

【Statute Title】 Interpretation No. I of the Supreme People's Court on Several Issues in the Application of Marriage Law of the People's Republic of China [Effective]

【法规标题】最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释(一) [现行有效]

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Interpretation No. I of the Supreme People's Court on Several Issues in the Application of Marriage Law of the People's Republic of China

The Interpretations No. I of the Supreme People's Court about the Application of the Marriage Law of the People's Republic of China, which were adopted at the 1202nd Meeting of the Judicial Committee of the Supreme People's Court on December 24, 2001, are hereby promulgated and shall come into force as of December 27, 2001.

December 25, 2001

Interpretations No. I of the Supreme People's Court about the Application of the Marriage Law of the People's Republic of China

(Adopted at the 1202nd Meeting of the Judicial Committee of the Supreme People's Court on December 24, 2001 Judicial Interpretation No. 30 [2001])

With a view to correctly try the cases of marriage and family disputes, interpretations are hereby made about the relevant issues concerning the application of the Marriage Law by the people's courts in accordance with the Marriage Law of the People's Republic of China, Civil Procedural Law of the People's Republic of China and other laws:

中华人民共和国最高人民法院公告

(相关资料: 案例 1 篇 裁判文书 181 篇 相关论文 32 篇 实务指南)

《最高人民法院关于适用〈中华人民共和国婚姻法〉若干问题的解释(一)》已于2001年12月24日由最高人民法院审判委员会第1202次会议通过。现予公布,自2001年12月27日起施行。

2001年12月25日

最高人民法院关于适用

《中华人民共和国婚姻法》若干问题的解释(一)

(2001年12月24日最高人民法院审判委员会

第 1 2 0 2 次会议通过 法释〔2 0 0 1〕3 0 号)

为了正确审理婚姻家庭纠纷案件, 根据《中华人民共和国婚姻法》(以下简称婚姻法)、《中华人民共和国民事诉讼法》等法律的规定, 对人民法院适用婚姻法的有关问题作出如下解释:

Article 1 The "family violence" as mentioned in Articles 3, 32, 43, 45 and 46 of the Marriage Law refers to a behavior whereby a person causes certain physical or mental injuries to his family member(s) by beating, binding, forced restriction of personal freedom or by other means. Durative or frequent family violence constitutes maltreatment.

第一条 婚姻法第三条、第三十二条、第四十三条、第四十五条、第四十六条所称的“家庭暴力”, 是指行为人以殴打、捆绑、残害、强行限制人身自由或者其他手段, 给其家庭成员的身体、精神等方面造成一定伤害后果的行为。持续性、经常性的家庭暴力, 构成虐待。

(相关资料: 裁判文书 7 篇 相关论文 1 篇 实务指南)

Article 2 The circumstance that "a person who has a spouse but co-habits with another person" as mentioned in Articles 3, 32 and 46 refers to a person who has a spouse continuously and stably live, not in the name of husband and wife, together with any person of the opposite sex other than his (her) spouse.

第二条 婚姻法第三条、第三十二条、第四十六条规定的“有配偶者与他人同居”的情形, 是指有配偶者与婚外异性, 不以夫妻名义, 持续、稳定地共同居住。

(相关资料: 裁判文书 4 篇 实务指南)

Article 3 If any party initiates a lawsuit based on Article 4 of the Marriage Law, the people's court shall not accept the case. If the people's court has accepted such case, it shall make a ruling to dismiss the lawsuit.

第三条 当事人仅以婚姻法第四条为依据提起诉讼的, 人民法院不予受理; 已经受理的, 裁定驳回起诉。

(相关资料: 裁判文书 1 篇 相关论文 2 篇 实务指南)

Article 4 If both the man and woman make up their marriage registration under Article 8 of the Marriage Law, the validity of the marital relations shall be calculated from the time when both parties conform with the substantial conditions for getting married as described in the Marriage Law.

