

【Statute Title】 Interpretation of the Supreme People's Court about Several Problems Concerning the Application of the Marriage Law of the People's Republic of China (II) [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(二) [现行有效]

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Interpretation of the Supreme People's Court about Several Problems Concerning the Application of the Marriage Law of the People's Republic of China (II)

(December 26, 2003)

With a view to correctly hearing the cases of disputes over marriage and families, the following interpretation is made about the relevant problems concerning the application of the Marriage Law by the people's court in accordance with the Marriage Law of the People's Republic of China (hereinafter referred to as the Marriage Law), the Civil Procedural Law of the People's Republic of China and other relevant laws and regulations:

最高人民法院公告

(相关资料: 地方法规 4 篇 案例 1 篇 裁判文书 1244 篇 相关论文 26 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(二)》已于 2003 年 12 月 4 日由最高人民法院审判委员会第 1299 次会议通过。现予公布, 自 2004 年 4 月 1 日起施行。

最高人民法院

2003 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(二)

(2003 年 12 月 4 日最高人民法院审判委员会

第 1299 次会议通过 法释[2003]19 号)

为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》等相关法律规定, 对人民法院适用婚姻法的有关问题作出如下解释:

Article 1 The people's court shall refuse to accept any lawsuit filed by the parties concerned to

stop the cohabitation. But, if the parties concerned plead to stop the "cohabitation between a person who has a spouse but co-habits with a third person" as provided for in Articles 3, 32 and 46 of the Marriage Law, the people's court shall accept such lawsuits and stop the cohabitation in accordance with the law.

The people's court shall accept the lawsuits filed by the parties concerned due to disputes over the partitioning of property or the upbringing of children.

第一条 当事人起诉请求解除同居关系的，人民法院不予受理。但当事人请求解除的同居关系，属于婚姻法第三条、第三十二条、第四十六条规定的“有配偶者与他人同居”的，人民法院应当受理并依法予以解除。

当事人因同居期间财产分割或者子女抚养纠纷提起诉讼的，人民法院应当受理。

（相关资料：裁判文书 19 篇 相关论文 2 篇）

Article 2 After the people's court has accepted a pleading for announcing a marriage invalid, if it finds, upon examination, that the circumstance is true, it shall make a judgment announcing the marriage invalid in accordance with the law. If the plaintiff pleads for withdrawing the lawsuit, he (she) shall be disapproved.

第二条 人民法院受理申请宣告婚姻无效案件后，经审查确属无效婚姻的，应当依法作出宣告婚姻无效的判决。原告申请撤诉的，不予准许。

（相关资料：相关论文 1 篇 实务指南）

Article 3 After the people's court has accepted a suit of divorce, if it finds, upon examination, that the marriage is invalid, it shall inform the parties concerned of this and shall make a judgment announcing the marriage invalid.

第三条 人民法院受理离婚案件后，经审查确属无效婚姻的，应当将婚姻无效的情形告知当事人，并依法作出宣告婚姻无效的判决。

（相关资料：裁判文书 1 篇 实务指南）

Article 4 Where the people's court hears a case of invalid marriage involving the partitioning of property or the upbringing of children, it shall make separate a ruling about the determination of the validity of marriage and about the handling of other disputes respectively.

第四条 人民法院审理无效婚姻案件，涉及财产分割和子女抚养的，应当对婚姻效力的认定和其他纠纷的处理分别制作裁判文书。

（相关资料：裁判文书 2 篇 实务指南）

Article 5 Within a year after the death of either the husband or wife or both of the husband and wife, if the existing party or the interested party files an application for announcing the marriage invalid, the people's court shall accept the application.

第五条 夫妻一方或者双方死亡后一年内，生存一方或者利害关系人依据婚姻法第十条的规定申请宣告婚姻无效的，人民法院应当受理。

（相关资料：裁判文书 1 篇 实务指南）

Article 6 If the interested party files an application to the people's court for announcing a marriage invalid in accordance with Article 10 of the Marriage law, the interested party shall be

the applicant, and the two parties to the marriage shall be the parties against whom the application is filed.

If either the husband or wife is dead, the existing party shall be the party against whom an application is filed.

If both of the husband and wife are dead, they shall not be listed as the parties against whom an application is filed.

