

Chinese Family Law

Lihong ZHANG, Professor of Law
East China University of Political Science
and Law, Shanghai, China
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Concept of family

Family=»not only the core of Chinese society but also the basis entity of State

“State” (国家, guo jia) in Chinese
国 (guo, country) + 家 (jia, family)

Family law

1. Field and sources

Marriage law (2001), Adoption law (1998),
Inheritance Law (1985), General
Principles of Civil Law (1985)

Chinese Civil Code

(2017-general part; 2020, special part)

Confucianism

social structure:

individual=>family=>Clan=>State
(government)=>emperor

First, state, then family, last, yourself

先有国，后有家

Ambition of a right man?

Governing state, putting in order the family, creating the peace for the people under the heaven

治国齐家平天下

Family is the key unit for the property transaction, business and financial activities

Law of obligations and property law were
much less important than family law

Marriage and inheritance played crucial
role for any human being in Chinese
traditional society.

Man(Husband) was key figure in Chinese
traditional society

New Epoch of Family law

1949 founding of PRC

Communism=»equality between men and women

Planning family= 1970, (constitutional principle, 1982)=>2015 (loosen-up)

Field of family law

Marriage law (2001)

Inheritance law (1985)

Adoption law (1998)

Sources of Family Law

1. Constitutional Law, international law and treaties

2. Codified law:

General principles of Civil Law (1985)

Marriage law (2001), Inheritance law (1985),

Adoption law (1998)

Chinese civil Code (General Part, March 15, 2017, Special Part, May 26, 2020)

Structure of family law on Chinese Civil Code

- Book 5 in Chinese Civil Code

Chapter 1 General provisions 1040-1046

Chapter 2 Marriage 1046-1054

Chapter 3 family relationship 1055-1075

Chapter 4 divorce 1076-1092

Chapter 5 adoption 1093-1118

Chapter 6 Inheritance 1119-1163

4. Judicial interpretations

For example, marriage law (1980, modified 2001) has 4 judicial interpretations

1st JI, Dec 24, 2001, voidness, voidable marriage, *De facto* marriage right to visit children, tort liability

2nd Dec 25, 2003, donation before marriage, debts concluded by one spouse, division of property-IP

3rd July 4, 2011, correction on the defects of registration of marriage, DNA test, real property bought before the marriage, donation of real estate by the parents before the marriage, fructus resulting from personal property after marriage shall be a part of personal property