第四条 男女双方根据婚姻法第八条规定补办结婚登记的, 婚姻关系的效力从双方均符合婚姻法所规定的结婚的实质要件时起算。

(相关资料: 裁判文书 5 篇 相关论文 2 篇 实务指南)

Article 5 For any man and woman who fail to go through the marriage registration formalities as prescribed in Article 8 of the Marriage Law but live together in the name of husband and wife, if they initiate a lawsuit in the people's court to request for divorce, they should be treated differently:

(1) Before the Regulation on Marriage Registration was promulgated and implemented on

February 1, 1994, if both man and woman meet the substantial conditions for getting married, the case shall be treated as de facto marriage.

(2) After of the Regulation on Marriage Registration was promulgated and began to be implemented on February 1, 1994, if both man and woman meet the substantial conditions for getting married, the people's court shall inform them that they should make up the marriage registration before the case is accepted. If they fail to make up their marriage registration, the case shall be treated as dissolution of cohabiting relations.

第五条 未按婚姻法第八条规定办理结婚登记而以夫妻名义共同生活的男女，起诉到人民法院要求离婚的，应当区别对待：

（一）1994年2月1日民政部《婚姻登记管理条例》公布实施以前，男女双方已经符合结婚实质要件的，按事实婚姻处理。

（二）1994年2月1日民政部《婚姻登记管理条例》公布实施以后，男女双方符合结婚实质要件的，人民法院应当告知其在案件受理前补办结婚登记；未补办结婚登记的，按解除同居关系处理。

（相关资料：裁判文书 39 篇 相关论文 1 篇 实务指南）

Article 6 With regard to any husband and wife who fail to go through the marriage registration formalities as described in Article 8 of the Marriage Law but cohabit in the name of husband and wife, if either dies and if the other claims for the inheritance right in the name of his (her) spouse, the case shall be dealt with according to the principle of Article 5 of these Interpretation.

第六条 未按婚姻法第八条规定办理结婚登记而以夫妻名义共同生活的男女，一方死亡，另一方以配偶身份主张享有继承权的，按照本解释第五条的原则处理。

（相关资料：裁判文书 1 篇 实务指南）

Article 7 The subject that has the right to file an application with the people's court for declaring a registered marriage as invalid marriage in accordance with Article 10 of the Marriage Law includes the parties concerned to the marriage and the interested parties. The interested parties include:

(1) the close relatives and grassroots organizations of the parties concerned if the application for declaring the marriage as invalid is filed on the ground of bigamy,

(2) the close relatives of the party (parties) who has (have) not attained to the legitimate age for marriage if the application for declaring the marriage as invalid is filed on the ground that either party (both parties) has not (have not) attained to the legitimate age for marriage;

(3) the close relatives of the parties if the application for declaring the marriage as invalid on the ground that both parties are in the kinship that is forbidden from getting married; or

(4) the close relatives living together with the party who has suffered from any disease that is held by medical science as rendering a person unfit for getting married and the disease has not been cured after marriage.

第七条 有权依据婚姻法第十条规定向人民法院就已办理结婚登记的婚姻申请宣告婚姻无效的主体，包括婚姻当事人及利害关系人。利害关系人包括：

（一）以重婚为由申请宣告婚姻无效的，为当事人的近亲属及基层组织。

（二）以未到法定婚龄为由申请宣告婚姻无效的，为未达法定婚龄者的近亲属。

（三）以有禁止结婚的亲属关系为由申请宣告婚姻无效的，为当事人的近亲属。

（四）以婚前患有医学上认为不应当结婚的疾病，婚后尚未治愈为由申请宣告婚姻无效

的，为与患病者共同生活的近亲属。

（相关资料：裁判文书 3 篇 相关论文 1 篇 实务指南）

Article 8 Where a party files an application with the people's court for declaring the marriage as invalid in pursuance of Article 10 of the Marriage Law, if the circumstance under which the invalid marriage has disappeared when such an application is filed, the people's court shall not support the application.