第六条 利害关系人依据婚姻法第十条的规定，申请人民法院宣告婚姻无效的，利害关系人为申请人，婚姻关系当事人双方为被申请人。

夫妻一方死亡的，生存一方为被申请人。

夫妻双方均已死亡的，不列被申请人。

（相关资料：实务指南）

Article 7 Where, with regard to a same marriage, the people's court has accepted a suit of divorce and an application for announcing the marriage invalid, it shall hear the case of divorce after it has made a judgment about the case of applying for announcing the marriage invalid.

After the marriage as mentioned in the preceding paragraph is announced invalid, if it is related to the partitioning of property or the upbringing of children, the hearing shall continue.

第七条 人民法院就同一婚姻关系分别受理了离婚和申请宣告婚姻无效案件的，对于离婚案件的审理，应当待申请宣告婚姻无效案件作出判决后进行。

前款所指的婚姻关系被宣告无效后，涉及财产分割和子女抚养的，应当继续审理。

（相关资料：裁判文书 1 篇 实务指南）

Article 8 The clauses about the partitioning of property in a divorce agreement or the agreement reached by the parties concerned on the partitioning of property shall be binding on both the husband and wife.

Where the party concerned files a lawsuit due to disputes over the above-mentioned agreement on the partitioning of property, the people's court shall accept the lawsuit.

第八条 离婚协议中关于财产分割的条款或者当事人因离婚就财产分割达成的协议，对男女双方具有法律约束力。

当事人因履行上述财产分割协议发生纠纷提起诉讼的，人民法院应当受理。

（相关资料：裁判文书 17 篇 相关论文 1 篇 实务指南）

Article 9 Within one year after the husband and wife are divorced on the basis of agreement, if they back out on the issue concerning partitioning of property and files a suit for modifying or canceling the agreement on the partitioning of property, the people's court shall accept their application.

After the people's court has accepted their suit, if it finds that no circumstance of fraud or coercion exists when the agreement on the partitioning of property is established, it shall dismiss the pleading of the parties concerned.

第九条 男女双方协议离婚后一年内就财产分割问题反悔，请求变更或者撤销财产分割协议的，人民法院应当受理。

人民法院受理后，未发现订立财产分割协议时存在欺诈、胁迫等情形的，应当依法驳回当事人的诉讼请求。

（相关资料：裁判文书 7 篇 相关论文 1 篇 实务指南）

Article 10 If it is found that the pleading of a party concerned for the return of the betrothal gifts given to the other party according to the tradition is under any of the following circumstances, the people's court shall support him or her:

- (1) Both parties fail to complete the marriage register formalities;
- (2) Both parties have completed the marriage register formalities, but as a matter of fact, they fail to cohabit;
- (3) The betrothal gifts given prior to the marriage make the giver live in difficulty.

The application of Items (2) and (3) in the preceding paragraph shall be based on the precondition of divorce between both parties.

第十条 当事人请求返还按照习俗给付的彩礼的，如果查明属于以下情形，人民法院应当予以支持：

- （一）双方未办理结婚登记手续的；
- （二）双方办理结婚登记手续但确未共同生活的；
- （三）婚前给付并导致给付人生活困难的。

适用前款第（二）、（三）项的规定，应当以双方离婚为条件。

（相关资料：裁判文书 146 篇 相关论文 3 篇 实务指南）

Article 11 During the existence of the marriage, the following properties shall fall within the scope of "other properties that shall be jointly owned" as provided in Article 17 of the Marriage Law:

- (1) The income gained by a party from the personal property as an investment
- (2) The housing subsidies and the public accumulation fund for housing construction that both parties have actually obtained or should obtain;
- (3) The endowment insurance, bankruptcy resettlement compensations.

第十一条 婚姻关系存续期间，下列财产属于婚姻法第十七条规定的“其他应当归共同所有的财产”：

- （一）一方以个人财产投资取得的收益；
- （二）男女双方实际取得或者应当取得的住房补贴、住房公积金；
- （三）男女双方实际取得或者应当取得的养老保险金、破产安置补偿费。

（相关资料：地方法规 1 篇 裁判文书 10 篇 相关论文 1 篇 实务指南）

Article 12 The "income gained from intellectual property" as provided in Item (3) of Article 17 refers to the property income that has already been obtained or is sure to be obtained during the existence of the marriage.