Jan 17, 2018, JI on Effectiveness of Debts concluded by one spouse

- 4. Administrative Law

Registration of marriage

Legalization of inheritance document
before the notary

▫ 5. usage

Ceremonial marriage and registration of marriage

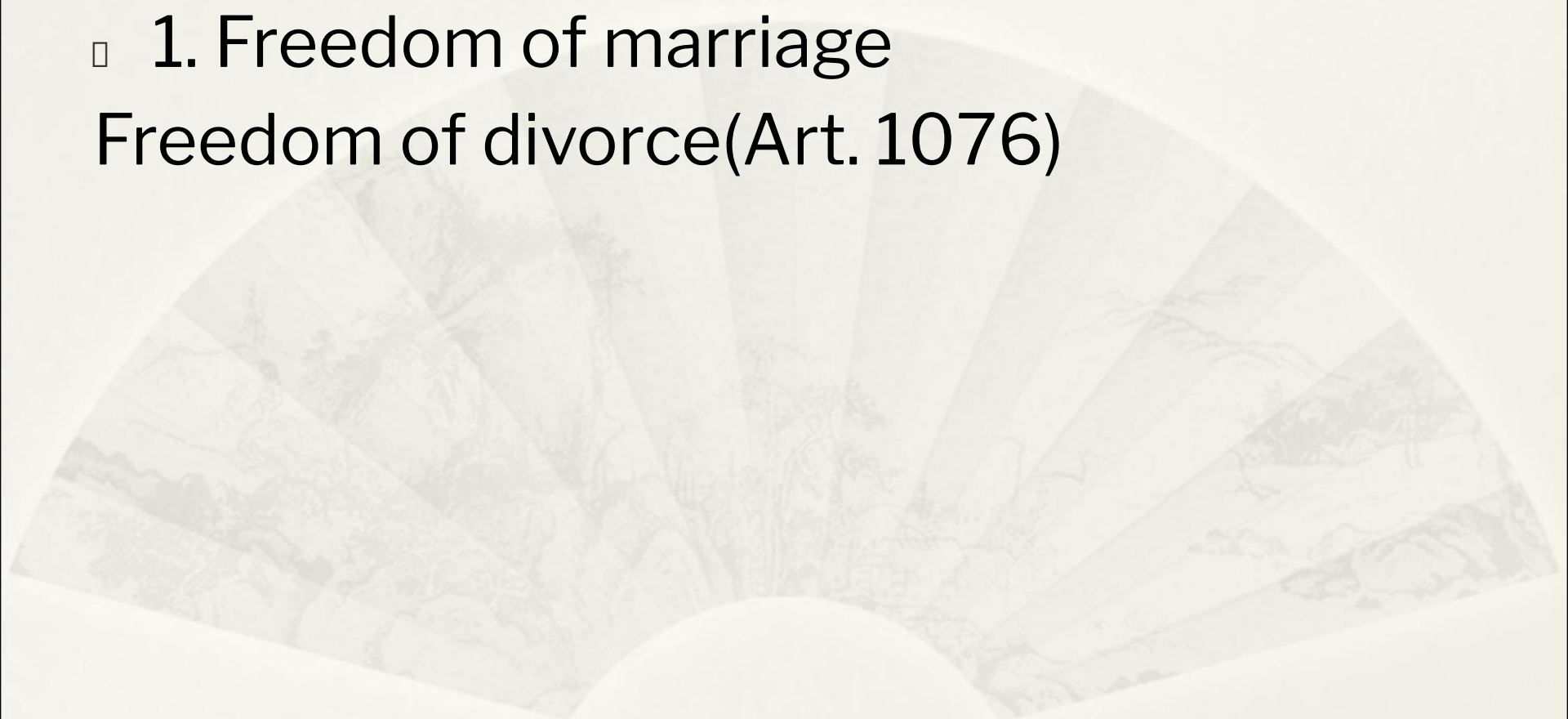
Polygamy-Tibet

Walking marriage-Mo Shou Ethnic minority (Yun Nang Province)

Principles of Family Law

- 1. Freedom of marriage

Freedom of divorce(Art. 1076)



New institution:

Limitation-cool down period before divorce

Within one month upon the presentation of application for divorce, any spouse is free to withdraw such application. Within 30 day after cool-down period has elapsed, the spouses for divorce shall be present in person before registration of marriage to get divorce certificate, in case of failure to be present in person before marriage authority, the application for divorce shall be deemed withdrawn.

2. Planning of family

2 children since 2015

But in fact, many exceptions

1. One spouse is foreigner, ethnic minority
2. The first born child is daughter in countryside
3. Handicapped
4. Usages

3.1 Protection of ladies, Children and old people (art. 1141)

1) monogamy

forbidden for the married person to co-live with others (art. 1042)

2) Forbidden domestic violence

3) Maltreatment of family member

4) Husband may not apply for divorce in case of pregnancy of wife.

5) Caring for rights and interests of wife and children=>principle of the joint property

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- 4) children born out of wedlock=>equal protection
 - 5) natural parents'duty to bring up their natural children
 - 6) Upon the death of a child's parents, grandparents, elder brothers and sisters with capacity of supporting him, are bound to bring them up;
 - 7) Children may inherit the property of their parents

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- Remedies for the weaker parties and impose stringent liability for violence and maltreatment

In case of desertion, abandonment, maltreatment, the victim may require the resident commission, villager's commission or work unit to dissuade or mediate, and take legal action before court—Very Chinese style

5. Observance of good customs



Luzhou case 2001 (Luzhou court, n. 561, 2001)

情妇遗赠案：中国和德国的不同判决

四川省泸州市纳溪区法院民事判决书, (2001)纳溪民初字第561号; 泸州市中级法院民事判决书, (2001)泸民一终字第621号

Same case, totally different decision in Germany

<<情妇遗嘱是否违反善良风俗——德国联邦最高法院“情妇遗嘱案”评析>>, 《<<情妇遗嘱是否违反善良风俗——德国联邦最高法院“情妇遗嘱案”评析>>, 《[中德法学论坛](#)<<情妇遗嘱是否违反善良风俗——德国联邦最高法院“情妇遗嘱案”评析>>, 《[中德法学论坛](#)》2003<<情妇遗嘱是否违反善良风俗——德国联邦最高法院“情妇遗嘱案”评析>>, 《[中德法学论坛](#)》2003年第<<情妇遗嘱是否违反善良风俗——德国

Art. 12, Chinese style

▫ Article 12

Widowed daughters-in-law or sons-in-law who have made the predominant contributions in maintaining their parents-in-law shall, in relationship to their parents-in-law, be regarded as successors first in order.

Agreement for legacy in return for support

- Article 31
- A citizen may enter into a legacy-support agreement with a person who, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to legacy. A citizen may enter into a legacy-support agreement with an organization under collective ownership which, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to legacy.

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- This agreement prevails over any kind of inheritance

Case in Zhejiang, 2013

Lover

《题西林壁》

苏轼

Topic on Wall in West Forest

By Su Shi (1037–1101)

横看为岭侧成峰，

远近高低各不同。

不知庐山真面目，

只缘身在此山中。

A ridge becomes a peak if the
same mountain is viewed
vertically,

Heights of mountains change
from their distance from us.

I don't know the real figure of
mountain Lu,

Because I stay inside this
mountain.