第八条 当事人依据婚姻法第十条规定向人民法院申请宣告婚姻无效的，申请时，法定的无效婚姻情形已经消失的，人民法院不予支持。

（相关资料：裁判文书 2 篇 相关论文 3 篇 实务指南）

Article 9 When the people's court tries a case of declaring a marriage invalid, if mediation is not applicable to the trial of the validity of the marriage, it shall make a judgment under the law. Once a judgment on the validity of marriage is made, it shall have legal force.

Where a case involves property partition and children fostering, it may be mediated. Where an agreement is reached upon mediation, a mediation document shall be created. If either party (both parties) refuses (refuse) to accept the judgment on property partition and children fostering, the party (parties) may appeal against it.

第九条 人民法院审理宣告婚姻无效案件，对婚姻效力的审理不适用调解，应当依法作出判决；有关婚姻效力的判决一经作出，即发生法律效力。

涉及财产分割和子女抚养的，可以调解。调解达成协议的，另行制作调解书。对财产分割和子女抚养问题的判决不服的，当事人可以上诉。

（相关资料：裁判文书 9 篇 相关论文 2 篇 实务指南）

Article 10 The word "intimidate" as mentioned in Article 11 of the Marriage Law means that the doer forces the other party to go against his genuine will to marry him (her) by threatening to injure the life, physical health, reputation and property of the other party or his (her) close relatives.

Only the intimidated party himself (herself) in a marriage relationship may plead for revoking the marriage.

第十条 婚姻法第十一条所称的“胁迫”，是指行为人以给另一方当事人或者其近亲属的生命、身体健康、名誉、财产等方面造成损害为要挟，迫使另一方当事人违背真实意愿结婚的情况。

因受胁迫而请求撤销婚姻的，只能是受胁迫一方的婚姻关系当事人本人。

（相关资料：相关论文 1 篇 实务指南）

Article 11 Where the people's court tries a case brought by a party concerned in a marriage for revoking the marriage on the ground that he (she) was intimidated, it shall apply the simplified procedures or ordinary procedures.

第十一条 人民法院审理婚姻当事人因受胁迫而请求撤销婚姻的案件，应当适用简易程序或者普通程序。

Article 12 The term "one year" as described in Article 11 of the Marriage Law is not applicable to

the provisions on the suspension, interruption or extension of the limitations of actions.

第十二条 婚姻法第十一条规定的“一年”，不适用诉讼时效中止、中断或者延长的规定。

（相关资料：实务指南）

Article 13 The term "invalid ab initio" as mentioned in Article 12 of the Marriage Law means that a marriage shall be determined as not subject to the protection of law from the very beginning only as of the time when it is declared invalid or revoked in accordance with the law.

第十三条 婚姻法第十二条所规定的自始无效，是指无效或者可撤销婚姻在依法被宣告无效或被撤销时，才确定该婚姻自始不受法律保护。

（相关资料：裁判文书 1 篇 实务指南）

Article 14 Upon application of a party concerned, if the people's court declares the marriage invalid or revocable in pursuance of the law, it shall capture the marriage certificates of both parties and shall mail the judgment which has become effective as well as the marriage certificates it has captured to the local marriage registration administrative organ.

第十四条 人民法院根据当事人的申请，依法宣告婚姻无效或者撤销婚姻的，应当收缴双方的结婚证书并将生效的判决书寄送当地婚姻登记管理机关。

（相关资料：裁判文书 2 篇 实务指南）

Article 15 When a marriage is declared invalid or revocable, the property obtained by both parties during the cohabiting period shall be treated as being in their co-ownership unless evidence shows that it is owned by one party.

第十五条 被宣告无效或被撤销的婚姻，当事人同居期间所得的财产，按共同共有处理。但有证据证明为当事人一方所有的除外。

（相关资料：裁判文书 5 篇 实务指南）

Article 16 When the people's court hears a case of invalid marriage caused by bigamy, if the case involves disposal of property, the people's court shall allow the party to the lawful marriage to participate in the litigation as a third party with independent claims.

