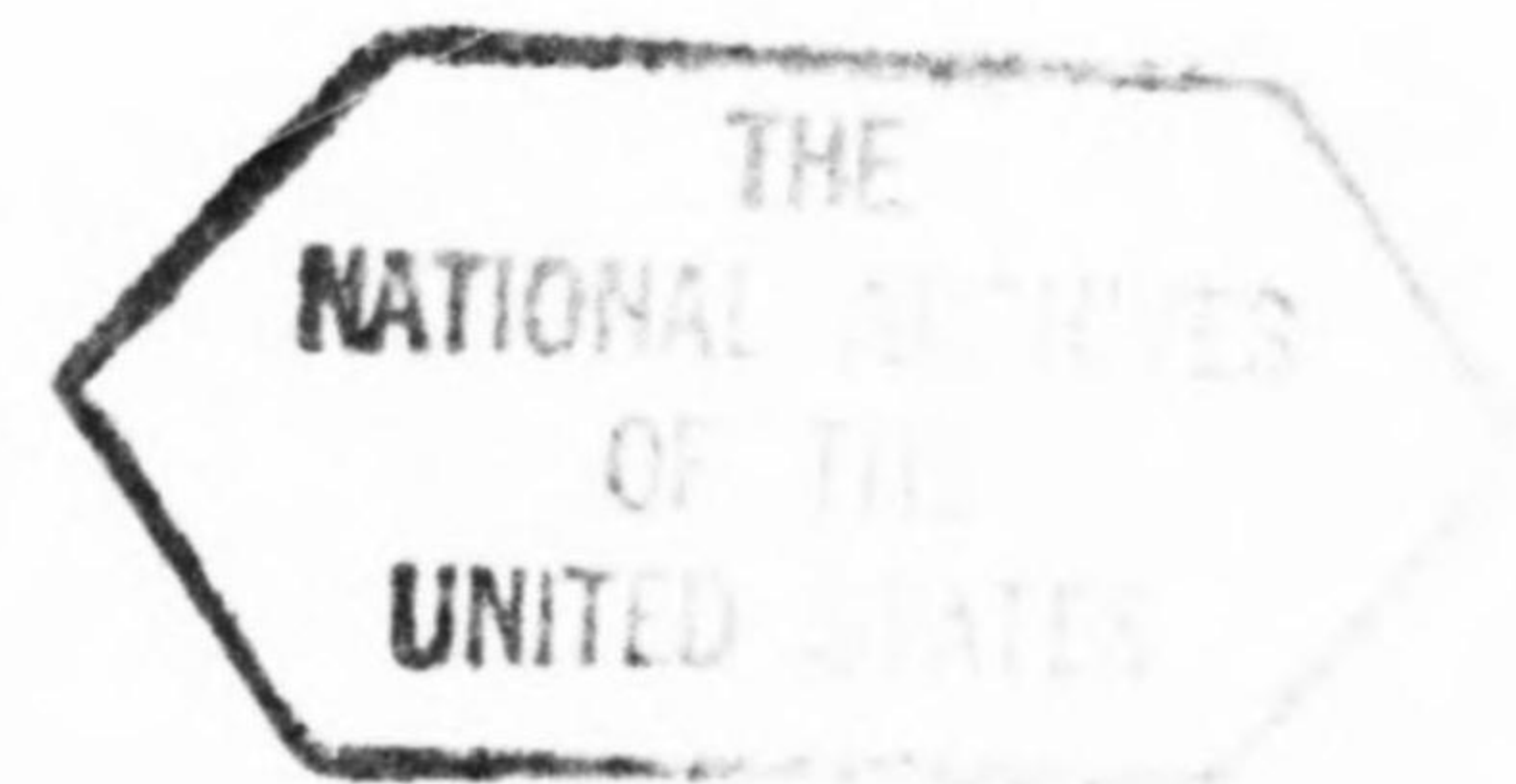


GHQ/SCAP Records(RG 331)
Description of contents



- (1) Box no. 2582
- (2) Folder title/number: (38)
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SOCIAL AFFAIRS BUREAU
MINISTRY OF WELFARE

Sha-otsu-hatsu No. 87

TO: Each Prefectural Governor

FROM: Chief, Social Affairs Bureau, Ministry of Welfare

SUBJECT: Handling of Liability for Support under the Daily Life Security Law

In view of the fundamental intent of the Daily Life Security Law it is a matter of course that before providing necessary assistance in the application of this law every effort should be made to help the client receive not only contributions from the persons under duty to furnish support as provided for in the Civil Code but also such aid as offered voluntarily from his friends or relatives who feel themselves responsible morally or socially for support.

