

**THE MARRIAGE LAW IN THE PEOPLE'S REPUBLIC OF CHINA  
AND  
ITS EFFECT ON DIVORCE AS COMPARED WITH  
DIVORCE IN THE UNITED STATES OF AMERICA**

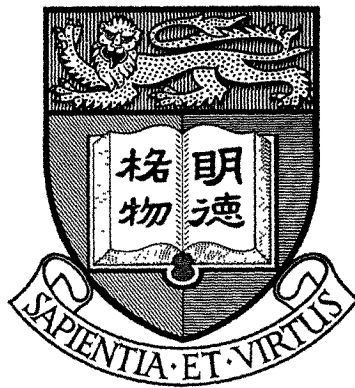
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The word Status may be usefully employed to construct a formula expressing the law of progress thus indicated, which, whatever be its value, seems to me to be sufficiently ascertained. All the forms of Status taken notice of in the Law of Persons were derived from, and to some extent are still coloured by, the powers and privileges anciently residing in the Family. If then we employ Status, agreeably with the usage of the best writers, to signify these personal conditions only, and avoid applying the term to such conditions as are the immediate or remote result of agreement, we may say that the movement of the progressive societies has hitherto been a movement from Status to Contract.

--Maine, Henry Sumner, Ancient Law, (1888)

The majority of relationships today, at least in western societies, are defined by contract rather than by status. In the United States one of the few remaining status relationships, certainly the bastion of status relationships, is the relationship formed by marriage. Marriage is unique among status relationships in that it is voluntarily entered by the parties, like a contract, although the parties are restricted in the negotiation of the contract's terms. However, once the contract is formed it loses the qualities of a contract and creates a status relationship the parties cannot dissolve without the approval of the state. The marriage and divorce laws in the U.S. vary from state to state, but the freedom to marry as well as to divorce is protected by the U.S. Constitution.

Freedom to marry and divorce is also protected in the People's Republic of China. The 1950 Marriage Law, accompanied by the law reforming land rights, was the first law promulgated in the PRC. The Marriage Law, updated in 1980, provides for marriage voluntarily entered by both parties, defines the marriage relationship, and provides for voluntary divorce.

On its face the law for contracting a marriage and for obtaining a divorce in the PRC appears very similar to the legal requirements for marriage and divorce in the U.S. In practice the bare legal proceeding for marriage is similar, but actual legal proceedings in divorce are very different. This paper discusses provisions in the PRC's 1980 Marriage Law (the Law) relating specifically to marriage and divorce, (the

provisions regarding family support obligations are beyond the scope of this paper). In addition to the general discussion of the Law, divorce conditions and practices in the PRC and the US are compared.

## I. The 1980 Marriage Law

To understand divorce conditions in a country it is important to understand the public policy behind divorce regulation. Understanding public policy requires a historical perspective of society's attitude toward divorce and a general familiarity with the history of marriage and divorce in the society. Unfortunately, such a broad focus is suitable for a book and neither time nor space allow discussion of these subjects here. Suffice it to say that the 1950 Marriage Law was promulgated to (a) fill the general legal void following the revolution and allow the new government to get firmer ground under its feet, and (b) break the loyalty directed toward traditional family groups and thereby break the power the clan traditionally held by directing this loyalty to the state. (See generally; Muller-Freienfels, "Soviet Family Law and Comparative Chinese Developments," in David Buxbaum, ed., Chinese Family Law and Social Change, pp. 323-34 [1978].)

The 1980 Law is generally the same as the 1950 Law. The additions made to the Law, those relevant to this paper's topic, reflect a more realistic attitude toward divorce, and a pragmatic approach to population control. The deletions were made in areas where it was believed incorrect feudalistic notions had already been corrected and regulation was unnecessary. (See; Wu Xinyu, Explanations on the Marriage Law (Revised Draft) 1980 speech.)

The Law begins with Chapter I, General Principle. Article 1 states that the Law

is the fundamental code governing marriage and family relations. This is consistent with other PRC codes. That the code is fundamental is significant because it means that the provisions will be general and further directives will be issued to supplement the law or change the direction of enforcement as the government deems necessary. The Law's purposes follow in articles 2 and 3. Articles 2 and 3, as well as article 4, emphasize that marriage is based on the free choice of the parties to the marriage. Articles 3 and 4 proscribe interference by third parties; article 3 also proscribes "mercenary marriage" and "the exaction of money or gifts in connection with marriage."