第十六条 人民法院审理重婚导致的无效婚姻案件时，涉及财产处理的，应当准许合法婚姻当事人作为有独立请求权的第三人参加诉讼。

（相关资料：实务指南）

Article 17 Article 17 of the Marriage Law, which provides that "both husband and wife shall have equal rights in the disposal of jointly owned property", shall be understood as follows:

(1)The husband and wife have equal right to dispose of their jointly owned property. If it is necessary to dispose of their jointly owned property for daily necessities, both the husband and wife shall have the right to make decisions; and

(2)When the husband or wife needs to make an important decision to dispose of their jointly owned property due to daily necessities, both husband and wife shall discuss the matter on an equal basis so as to reach an agreement. Where others have reasons to believe any common genuine expressions of both husband and wife, the other party shall not challenge any bona fide third party on the ground that he (she) does not agree or does not know.

第十七条 婚姻法第十七条关于“夫或妻对夫妻共同所有的财产，有平等的处理权”的规定，应当理解为：

（一）夫或妻在处理夫妻共同财产上的权利是平等的。因日常生活需要而处理夫妻共同财产的，任何一方均有权决定。

（二）夫或妻非因日常生活需要对夫妻共同财产做重要处理决定，夫妻双方应当平等协商，取得一致意见。他人有理由相信其为夫妻双方共同意思表示的，另一方不得以不同意或不知道为由对抗善意第三人。

（相关资料：案例 1 篇 裁判文书 50 篇 相关论文 3 篇 实务指南）

Article 18 With regard to the circumstance that "if the third party has the knowledge of the said agreement" as mentioned in Article 19 of the Marriage Law, either the husband or wife bears the burden of evidence.

第十八条 婚姻法第十九条所称“第三人知道该约定的”，夫妻一方对此负有举证责任。

（相关资料：裁判文书 6 篇 实务指南）

Article 19 The property owned by the husband or wife as described in Article 18 of the Marriage Law shall not change into property jointly owned by both parties.

第十九条 婚姻法第十八条规定为夫妻一方的所有的财产，不因婚姻关系的延续而转化为夫妻共同财产。但当事人另有约定的除外。

（相关资料：裁判文书 3 篇 相关论文 2 篇 实务指南）

Article 20 The "children without the ability to live an independent life" as described in Article 21 of the Marriage Law refers to the adult children who are unable to maintain their normal life because they are still accepting high school or inferior education, or have lost or have incompletely lost the work ability, or for any non-subjective reason.

第二十条 婚姻法第二十一条规定的“不能独立生活的子女”，是指尚在校接受高中及其以下学历教育，或者丧失或未完全丧失劳动能力等非因主观原因而无法维持正常生活的成年子女。

（相关资料：裁判文书 12 篇 实务指南）

Article 21 The term "aliments" as mentioned in Article 21 of the Marriage Law includes the expenses for life sustention, education, medical care, etc.

第二十一条 婚姻法第二十一条所称“抚养费”，包括子女生活费、教育费、医疗费等费用。

（相关资料：裁判文书 12 篇 实务指南）

Article 22 When the people's court hears a case of divorce, if the case conforms to any of the circumstances under which "divorce shall be granted" as prescribed in Paragraph 2 of Article 32, it shall not make a judgment to deny the divorce on the ground that the parties concerned are at fault.

第二十二条 人民法院审理离婚案件，符合第三十二条第二款规定“应准予离婚”情形的，不应当因当事人有过错而判决不准离婚。

（相关资料：裁判文书 1 篇 相关论文 2 篇 实务指南）

Article 23 The circumstance that "the soldier is in grave fault" as described in Article 33 of the Marriage Law may be judged according to the provisions of Items (1) through (3) of Article 32 of the Marriage Law as well as other circumstances under which the soldier has committed any other severe fault and leads to break of mutual affection as husband and wife.