There are, however, so marked variations in its handlings (some are too severe, and some are too lenient) according to locality that we have attempted to unify its handlings as stated in the following. Accordingly, you are requested to take actions to fully familiarize the personnel concerned such as the mayors of city, town or village, social welfare secretaries and Minsei-iin, etc. with the purport and method of its handling.

1. Liability for support under the Civil Code.

The liability for support as provided for in the Civil Code is a legal obligation to be fulfilled by the responsible person, it is, however, desirable from the nature of liability for support to avoid, if possible, an immediate resort to laws regarding it as a legal problem. Hence, your efforts should be directed to such direction as to settle the case in question in an amicable way under a perfect and satisfactory agreement between the parties concerned with respect to the fulfillment of the duty to furnish support.

2. Investigations on the order of the persons under duty to furnish support.

(1) First, investigations should be made as to the husband and wife, lineal relatives by blood and brothers and sisters (Civil Code, Article 730, 752 or 877) who are legally responsible for support.

(2) Second, investigation should be made as to the relatives within the third degree of relationship other than those mentioned in the preceding paragraph who are subject to the judgement rendered by the Family Court in respect to the obligations for support to be imposed on.

3. Methods of investigating the financial capacity for support.

(1) In making investigations, social welfare secretaries or Minsei-iin in charge should make efforts to visit directly the person under duty to furnish support to have an accurate understanding of the actual situation of his resources and living.

(2) In case when the person under duty to furnish support is living in a distant place, making it difficult to depend upon (1), investigations should be made either directly by sending a letter requesting information as to his personal affairs or securing the cooperation of the mayor of city, town or village in which he resides. In the above-mentioned letter to be addressed to the person under duty support it is to be stated clearly that his support will be necessary because the person entitled to support is in needy circumstances, necessitating assistance under the Daily Life Security Law, and he may express any hope as to the extent and mode of support, and in the letter requesting investigations from the mayor of city, town or village in which the person under duty to furnish support resides, it is to be stated that if, on making investigations into the living conditions of the person under duty for support, he is deemed to have financial capacity for support, the mayor of city, town or village will make efforts to urge the person under duty for support to support his relatives in need.

Inclosure No. 2

(3) When the mayor of city, town or village in which the person under duty to furnish support resides is asked to give information upon the person under duty to support who is living in his city, town or village, he should, needless to say, make every effort in response to the purpose of the request and should not fail to give a reply, regardless of its results.

4. Judgement of the capacity for support.

(1) If, in the case of husband or wife, minor and his parents, the person under duty to support makes a living on a higher level than that made by the minimum living cost provided for in the amount of standard for Living Aid, he should be judged to have a capacity for support in respect to the portion exceeding the level.

(2) With respect to the lineal relatives by blood, other than a minor and his parents, namely, brothers and sisters and the relatives within the third degree of relationship on whom the adjudgement by the Family Court may impose a duty to furnish support, they should be judged to have a capacity for support, unless such a living as is deemed befitting to them from social common sense is impaired. In particular, care should be taken, so that an unreasonable judgement will not be enforced to sacrifice their living planning in the present and the future.

5. Performance of furnishing support.

(1) Even in the case in which the person under duty to support has been judged to have a capacity for support according to 4, it is studiously avoided that the extent and mode of support is determined only from the side of one party, and imposed on the person under duty to support. Rather, measures will be taken to reach a perfect agreement between the parties concerned, and to determine concretely the extent of support as well as a method as to whether either any means for living will be provided or the person entitled to support will be taken in and cared for and, if possible, to make the person under duty to support fulfill his responsibility without fail by exchanging written documents each other.

(2) The person under duty to furnish support should fully be informed of the effect that at any time when there has been a change in his living condition to make it difficult for him to fulfill his duty for support even after the extent and mode of support imposed upon him has been determined according to (1), he is entitled to consult with the mayor of city, town or village as to the modification of the extent and mode of support already determined. At the same time the mayor of city, town or village should make efforts to get a full understanding of the real circumstances of the person under duty to support, and in case his circumstances has changed, such arrangements as to modify without delay the extent and mode of support according to his capacity for support should be made to enable the person under duty to support to perform a duty of support with certainty and continuously.