Traditionally marriages were arranged by the families often with the aid of third party match makers. Children could be betrothed at a tender age and girls in poor families often left their parents to grow up in their future husband's home. The betrothal arrangements included the payment of a bride price. Sometimes another payment was made at the actual time of the marriage. The bride's family was expected to reciprocate with a dowery. Although these practices have been repressed they still exist. In Anhui province six young people recently attempted suicide, four of them successfully, to avoid pre-arranged marriages. (South China Morning Post, 13 Sept. 1986.) The practices of extracting a payment for the bride and expecting a substantial dowery are reasserting themselves in the current Open Door economic environment. (See, Conroy, "Here Comes the Bride--There Goes the Money," Far Eastern Economic Review, 16 July, 1987.)

Another reappearing practice is bigamy which is prohibited in article 3. Bigamy has reappeared since men in rural areas have been allowed to take up jobs away from their homes. After time living by themselves and making higher wages the men drift into marrying again. (China Daily, 20 Aug. 1986.)

The efforts to alter traditional marriage practices continue into Chapter II of the Law, comprising articles 4 to 8, which deals specifically with the marriage contract. Article 5 requires that men be 22 and women 20 before contracting marriage. This raises the statutory age by two years from the 1950 Law and is the highest statutory age required for marriage in the world. Obviously before the Law many marriages were contracted by men and women younger than the new statutory age. Article 5 also encourages late childbirth.

The emphasis on late marriage and late childbirth in article 5 and other articles in the Law represent formal statutory efforts to limit the PRC's overwhelming population. These provisions are contrary to the tradition of large Chinese families. Large families were desirable to (a) continue the family line and provide for ancestor worship, as well as to (b) ensure an adequate number of sons to support the parents in their old age. The conflict between traditional desires and the Law has leads to violations of family planning regulations, estrangement of husbands from wives who bare female babies, and female infanticide.

Continuing through Chapter II, article 6 makes an unusually broad proscription of marriage between blood relatives, prohibiting marriage up to the third degree of relationship. It also proscribes marriage when one partner has any disease "regarded by medical science as rendering a person unfit for marriage." It is unclear what diseases this reaches, but leprosy is specifically mentioned and it could be presumed sexually transmitted diseases are included. There is potential in this provision for further controlling population growth by expanding the category of diseases rendering a person unfit for marriage.

The actual formation of the marriage contract is treated in article 7. A man and woman must simply register in person with the marriage registration office. If they

meet the requirements of the Law, registration will be granted and they will be issued a marriage certificate. They are legally married when they receive the certificate. Official policy, to avoid wasting resources that could be used to build the state, encourages limiting the marriage activities to the marriage registration and a small gathering afterward with sweets, tea, cigarettes, and friendly chat.

I interviewed a man who was married in 1972, during the cultural revolution. He described his marriage as follows: My wife and I went to the registration office. The official sat behind a desk. He asked my wife, "How old are you?" She said she was 26. He asked her if she loved me. She said she loved me. He asked if she really wanted to marry me and she said yes. Then he asked me how old I was. I said 40. He asked me if I loved her and if I really wanted to marry her. I said yes. He told us to wait for about five minutes and he would ask us again. We stood in front of the desk and he went away. He came back later and asked us the same questions again. We answered that we loved each other and we wanted to get married. He said, "Okay, you can come and get your marriage certificate tomorrow."

The man further recounted that after his marriage they had only 10 yuan to buy some tea, a couple of cartons of cigarettes and a few sweets. This marriage complying with government policy during a period of intense political pressure is a bleak contrast with the trend in marriages today. Marriages today often include elaborate feasts and gift giving. A survey conducted in Xian showed that marriage costs range from Rmb 800-4,500, with the average cost around Rmb 2,800, equal to about three years of a worker's wages. In Liaoning province, the most urbanised and industrialised, average costs are said to have reached about Rmb 8,500 (US \$2,284) equal to about nine years of an average worker's basic wage. To finance marriages all those involved in the marriage, the couple, their immediate and sometimes

extended family, usually save for several years and go into debt. The expenses have also led to theft and embezzlement. (Conroy, supra.) The government continues to speak out against the excesses but some of the most conspicuous violations of the government's policy are committed by government officials.