第二十三条 婚姻法第三十三条所称的“军人一方有重大过错”，可以依据婚姻法第三十二条第二款前三项规定及军人有其他重大过错导致夫妻感情破裂的情形予以判断。

（相关资料：实务指南）

Article 24 If a valid judgment of divorce made by the people's court does not involve the visit right and if the parties concerned bring a separate lawsuit over the visit right, the people's court shall accept the case.

第二十四条 人民法院作出的生效的离婚判决中未涉及探望权，当事人就探望权问题单独提起诉讼的，人民法院应予受理。

（相关资料：裁判文书 1 篇 实务指南）

Article 25 During the course when the parties perform the valid judgment, ruling or mediation document, if a party concerned requests for suspending the exercise of the visit right, the people's court shall make a ruling if it believes it is necessary to suspend the exercise of the visit right after it consults the opinions of both parties. After the circumstance for the suspension of the visit right disappears, the people's court shall, upon application of the party concerned, inform him (her) that he (she) may resume the exercise of the visit right.

第二十五条 当事人在履行生效判决、裁定或者调解书的过程中，请求中止行使探望权的，人民法院在征询双方当事人意见后，认为需要中止行使探望权的，依法作出裁定。中止探望的情形消失后，人民法院应当根据当事人的申请通知其恢复探望权的行使。

（相关资料：实务指南）

Article 26 The underage children, the father or mother who directly brings up the children, or any other legal custodian who bears the obligation of upbringing and educating the underage children shall have the right to request the people's court for suspending the visit right.

第二十六条 未成年子女、直接抚养子女的父或母及其他对未成年子女负担抚养、教育义务的法定监护人，有权向人民法院提出中止探望权的请求。

（相关资料：实务指南）

Article 27 The circumstance under which "either party has difficulties in life" as mentioned in Article 42 of the Marriage Law means that it can't sustain the local basic living level by depending on the personal property and the property divided to him (her) at the time of divorce.

A party who has no domicile after divorce conforms to the circumstance of having difficulties in life.

At the time of divorce, one party may help the party who has difficulties in life by offering the dwelling right to or ownership of the house out of his (her) personal properties.

第二十七条 婚姻法第四十二条所称“一方生活困难”，是指依靠个人财产和离婚时分得的财产无法维持当地基本生活水平。

一方离婚后没有住处的，属于生活困难。

离婚时，一方以个人财产中的住房对生活困难者进行帮助的形式，可以是房屋的居住权或者房屋的所有权。

（相关资料：裁判文书 12 篇 相关论文 2 篇 实务指南）

Article 28 The term "compensation for damages" as mentioned in Article 46 of the Marriage Law include compensation for physical and mental damages. If any mental damages are involved, the relevant provisions of the Supreme People's Court concerning the Interpretation of the Supreme People's Court on Problems Regarding the Determination of Compensation Liability for Mental Damages in Civil Torts shall apply.

第二十八条 婚姻法第四十六条规定的“损害赔偿”，包括物质损害赔偿和精神损害赔偿。涉及精神损害赔偿的，适用最高人民法院《关于确定民事侵权精神损害赔偿责任若干问题的解释》的有关规定。

（相关资料：裁判文书 5 篇 相关论文 1 篇 实务指南）

Article 29 The subject of compensation liability as mentioned in Article 46 of the Marriage Law shall be the spouse of the innocent party in the litigation of divorce.

Where the people's court makes a judgment of not granting the divorce in a case, it shall not support any compensation claimed by any party on the basis of Article 46 of the Marriage Law.

During the period of existence of the marital relationship, the people's court shall not support any compensation claimed by a party based on this Article separately without filing a divorce lawsuit.

