

## **In the Name of the Father/Mother?: Wills in Division of Family Property in Qing-Taiwan**

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### **ABSTRACT**

Existing legal history research on division of family property in Taiwan focuses mainly on the Great Qing Legal Code (hereinafter, the Code) with the equal inheritance principle for succession by each son/sub-family. With reference not only to the Code but also historical data from wills in Qing-Taiwan and the *Tan-Hsin Archive*, this paper analyzed the role and impact of family elders' wills in the division of family properties. Firstly, the Code emphasized the elders' authority to teach, instruct and discipline the juniors. While the elders had the final say on how family properties were to be divided, the Code also upheld the principle of equal inheritance among all sons. Secondly, in contrast to allotment agreements made on the basis of consensus or consent among all (male) heirs, wills were drawn up purely in accordance with the elders' wishes and executed in the manner of "seniors dictate, juniors obey". Hence, in social practice, the elders' decisions had greater binding on asset allotment among heirs. Records of the *Tan-Hsin Archive* reveal that magistrates took wills seriously and had great respect for the elders' wishes, sometimes even overriding the equal inheritance principle. In addition, (widowed) grandmothers and mothers' wills and decisions were also influential in division of family property, indicating that women also had control over asset allotment in Qing-Taiwan. Overall, the legal order of property transfer in present-day Taiwan still upholds both the equal inheritance principle and the binding power of elders' will.

**Keywords:** Traditional Chinese Law, Qing-Taiwan, Wills, *Tan-Hsin Archives*, The Distribution of Family Property, Women, Property