After the marriage has been registered, article 8, as well as recognizing the traditional practice of the woman becoming a member of the man's family, provides that the man may become a member of the woman's family. This regulation attempts to encourage equality of the sexes and alter the traditional practice that continues to foster male dominance and attitudes of male superiority. It also attempts to treat the traditional need for a male child, to provide for the parents in their old age and continue the family line, by making it possible to adopt a son-in-law into the family. Few cases of men joining their wife's family have been reported and it is difficult to imagine a one child family, with one son, ever countinancing the adoption of their son into his wife's family, thereby leaving themselves sonless.

Chapter III regulates family relations and Chapter IV of the Law, articles 24 to 33, is devoted to divorce. Articles 24 and 25 are the central divorce provisions. Article 24 treats bilateral divorce. When both parties desire a divorce they should go to the marriage registration office. After it is established that divorce is really desired by both parties and that measures have been taken for children and marital property they should be issued a divorce certificate. Even in the case of a mutual divorce the proceeding is not as simple as it may seem. Clearly the need to establish that divorce is really desired by both parties and that appropriate measures have been taken for children and property permits mediation to enter even a bilateral divorce. Mediation is more important in a unilateral divorce.

Article 25 provides that when one party insists on divorce, the organizations



concerned may try to effect a reconciliation. The organizations concerned are any conceivable organization the parties may have contact with. Concerned organizations are at least the parties' supervisors at work, some sort of neighborhood mediators, and official mediators. If the divorce is not granted the party unilaterally seeking divorce may appeal to the people's court. It is also possible to appeal directly to the people's court. The people's court working through lawyers, judges and neighborhood mediators, will also try to bring about a reconciliation. The 1980 Law makes a concession to cases when mediation has failed. The addition to the 1950 Law provides that in cases of complete alienation of mutual affection divorce should be granted.

The prevalence of mediation in divorce is distinctly Chinese. It reflects the traditional Confucian reluctance to resort to direct confrontation as well as the fact that China has never been a mobile society and the prospect of a lifetime of contact with a contentious individual fostered a conciliatory approach to dispute resolution. It also reflects the original PRC regime's distrust of law and the notion that formal dispute resolution protected only capitalist rights. The effect of mediation on divorce is treated below.

Articles 26 to 34 supplement the basic divorce provisions in articles 24 and 25. Article 26 provides that a spouse cannot divorce from a member of the armed forces on active service without the member of the armed forces' consent. This special protection for the marital interests of those in the military reflects the military background and experiences of most leading cadres in the PRC today. A similar special protection of marriage rights is provided for pregnant women.

Article 27 prohibits a divorce initiated by the husband when the wife is pregnant, or within one year after childbirth except when the people's court deems it

absolutely necessary to deal with the husband's divorce application. Given the strong bias toward preserving marriages it is difficult to imagine situations when the court would find the husband's application absolutely necessary. Article 28 further demonstrates the bias toward preserving marriages by providing that in the case of the remarriage of a previously divorced couple the marriage registration office should simply accept the application for remarriage.

Child custody is treated in article 28. After divorce the blood ties between parents and children continue. Both parents have the right and duty to rear and educate their children. There is a maternal preference for breast-fed infants, but after weaning the child both parties have a right to custody. In cases of custody dispute, mediation will certainly be used and disputes can ultimately be resolved by the people's court.

Provisions for children are continued in article 30. Article 30 distributes the burden of child support between the custodial and non-custodial parties. The parties are to negotiate a support agreement and failing to agree, support will be settled by the people's court. A child is not prevented from making further reasonable requests for support by any prior agreements or court decisions.

After legislating child custody and support the Law treats the other major divorce issue, marital property and spousal support. Articles 31, 32 and 33 as well as article 13 are relevant. Article 13 provides that property acquired during the period in which the couple is married is in the joint possession of both parties unless they provide otherwise. Article 31 provides that the disposal of the marital property is subject to agreement between the two parties. If they fail to agree division will be decided by the people's court, taking into consideration the actual state of the family property, and the rights and interests of the wife and children. According to article

32, debts jointly incurred should be paid with joint property. If the property is insufficient to pay the debts the parties should work out an agreement to repay and if they fail to agree the court will intervene. Debts acquired separately should be paid off by the party responsible. Finally, article 33 requires that one party render appropriate financial assistance if the other party has maintenance difficulties. The parties should agree on maintenance but if they cannot the people's court will make a judgement.

