, there are more and more cases happened in the field of the agent right of daily household matters. Due to the lack of such regime in China mainland, we can only use spouses' community property regime instead. Compared to previous laws, the amended 2001 Marriage Law gives regulations in Article 17 about spouses' community property, Article 18 individual property of the spouses, and Article 19 agreed spouses' property. But we cannot deduce the legal scope of spouses' community property. All resolutions used according to marital property system for settling legal relationship between the spouses and the third party in daily household matters cannot be used to identify spouses' community property. Therefore, such disputes do not have clear legal foundations. On the contrary, the agent right of daily household matters in Taiwan Civil Code is a clear provision stipulating that the husband and the wife shall be each other's agent in such circumstances and the debt caused by their agent behaviors must be bear jointly by the spouses.

### 1.3 Nature of the Agent Right of Household Matters

The agent right of household matters is established on the foundation of legal marriage. Civil law countries usually give the husband and wife the right to act as each other's agent in the form of statute laws. Although such statute laws cannot be found in common law countries, the foundation of the agent right of household matters could be found out in their cases. All in all, no matter in civil law countries or in common law countries, the rules governing the agent right of household matters are all in the scope of marriage law which cannot be mixed up with traditional agency system in contract law. There are mainly the following three theories in academic field:

#### 1.3.1 Statutory Agency Theory

Scholars supporting statutory agency theory think spouses are made by legal marriage. Two independent individuals' personality has become a unit. One party of the unit acts as the other party's agent in daily household matters just because the agent right he or she has is given by laws. Therefore, he or she holds the same position as statutory agency. Representative countries for such theory are Germany and Switzerland.

#### 1.3.2 Special Agency Theory

Special agency theory thinks the agent right of daily household matters is not a common agency but a special one. The particularity of such agency lies in its subject, application scope, and legal consequences, etc. Some scholars in China mainland support this theory and so does the author of this paper.

#### 1.3.3 Apparent Agency Theory

The apparent agency theory thinks the husband or the wife does not have the right to represent each other to do daily household matters. However, due to the reason of protecting the third party's interests, when the husband or the wife establishes certain legal relationship with the third party in daily household matters, such agent behavior is recognized as having the same effect as authorized agency.

## 2. COMPARISON BETWEEN THE AGENT RIGHT OF DAILY HOUSEHOLD MATTERS AND THE AGENT RIGHT OF CHINESE CONTRACT LAW

The agent right of daily household matters in Taiwan civil law remains blank in Chinese mainland's legislation. However, since it is very similar with the agent right in China's contract law, the paper compares the two systems in the following part so that to get a better understanding on the differences between them. Article 63 Paragraph 2 of the General Principles of the Civil Law of the People's Republic of China provides: "An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency."

### 2.1 Comparative Analysis of the Application Scope of the Agent Right of Daily Household Matters and the Agent Right in Contract Law

Article 1003 Paragraph 1 of the Civil Code of Taiwan regulates: "in daily household matters, the husband and the wife act as agents for each other." That is to say, the scope of the agent right of daily household matters is daily housework and routines. However, there are no detailed examples listed in the Civil Code of Taiwan. Taiwanese legal scholar Shi Shangkuan thought that:

Daily household matters include everything needed by juveniles and spouses' daily lives. Buying foods, electricity, clothes, healthcare, (proper) amusement, medicine, children's teaching, furniture, hiring housemaid, giving gifts to friends and relatives, buying papers and magazines, and so on are all included.

The application scope of the agent right in China mainland's Contract Law can be found in Article 63(2) of the General Principles of the Civil Law of the People's Republic of China that "an agent shall perform civil juristic acts in the principal's name within the scope of the power of agency." Article 64(2) the General Principles of the Civil Law of the People's Republic of China provides:

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

According to Article 67 of the General Principles of the Civil Law of the People's Republic of China, it can be reversely deduced that a principal can appoint an agent to do anything except illegal behaviors and the principal has autonomy of will. In civil law filed, statutory agent's scope of rights basically equals to the principal's right scope. There is no clear stipulation regulating appointed agent's agent right's application scope but the difference between an appointed agent and an entrusted agent is the cause of the agent: the previous one is made through court appointment or related unites' appointment and the later is authorized by nature person or legal person via laws. There is no difference between the two agent rights. Except illegal behavior the principal can arbitrarily authorize the scope of agents.