(3) (i) When the person under duty to furnish support who has a capacity for support will not perform his duty to support, even though every possible means has been employed, measures should be taken to make the person entitled to support appeal to the Family Court for adjudgement without delay, and determine, in respect to the husband and wife, lineal relatives by blood, and brothers and sisters, the amount of money and method for support to be fulfilled, and, in respect to other relatives within the third degree, the extent and mode of furnishing support, and thus to make the person under duty to support assume his responsibility.

In this case, if the person entitled to support wishes, the social welfare secretary to whom the person entitled to support has entrusted his appeal case and who has obtained the permission of the Family Court concerned in accordance with the provisions of Article 5 of the Regulations for Adjudgment of Domestic relations may, as his proxy, take proceedings for appeal according to the circumstances.

(ii) In making such a handling, consideration will be given to such a method as to provide, first, necessary assistance in parallel with the process of taking the procedures stated in (i), and then to collect, in accordance with the provisions of Article 77 of the Law, the expenses required for assistance within the scope of the amount of the expenses for which the person under duty to support is responsible, after the decision by the Family Court has been made.

(iii) In case the person in need of assistance has refused to appeal to the Family Court for adjudgement without any justifiable reason, the amount of the contribution which the person under duty to furnish support can supposedly afford for support may be deducted from the living assistance grant, provided, however, that such measures will be limited to the case in which the recipient has not complied with a written request officially issued by the mayor of city, town or village, instructing him to appeal to the Family Court.

(4) The person entitled to support should be encouraged to make him understand fully that a problem as to the fulfillment of the duty to support is essentially that existing between the recipient and his sole dependent feeling on the social welfare secretary or Minsei-in and have an active contact with the person under duty to support to ensure the fulfillment of liability for support. In this case, he should be made to have a full understanding of the standpoint of the person under duty to support whose willingness for support is to be appreciated wholeheartedly.

6. Handling of making the person under duty to support repay the expenses

(1) In collecting the expenses required for assistance from the person under duty to support in accordance with Article 77 of the Law, it must be ascertained whether or not the conditions listed below will be met by the person under duty to furnish support:

(i) At the time when the person entitled to support was receiving assistance, the person under duty to support was a legally responsible person for support.

(ii) At the time when assistance was provided, the person under duty to support has a capacity for support.

(iii) At present the person under duty to support has a capacity of repaying the expenses incurred.

(2) With respect to a concrete method of collecting the expenses, its handling should be made in accordance with the provisions of Article 23 of the Enforcement Regulations at the Daily Life Security Law.

7. Contributions from those other than the person under duty to support.

In case a person is not a legally responsible person for support, but a person who is naturally supposed to be responsible for support from social common sense in view of the relationship existing between him and the recipient, the recipient should be encouraged to receive contributions from such a socially responsible person for support, and if necessary, this should be realized through good offices of the Social Welfare Secretary or Minsei-in in charge.

For Reference:

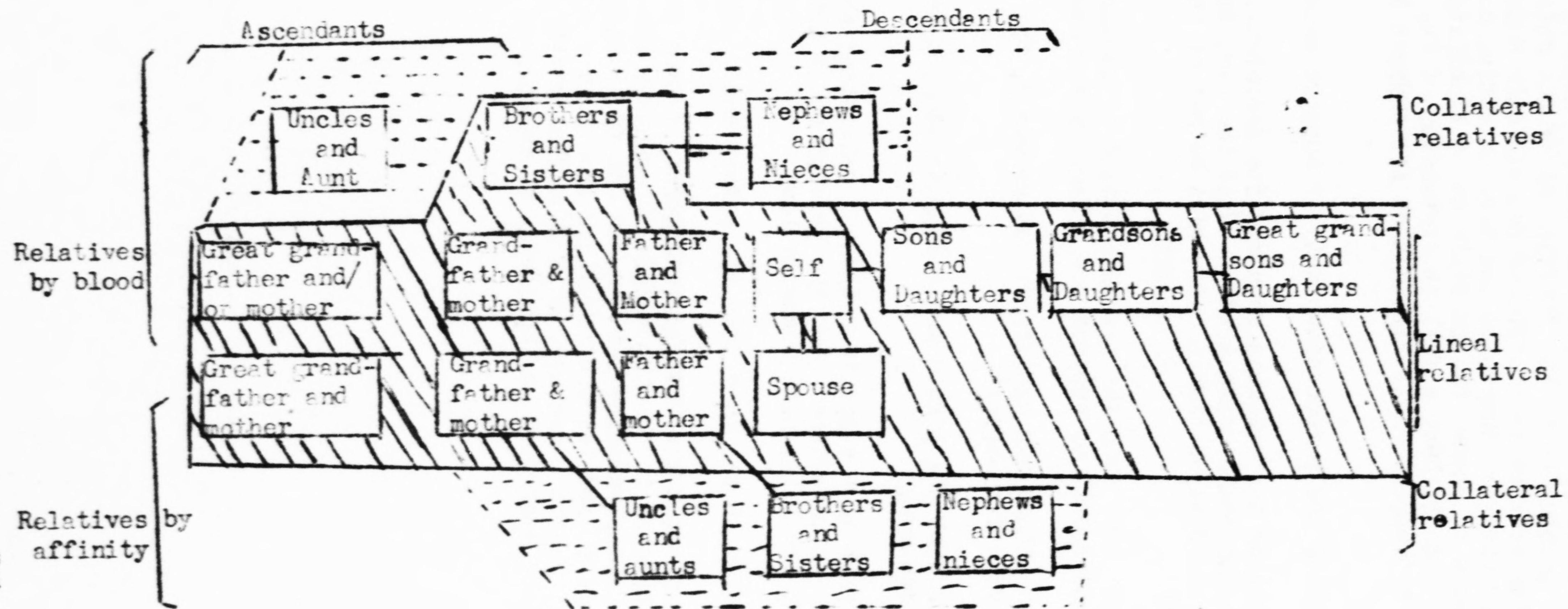
1. Chart illustrating the Degree of Relationship



Persons under duty to furnish support as provided by Para. 1 Art. 877 of the Civil Code.



Persons under duty to furnish support as provided by Para. 2, Art. 877 of the Civil Code



DECLASSIFIED E. O. 12065 SECTION 3-402 / RNDG NO. 175013

2. Interpretation of "brothers and sisters"

The theoretical interpretations of "brothers and sisters" referred to in Article 877 of the Civil Code are not necessarily definite, but the administration of the Daily Life Security Law will be in accordance with the following interpretation.

In this connection, the interpretation of "brothers and sisters" described in page 31 of Daily Life Security "One Hundred Questions and One Hundred Answers" will be corrected.

"Brothers and sisters" referred to in Article 877 of the Civil Code will not necessarily be interpreted to have a strict meaning of the children between the same father and the same mother, but will be interpreted to have a wide meaning as appearing in the provision to item (4) of Article 900 of the Civil Code. In other words, "brothers and sisters" include not only children from the same father and the same mother but also those from the different father and the same mother as well as the same father and the different mother, that is, children from father and mother, either of whom is the same, as specified in the following:

(1) Children between the same father and the same mother (a wife not legally married is also approved)

(2) Natural child of the foster-father or mother and adopted child. Adopted child of a father and that of a mother.

(3) Children between the same father and the different mother.

(i) Child of the former wife and child of the second wife both of whom come from the same father.

(ii) Legitimate child and illegitimate child as recognized legitimate by the father of the legitimate child.

(4) Children between the different father and the same mother.

(i) Illegitimate children born from the same mother, but coming from the different father.

(ii) Child of the former husband and child of the second husband whose family names are different.

(iii) Child brought by a wife and child born between the present husband and that wife.

The spouses of brothers and sisters are called brothers-in-law or sisters-in-law, but they are not "brothers and sisters". Relationship between a spouse and the other spouse's brother or sister is the relationship of the second degree of relatives by affinity, so liability for support does not arise between them. However, an adjudgement by the Family Court may impose liability for support upon them.

3. Contents of the Liability for Support

What is to be attended to in respect to the contents of liability for support is that the person entitled to support is not allowed to count the liability for support responsible for others in his own need. In other words, the contents of the liability for support which the person entitled to support can demand from the person under duty to furnish support is limited to the subsistence of the person entitled to support himself, and the person entitled to support is not allowed to demand the subsistence or schooling expenses of his wife or children. However, it is needless to say that there are cases in which a wife or child of the person entitled to support or demand support according to their respective degree of relationship apart from the person entitled to support.