## II. The Substantive Divorce Law in the US and the PRC

Recognizing that the Law is merely a fundamental framework and that future supplemental directives could substantially alter the interpretation offered here--an interpretation admittedly influenced by US legal experience--it doesn't appear that the PRC's substantive divorce provisions are significantly different from general US divorce law. Consider the grounds for divorce and areas of major divorce conflict: child custody and child support, division of marital property and spousal support.

US substantive divorce law has changed significantly in the last twenty years. In respect of the basis for divorce, traditional grounds for divorce included adultery, physical abuse, great mental anguish, infertility before marriage, alcoholism, and incurable insanity, all forms of fault. Within the recent past the majority of US jurisdictions have legislatively or judicially recognized "no fault" divorce. No fault divorce recognizes that the traditional grounds for fault divorce are often merely symptoms of general marriage breakdown. As a result, in jurisdictions with legislative recognition of no fault divorce, divorce is granted in cases of "irreconcilable differences," "alienation of mutual affection," and "irreparable

breakdown." In other jurisdictions judges have recognized no fault divorce through broad interpretations of the fault based grounds of "mental cruelty" or "extreme cruelty." In plain English, divorce in the US will generally be granted when one or both parties to the marriage desire it. Broadly speaking then, the desire for divorce is the only required grounds for divorce in both the US and the PRC.

Another significant change in US divorce law are the rules of determining child custody. The overriding principle in determining who will have custody of a child is "the child's best interest." This is similar to the Law's mandate to grant custody when agreement cannot be reached "in accordance with the rights and interests of the child." To determine the child's best interest US courts must consider the circumstances of the parents. The Law requires a similar consideration.

Presumptions used in the US when considering the circumstances of the parents have evolved and changed. There has always been some kind of maternal bias. It was referred to as the "tender years" doctrine, recognizing a young child's need for nurturing. The tender years doctrine has been constitutional challenged as a violation of equal rights and in most jurisdictions the rule in determining child custody has become the "primary care taker" principle. That is, the child will go to the parent who has primarily taken care of it. Of course this principle has generally resulted in the mother taking custody. Similar to these US presumptions, the Law has "a guiding principle" requiring breast-fed infants to remain in the custody of the mother. It is probable that weaned young children will go to the mother. The result is that the rules for granting custody in disputed cases are substantial the same in the US and PRC.

Child custody is intimately related to child support. The only general principle in the US is that both parents have a duty to support their children. The results in

practice vary widely, but the usual scenario involves the mother with the custody of the children and the father with a child support obligation, (which is often difficult to enforce). The Law also establishes that both parents have a duty to maintain and educate their children. The resulting scenario in the PRC is usually similar to that in the US.

Conflict over marital finances shares the stage with conflict over offspring in divorce resolution. If a general principle of marital property could be extracted from US divorce jurisdictions it would be that both parties to a marriage have an interest in the property acquired during marriage. In some states the concept of community property provides that all property acquired is split 50/50 at divorce. Other states allow division of marital assets based on vague rules of equity that provide a judge's version of the appropriate split. The Law provides no specific provisions for property division. It merely provides that the property is in the joint possession of the parties, the "in possession" reflecting the socialist principle that some types of property cannot be owned. In cases where parties cannot reach agreement on property division it will be decided by the court and joint possession could either suggest a 50/50 split, or division governed by the judge's own equitable principles.

Further, in regards to spousal maintenance, the provisions for spousal maintenance in the Law, requiring one party to render appropriate financial assistance to the other when needed, is in substantial conformity with the more progressive jurisdictions in the US. The practice of requiring the male to pay alimony has disappeared with the women's movement and recognition of women in the workforce. Generally the progressive position is to require either spouse to pay for maintenance only if the maintenance is necessary. The actual results of the rule

are usually maintenance payments from the male that resemble alimony, although the period of payment can be limited. The result is probably similar in the PRC. The important thing is that in both countries either spouse may continue to have financial responsibility for the other, and the need for flexibility when determining the parties' future finances is recognized.