第二十九条 承担婚姻法第四十六条规定的损害赔偿责任的主体，为离婚诉讼当事人中无过错方的配偶。

人民法院判决不准离婚的案件，对于当事人基于婚姻法第四十六条提出的损害赔偿请求，不予支持。

在婚姻关系存续期间，当事人不起诉离婚而单独依据该条规定提起损害赔偿请求的，人民法院不予受理。

（相关资料：相关论文 1 篇 实务指南）

Article 30 When the people's court accepts a case of divorce, it shall notify, in writing, the parties of the relevant rights and obligations as described in Article 46 of the Marriage Law. In the application of Article 46 of the Marriage Law, it shall differentiate the following circumstances:

(1) If the innocent party who meets the conditions in Article 46 of the Marriage Law, on the basis of this Article, wants to claim for compensation for damages in the people's court, he (she) shall do so when initiating the lawsuit of divorce;

(2) If the innocent party who satisfies the conditions in Article 46 of the Marriage Law, is the defendant in a divorce litigation case and if he (she) does not consent to divorce nor claim for any compensation under this Article, he (she) may initiate a lawsuit separately within 1 year after the divorce;

(3) In a divorce litigation case where the innocent party is the defendant, if the defendant, during the first instance, fails to claim for compensation according to Article 46 of the Marriage Law, but he (she) claims for compensation in the second instance, the people's court shall conduct a mediation. If the mediation fails, the people's court shall inform the parties concerned to initiate a separate lawsuit within 1 year after the divorce.



第三十条 人民法院受理离婚案件时，应当将婚姻法第四十六条等规定中当事人的有关权利义务，书面告知当事人。在适用婚姻法第四十六条时，应当区分以下不同情况：

（一）符合婚姻法第四十六条规定的无过错方作为原告基于该条规定向人民法院提起损害赔偿请求的，必须在离婚诉讼的同时提出。

（二）符合婚姻法第四十六条规定的无过错方作为被告的离婚诉讼案件，如果被告不同意离婚也不基于该条规定提起损害赔偿请求的，可以在离婚后一年内就此单独提起诉讼。

（三）无过错方作为被告的离婚诉讼案件，一审时被告未基于婚姻法第四十六条规定提出损害赔偿请求，二审期间提出的，人民法院应当进行调解，调解不成的，告知当事人在离婚后一年内另行起诉。

（相关资料：裁判文书 4 篇 实务指南）

Article 31 When a party concerned initiates a lawsuit in the people's court in pursuance of Article 47 of the Marriage Law, the limitation of actions for requesting for dividing the property jointly by the husband and wife for a second time shall be two years, which shall be computed from the next day when the party finds the property.

第三十一条 当事人依据婚姻法第四十七条的规定向人民法院提起诉讼，请求再次分割夫妻共同财产的诉讼时效为两年，从当事人发现之次日起计算。

（相关资料：裁判文书 5 篇 实务指南）

Article 32 What Article 48 of the Marriage Law provides that the execution may be enforced by the people's court in accordance with the law in case any person refuses to execute the judgment or decision on the visit of children refers to the taking of mandatory measures such as detaining and fining the relevant individuals and entities that refuse to help the other party to exercise the right of visit, and does not refer to the enforcement against the body of the children or act of visit.

第三十二条 婚姻法第四十八条关于对拒不执行有关探望子女等判决和裁定的，由人民法院依法强制执行的规定，是指对拒不履行协助另一方行使探望权的有关个人和单位采取拘留、罚款等强制措施，不能对子女的人身、探望行为进行强制执行。

（相关资料：裁判文书 1 篇 相关论文 1 篇 实务指南）

Article 33 After the Marriage Law was amended, any case of marriage and family disputes which is being heard in first or second instance shall be governed by the amended Marriage Law. If any relevant judicial interpretation made by the Supreme People's Court earlier is contrary to these Interpretation, the latter shall prevail.

第三十三条 婚姻法修改后正在审理的一、二审婚姻家庭纠纷案件，一律适用修改后的婚姻法。此前最高人民法院作出的相关司法解释如与本解释相抵触，以本解释为准。

（相关资料：裁判文书 4 篇 实务指南）

Article 34 These Interpretation shall come into force as of the date of promulgation.

第三

十四条 本解释自公布之日起施行。