It is always thought by the agent right of daily household matters regime that in order to prevent abuse of the right, the scope of agent right of daily household matters should be limited. The advantage for doing this is to maintain stability for the family and to increase trading efficiency and security. Generally speaking, the following three types of matters are inappropriate to be included in the agent right of daily household matters.

First, deal with large amount of spouses' community property. Because dealing with large amount of spouses' community property may influence spouses' interests as well as the children's and the wife's or the husband's parents' interests. Large amount of community property disposal may cause the large loss of family property and harm the spouses' feelings or even creates barriers between them if the dealing party lacks of experience or knowledge. Once damage is made, it may take many years for a family to recover. Therefore, to deal with large amount of community property should be taken good care of and that is the reason why it is not included in the scope of the agent right of daily household matters.

Second, deal with spouse's personal matters. Legal behavior which contains strict personal nature is connected with human body. Therefore, such behavior cannot be transferred or inherited and it can be exercised alone without the other party's intention in family life. Thus, it should not be incorporated into the agent right of daily household matters.

Third, adoption behaviors. According to law, whether parents of legitimate children, illegitimate children, stepchildren, or adopted children shall have the obligation to raise underage children. Once the adoption relationship is set up, it cannot be easily changed no matter what the motive of adopting other people's children. Or once the parents decide to give their children to other people for adoption, the original rights and obligations between the children and the birth parents are eliminated as long as the adoption relation established. Since children is irreplaceable, if one party of spouses can make decision on his or her own, it may cause great spiritual damage to the other party and even money cannot remedy such

damage. Therefore, for the reason of cautious attitude, it is normally considered not be included in the scope of the agent rights of daily household matters.

## **2.2 Comparative Analysis on the Constitutive Elements of the Agent Right of Daily Household Matters and the Agent Right in Contract Law**

The agent right of daily household matters in Taiwan Civil Code is based on legal marriage while the agency system in Chinese mainland is based on authorized behaviors or laws. The agent right of daily household matters in Taiwan Civil Code stipulates special subjects who must be the husband or the wife. Article 63 of the General Principles of the Civil Law of the People's Republic of China regulates: "Citizens and legal persons may perform civil juristic acts through agents." The subjects do not have to be limited between husband and wife. Also Article 12 of the General Principles of the Civil Law of the People's Republic of China regulates:

A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

It means in China mainland, minors above 10 years old are nature person with limited capacity for civil conduct and cannot be recognized as agents.

## **2.3 Comparative Analysis of Agent Behaviors' Legal Consequences**

The agent right of daily household matters in Taiwan Civil Code is established for protecting the third party's interest. It stipulates that the husband or the wife can be each other's agent in daily household matters and makes agreement with the third party so that to set up legal relationships. And the debt caused shall be borne by the husband and the wife jointly. While in the General Principles of the Civil Law of the People's Republic of China, Article 63(2) provides: "The principal shall bear civil liability for the agent's acts of agency." Article 67 provides: "If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable." That is to say, in mainland China the consequences of agent behaviors are usually taken by the principals except the agent behavior is illegal.

Article 1003 Paragraph 2 of the Taiwan Civil Code provides: "Where one of the parties abuses the foresaid right of agency, the other party may restrict it, but such restriction cannot be set up against any bona fide third party." From which we can see, Taiwan Civil Code thinks that the agent right of daily household matters cannot exceed necessary scope or the other party can restrict it. However, there is no provision stipulating the responsibility of such abuse or the degree of the



responsibility. Article 66 of the General Principles of the Civil Law of the People's Republic of China regulates: "The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. If a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given." When the agent party act exceeds its authorization by the principal: if the principal recognized afterwards, the principal shall bear the legal consequences, or if the principal refuse to recognize the behavior of the agent, then the agent shall take the legal consequences.

#### **2.4 Comparative Analysis on the Elimination of Agent Rights**

The agent right of daily household matters is a supporting system which appears for meet the requirement of the husband's or the wife's daily household matters. It is

commonly recognized that once the spouses separate, the agent right of household matters cannot be applied. Or due to diseases, mental, or physical situation, one of the spouses cannot understand or comply with the boundary of agency right, that is to say, in the situation that either party of the spouses is incapable of agency right, the agent right of daily household matters dies out. There are usually three conditions that the agency right wipes out in China mainland: a. the agent finishes the agent task; b. the agent loses its qualification; c. the principal dies or loses his or her active ability.

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