### III. The Procedural Divorce Laws in the US and the PRC

The substantive divorce law in the US and the PRC is in substantial conformity. The primary difference between divorce law in the US and the PRC is not substantive but procedural. Ultimate resolution of contested divorce is provided by a court in both countries. In both countries the resolution of the majority of divorces is accomplished by negotiation. However, the parties to the divorce are operating under very different alternatives to either a court resolved contested divorce or a negotiated settlement when they begin to pursue a divorce in the US and in the PRC. The alternative methods of realizing divorce available to the parties influences the resolution of the divorce however it is achieved. The differences between the adversary and mediated resolution of divorce can best be shown by providing examples of each.

Consider the fictitious, typical case (if there is a typical case) of Jon and Sue in the US. They have had a reasonable existence together for about 8 years but they are bored and believe that greener pastures exist beyond their marital walls. There have never been major negative incidents in the marriage. Because boredom does not seem a sufficient reason for divorce, even though in a truly no fault state it is sufficient, Jon looks for conflicts and becomes convinced that Sue likes to keep up with the Jones

and as a result is spending too much money. Sue is convinced that she is not a social climber but is trying to provide her family with a cultural life beyond the sports programs Jon is content to watch. She decides that Jon is a slob. They decide that they can amicably settle a mutual divorce.

Somewhere along the line to amicable settlement Jon realizes that he will be paying \$500 a month, after taxes, from the \$27,000 he grosses a year, in child support for children he will seldom see. Jon consults a lawyer who tells Jon that if Sue really wants custody of the children, as women generally do, a potential custody fight could provide a lever to lower the child support payments. Jon feverishly begins a campaign to establish a pattern of child care that would give him a claim for child custody. Sue, when she learns that Jon will ask for child custody, consults a lawyer and learns that judges grant fathers sole custody about 5 percent of the time and joint custody about 25 percent of the time. She is not reassured by the odds. Her attorney suggests she can improve the chances of keeping the children if she can sue for divorce on the basis of Jon's fault. She begins to look for fault.

When talk of divorce began Jon moved out of the house. After a few months alone he acquired a live-in lady friend, who is also in the process of getting a divorce. Sue cries adultery, which would make Jon an unfit custodian as well as give the court an unfavorable impression of him. Sue continues to scrutinize Jon's behavior looking for further faults Jon may have committed. Meanwhile, Jon continues to court their children, and after consultation with his attorney begins to look for a basis for a fault divorce in Sue's activities. The point being made is obvious. The adversary system of resolving divorce tends to produce true adversaries from people who may have been non-antagonistic. Further, as can be seen in case of Jon and Sue the "prospect of litigation distorts the lives of litigants in direct proportion to the

level of contention." (Neely, The Divorce Decision, [McGraw-Hill] 1984.)

"Court proceedings alienate most domestic litigants because emotion-charged human problems must be presented exclusively in terms of preexisting, abstract legal categories." (supra) Litigants are disappointed that they are not able to spill their guts. "Emotional satisfactions are often denied when complex personal relationships must be dissected so that the parts can be forced into a preconceived legal category." (supra) Finally, after the alienation of the parties and the dissatisfaction caused by having personal experience forced into legalize, the court is asked to do something it cannot do--namely, sort out what went wrong with a marriage and award benefits and punishments in keeping with relative degrees of fault.

The frustrations of a litigated divorce in the US lead to more assaults and threats directed toward family court judges than toward judges who preside over criminal proceedings. Richard Neely, an experienced US divorce lawyer, and a family court judge, has concluded that litigation is the most dangerous approach to getting a divorce. "[M]ediation at least provides superficial acceptance of a resolution, if not a grudging complete acceptance, because at least both parties feel they have been heard." (supra)

Mediation is the dominant means of dispute resolution in all civil PRC disputes. An idealized example of a mediated divorce settlement comes from the Beijing Review ( no. 7, 13 Feb. 1984, p.25). Zhang married Wang in 1964 and they had a boy and a girl. They often quarrelled because they were of different temperments. In 1979, Zhang became acquainted with a married woman, and their frequent contacts led to more quarrels between Zhang and Wang. Finally, they lived separately. In 1982 Zhang brought suit for divorce. Wang disagreed and asked the court for fair treatment.

