

準公同共有關係裡之權利行使 ——以債權與股份表決權為例

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摘 要

若系爭準公同共有權利乃民法第 828 條第二項規定所指權利，則應適用該條規定，而非逕自適用民法第 828 條第三項規定，以避免應以全體準公同共有人之同意，始得行使權利，這項權利行使限制所造成的難以行使權利的困境。關於系爭權利行使，應依民法第 831 條規定準用第 828 條第二項或第三項規定？這則法律解釋適用，應追求符合相應於民法共有之團體規範意義關連之法律解釋。

在例如繼承人因繼承而準公同共有股份權利之情形，繼承人基於股東權利，出席股東會，行使表決權，這項表決權行使，應依民法第 831 條準用民法第 828 條第二項規定，以全體準公同共有股份權人成立分管契約為之，不能成立分管契約者，則得以多數決為之。

例如準公同共有債權，其給付不可分者，應準用民法第 821 條規定本文與但書規定，使各準公同共有債權人雖均得請求債務人為給付，但僅得請求

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債務人向全體準共同共有債權人為給付；其給付可分者，應依民法第 831 條準用第 828 條第二項、第 821 條本文與但書規定，使各準共同共有債權人雖均得單獨請求債務人給付，但僅得請求債務人向全體準共同共有債權人為給付。

關鍵詞：準共有、準共同共有債權、準共同共有股份權利、可分債權、不可分債權

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The Exercise of Rights in Quasi Relation in Common — Taking Obligation and Right of Stock Voting as Examples

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Abstract

If the right in dispute is the right referred to in article 828, item 2 of the Civil Law, that provision shall be applied first, rather than directly applying of article 828, item 3 of the Civil Law, so to avoid that quasi owners in common shall exercise their rights only with the consent of the all quasi owners in common. Regarding the exercise of disputed rights, should article 831, 828, item 2 or 3 be applied? This application should pursue a legal interpretation that is consistent with the group meaning of co-owners of the Civil Law.

For example, in the case where heirs are quasi owners of share rights in common due to inheritance, the heirs attend the shareholders meeting and exercise the right to vote, this voting right shall be exercised in accordance with article 831, 828 item 2 of the Civil Law under the establishing of the division contract, and if the division contract cannot be established, it shall be decided by a majority.

For example, if the quasi obligation in common is inseparable, the whole ar-

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article 821 of the Civil Law shall be applied. And then each quasi creditor in common can request the debtor for payment, but can only request the debtor to pay to all the quasi creditors in common. If separable, article 831, 828, item 2 and whole article 821 of the Civil Law shall be applied. Thus, each quasi creditors in common can request the debtor to pay, but only request the debtor to pay all the quasi creditors in common.

Keywords: Quasi Co-Ownership, Quasi Obligation in Common, Quasi Right of Shareholder in Common, Dividable Obligation, Indivisible Obligation