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中国内地与澳门地区法定继承制度  
比较研究

A Comparison of Succession Law on Intestacy  
Between Chinese Mainland and Macao SAR

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## 内容摘要

继承法与一个国家或地区的政治、经济制度、文化传统等有着密切的联系，与每个婚姻家庭息息相关。继承制度关系到公民财产所有权的保护，继承法在社会生活中具有重要的地位和作用。澳门回归十年，中国内地与澳门之间的往来频繁，交流范围逐渐扩展，涉澳婚姻家庭关系日益增多，继承问题也日渐突出。中国内地与澳门地区的法律同具大陆法传统，但两地间存在着许多差异。中国内地与澳门地区各有独立的继承法律制度，其中既有相近相容的共同规则，又有不容讳言的差异。因此，比较研究中国内地与澳门地区两法域的继承法，不仅具有理论意义，同时深具实践价值。

本文除引言与结语外，一共包括三章。

第一章比较中国内地和澳门地区法定继承制度历史沿革，内容包括法定继承制度的概述、法定继承的概念和界定、历史背景与传统文化对两地继承立法的影响以及对两地法定继承制度立法背景的评析等。由于历史因素，澳门由祖国的一份子到屈从于葡萄牙殖民统治，最终又回归祖国，经历的三个阶段对澳门地区的法律体系产生了重要影响。因为历史变化，两地的传统文化迥然不同，基于立法背景的差异，两地继承立法的法律渊源也有所区别。

第二章两地法定继承制度基本内容的比较，这是本文的重点。本章较全面系统地论述了两地法定继承制度在法定继承的适用范围、法定继承人范围、法定继承人顺序以及代位继承方面的不同。笔者认为，内地的法定继承制度从范围和顺序上看都相对保守，而澳门的法定继承制度则相对进步，其中澳门将直系血亲卑亲属列为法定继承人的范围，体现了遗产继承中的公平与育幼的价值功能，更充分地发挥代位继承制度的作用。这一点值得内地法定继承制度在立法上借鉴。

第三章从原则切入，从立法司法、法律适用与冲突规范三个层面论述了两地法定继承制度产生冲突的原因，以及解决冲突的研究对策，从而突

破司法实践中面对法律适用冲突的难题，同时进一步维护了法定继承关系中当事人的权益。

本文的创新之处有二：一是从历史视角分析中国内地与澳门地区法定继承制度的背景、各自法定继承制度的历史演变；二是根据内地《继承法》与《澳门民法典》有关规定，比较分析两地法定继承制度的内容之异同，提出作者个人观点。

**关键词：**内地法定继承；澳门法定继承；立法差异；区际冲突；立法对策

## ABSTRACT

Succession is an important part of civil law. It not only has a close link with a country or region's political, economic systems and cultural traditions, but also closely related with each marriage and family. Because the succession system related to the protection of citizens' property rights, it plays an important role in social life.

It has been over a decade of Macao's return. As the accelerated contact and the gradual expansion of the scope of the exchange between the people of Mainland and Macao, more and more conjugal family relations in mainland relate with macanese. The question of succession among these people therefore has become increasingly important. Although the law of Mainland and Macao both belong to civil law system, there are still very different.

Mainland China and Macao have their own independent legal system of succession, which are similar and compatible with the common rules, but also exist undeniable differences. The comparative study of succession in these two jurisdictions between the Chinese mainland and Macao theoretical, it has significance and practical value.

This article includes preface, conclusion and three chapters.

Chapter one introduced two histories separately and the historical comparison briefly of the succession system's between the Chinese mainland and Macao.

The content includes three aspects, which are the overview of the succession system, the concept and definition of the intestacy, the effect of historical background and traditional culture on the succession legislation, as well as the analysis of the succession legislation's background. The three historical stages of Macao, Macao from a part of Mainland to under the portuguese colonial rule, eventually, return to the motherland, give an important



impact on the legal system in Macao. It is historical change that, the tradition culture between Mainland and Macao is particularly different. Basic on the different backgrounds, the source of these two succession legislation also have difference.

Chapter two focused the comparison of the succession system's basic components between the Chinese mainland and Macao. It is the main viewpoint of this article.

This chapter expound the scope and the order of legal heir, as well as the difference of the subrogation heir of the two areas in intestacy comprehensively and systematically. The author thinks that in terms of scope and order, the Mainland's succession system are relatively conservative, but Macao's is relatively progressive, in which Macao would lineal descendant heirs as the scope, reflects the equity and the value of nursery. It is more full to play the role of subrogation heir system. This is worth using for reference by the Mainland succession system.

Chapter three discussed the principles at the beginning. Then expound in three dimensions: legislative judiciary, application of law and conflict rules, to explain the reason and solution of the conflict in the succession between two areas.

By considering these aspect, the article try to find a way to resolve the problem of the conflict of law's application in judicial practice, and to further safeguard the legal rights of the parties in succession.

There are two innovations of this article. First, from the view of history, analyzing the background and the historical development of the succession system's between the Chinese mainland and Macao. Second, from the China's succession law and Macao Civil Law Code, analytic comparison the similarities and differences of succession system between two areas. And then, the author put forward some viewpoints.

**Key words:** Chinese mainland's Intestacy; Macao SAR's Intestacy;  
Legislation difference; Interregional conflict; Legislative countermeasure

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