After the case was accepted by the court, both parties appointed a lawyer.



Instead of pursuing the individual interests of their clients in court, the lawyers worked together and tried to reason with the two parties. The lawyers agreed that Zhang and Wang were married voluntarily, but the marriage was not well founded. They had no deep feelings for each other, and they quarrelled. The primary reason for divorce was Zhang's change of heart but they had not lived in harmony for a long time and it was likely their conflicts would continue.

There could be reconciliation or divorce. While there was little hope of reunion, the lawyers tried their utmost to mediate. The court and Zhang's lawyer tried to reason with the husband. During mediation, they tactfully pointed out his shortcoming and mistakes. They suggested he consider his son and daughter and the feelings of his wife who had been with him for nearly 20 years. The court and Wang's lawyer even took time to visit Zhang and Wang personally. The court and Zhang's lawyer encouraged Wang to take the initiative to be on good terms with her husband.

Both sides were touched by the consideration of the judges and lawyers. Zhang admitted his mistakes and Wang acknowledged her shortcomings. Because of their deep differences they could not agree to reunite. However, they became less antagonistic and were able to sit down and talk.

The lawyers began to mediate for divorce. They mainly spoke with Wang, asking her to consider the condition of her marriage. Even if the court decided on reconciliation, the conflicts would continue and there would be no happiness in the family. She finally came to understand that by opposing the divorce she was only hurting her self.

Once Wang agreed to the divorce, everything was settled smoothly, including who would look after the children and the division of property. Zhang made some

concessions to express his gratitude to the court and the lawyers. Both children stayed with their mother, so he gave Wang some money and bought her a television set.

The case was settled to the satisfaction of both the husband and wife. They thanked the judges and lawyers for their kindness and consideration.

This account of a mediated divorce obviously smooths over the rough edges that may have existed in settling the domestic dispute but it does provide a sense of objective contrast between a mediated divorce in the PRC and a litigated divorce in the US. Many of the problems areas of a contested divorce are illuminated, or at least treated more satisfactorily. But, mediated divorce is not without flaws.

The greatest flaw in the mediated divorce in the PRC is that the freedom of receiving a mediated divorce is illusory. First, if the parties are aware of the time that will be spent mediating their divorce the mere prospect of the ordeal may discourage an effort for divorce. Second, because even a successful effort at divorce takes so long to mediate the party desiring divorce really has no freedom to divorce. Third, because Chinese people tend to be conformists, the community nature of mediation, both from the number of people involved in the mediation, and the propaganda presented to a party trying to divorce, puts enormous pressure on the parties to preserve a marriage. Finally, even if someone hurdles the barriers of facing a long proceeding, and acting contrary to community opinion, the divorce, particularly in the case of a unilateral divorce, can be denied. The frustration generated by the difficulty of achieving a divorce has also led to violence in the PRC. Instead of directing the violence at judges, as in the US, the violence is usually directed at wives, children and lovers.

#### IV. Conclusion

In the end we are left with the unsatisfying result that neither divorces resolved under the specter of litigation in the US, nor divorces resolved by mediation in the PRC always achieve satisfactory results. The sad reality is that there is probably no way to completely satisfy all those affected by divorce no matter how the divorce is accomplished. There are elements of the US and PRC divorce proceedings that are effective and both jurisdictions could learn from the experience of the other. The PRC could recognize greater personal autonomy in divorce. The US could improve the amicable negotiating environment of divorce. But, neither system could make major injections of the divorce procedure from the other. The two divorce systems are the results of long cultural and historical heritages that can[not be changed so quickly.

## Appendix

Selected articles from The Marriage Law of the People's Republic of China adopted by the Fifth National People's Congress at Its Third Session on September 10, 1980, and put into effect from January 1, 1981.

### article 1

This Law is the fundamental code governing marriage and family relations.

### article 2

The marriage system based on the free choice of partners, on monogamy and on equal rights for the sexes, is put into effect.

The lawful rights and interests of women, children and the aged are protected.

Family planning is practised.

### article 3

Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage are prohibited. The exaction of money or gifts in connection with marriage is prohibited.

Bigamy is prohibited. Within the family maltreatment and desertion are prohibited.

## Chapter II Marriage Contract (articles 4 to 8)

### article 4

Marriage must be based upon the complete willingness of the two parties. Neither party shall use compulsion and no third party is allowed to interfere.

### article 5

No marriage shall be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth should be encouraged.

### article 6

Marriage is not permitted in any of the following circumstances:

(1) where the man and woman are lineal relatives by blood or collateral relatives by blood (up to the third degree of relationship); and

(2) where one party is suffering from leprosy, a cure not having been effected, or from any other disease which is regarded by medical science as rendering a person unfit for marriage.

article 7

Both the man and the woman desiring to contract a marriage shall register in person with the marriage registration office. If the proposed marriage is found to be in conformity with the provisions of this Law, registration shall be granted and a marriage certificate issued. The relationship of husband and wife is established when a marriage certificate is acquired.

article 8

After a marriage has been registered, the woman may become a member of the man's family, or the man may become a member of the woman's family, according to the agreed wishes of the two parties.

article 13

The property acquired during the period in which husband and wife are under contract of marriage is in the joint possession of the two parties unless they have agreed otherwise.

Husband and wife enjoy equal rights in the management of the property in their joint possession.

Chapter IV Divorce (articles 24 to 33)

article 24

Divorce is granted when husband and wife both desire it. Both parties should apply for divorce to the marriage registration office. The marriage registration office, after clearly establishing that divorce is desired by both parties and that appropriate measures have been taken for the care of any children and property, should issue the divorce certificate without delay.

article 25

When one party insists on divorce, the organizations concerned may try to effect a reconciliation, or the party may appeal directly to the people's court for divorce.

In dealing with a divorce case, the people's court should try to bring about a reconciliation between the parties. *In cases of complete alienation of mutual affection, and when mediation has failed, divorce should be granted.* ( addition to 1950 Code is in italics )

article 26

If the spouse of a member of the armed forces on active service insists on divorce, consent must be obtained from the member concerned.

article 27

The husband is not allowed to apply for a divorce when his wife is pregnant or within one year after the birth of a child. This restriction does not apply in the case of the wife applying for divorce, or when the people's court deems it absolutely necessary to agree to deal with a divorce application by the husband.

#### article 28

After divorce, if both parties desire to resume husband-and-wife relations, they should apply to the marriage registration office for a registration of remarriage. The marriage registration office should accept such a registration.

#### article 29

The blood ties between parents and children are not ended by the divorce of the parents. Whether the father or the mother has the custody of the children, they remain the children of both parties.

After divorce, both parents continue to have the right and duty to rear and educate their children.

The guiding principle after divorce is to allow the mother to have the custody of a breast-fed infant. If a dispute arises between the two parties over the guardianship of a child after weaning and agreement cannot be reached, the people's court should make a judgement in accordance with the rights and interests of the child and the circumstances of both parties.

#### article 30

If, after divorce, one party is given custody of a child, the other party is responsible for a part or all of the necessary cost of the maintenance and education of the child. The two parties should reach an agreement regarding the amount of the cost and the duration of its payment for such maintenance and education. If such an agreement is lacking, the people's court should make a judgement.

An agreement reached between parents or a judgement made by the people's court in connection with the cost of the maintenance and education of a child does not obstruct the child from making a reasonable request where necessary for either parent to increase the amount decided upon by agreement or by judicial decision.

#### article 31

In case of divorce, the disposal of the property in the joint possession of husband and wife is subject to agreement between the two parties. In cases where agreement cannot be reached, the people's court should make a judgement after taking into consideration the actual state of the family property and the rights and interests of the wife and the child or children.

#### article 32

In case of divorce, debts incurred jointly by husband and wife during the period of their married life should be paid off out of their joint property. In cases where such property is insufficient to pay off such debts, the two parties should work out an agreement with regard to the payment; if an agreement cannot be reached, the people's court should make a judgement. Debts incurred separately by the husband or

wife should be paid off by the party responsible.

article 33

In case of divorce, if one party has maintenance difficulties, the other party should render appropriate financial assistance. Both parties should work out an agreement with regard to the details; in case an agreement cannot be reached, the people's court should make a judgement.

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