第十二条 婚姻法第十七条第三项规定的“知识产权的收益”，是指婚姻关系存续期间，实际取得或者已经明确可以取得的财产性收益。

（相关资料：地方法规 1 篇 裁判文书 1 篇 实务指南）

Article 13 A military armyman's injury and death insurance compensation, the injury and disability allowances and the subsistence and medical allowances shall fall within the scope of personal property.

第十三条 军人的伤亡保险金、伤残补助金、医药生活补助费属于个人财产。

（相关资料：实务指南）

Article 14 Where the people's court hears a case of divorce involving the partitioning of the demobilization pay, the self-selection employment subsidies and other lump-sum money given to the military armyman shall be calculated by multiplying the number of years during which the marriage exists by the annual average amount, the result of calculation thereof shall be property jointly owned by the husband and wife.

The term "annual average amount" as mentioned in the preceding paragraph refers to the calculation result by dividing the total amount of the above-mentioned expenses by the actual number of years. The actual number of years shall be the margin between the average life expectancy – 70 years and the actual age of the armyman when he joins the army.

第十四条 人民法院审理离婚案件，涉及分割发放到军人名下的复员费、自主择业费等一次性费用的，以夫妻婚姻关系存续年限乘以年平均值，所得数额为夫妻共同财产。

前款所称年平均值，是指将发放到军人名下的上述费用总额按具体年限均分得出的数额。其具体年限为人均寿命七十岁与军人入伍时实际年龄的差额。

（相关资料：裁判文书 1 篇 实务指南）

Article 15 When the husband and wife partition the jointly owned portfolios such as stocks, bonds and investment shares etc., and stocks of unlisted joint-stock companies, if they fail to reach an agreement through negotiation or are hard to partition the property on the basis of market price, the people's court may divide the amount in proportion.

第十五条 夫妻双方分割共同财产中的股票、债券、投资基金份额等有价证券以及未上市股份有限公司股份时，协商不成或者按市价分配有困难的，人民法院可以根据数量按比例分配。

（相关资料：裁判文书 2 篇 实务指南）

Article 16 When the people's court hears a case of divorce involving the partition of jointly owned property, the capital contributions made to a limited company in the name of one party shall be handled according to the following circumstances if the other party isn't a shareholder of this company:

(1) If both husband and wife agree to assign part of or all of the contributions to the spouse of the shareholder, if more than half of the shareholders consent and the other shareholders explicitly waives the priority to purchase the shares, the spouse of this shareholder may become a shareholder of this company;

(2) After the husband and wife have reached an agreement on the to-be-transferred shares formed by capital contributions, if more than half of the shareholders oppose to the transfer, but are willing to purchase the shares at an equal price, the people's court may partition the income from the transfer of shares incurred from contributions. If more than half of the shareholders are opposed to the transfer of shares, and if they are unwilling to purchase the shares at an equal price as well, they shall be deemed to consent to the transfer, and the spouse of the shareholder may become a shareholder of this company.

The proof used for showing the consent by more than half of the shareholders as mentioned in the preceding paragraph may be a resolution of the shareholders' meeting or a written statement of the shareholders obtained by other lawful means.

第十六条 人民法院审理离婚案件，涉及分割夫妻共同财产中以一方名义在有限责任公司的出资额，另一方不是该公司股东的，按以下情形分别处理：

（一）夫妻双方协商一致将出资额部分或者全部转让给该股东的配偶，过半数股东同意、其他股东明确表示放弃优先购买权的，该股东的配偶可以成为该公司股东；

（二）夫妻双方就出资额转让份额和转让价格等事项协商一致后，过半数股东不同意转让，但愿意以同等价格购买该出资额的，人民法院可以对转让出资所得财产进行分割。过半数股东不同意转让，也不愿意以同等价格购买该出资额的，视为其同意转让，该股东的配偶可以成为该公司股东。

用于证明前款规定的过半数股东同意的证据，可以是股东会决议，也可以是当事人通过其他合法途径取得的股东的书面声明材料。

（相关资料：裁判文书 2 篇 相关论文 2 篇 实务指南）

Article 17 When a people's court hears a case of divorce involving the partition of jointly owned property, the capital contributions made to a partnership enterprise in the name of one party shall be handled according to the following circumstances if the other party isn't a member of this partnership enterprise, and if both the husband and wife agree to assign all or part of the shares in the partnership enterprise to the spouse upon negotiation:

(1) If all other partners agree on the assignment, the spouse may become a partner in accordance with the law;

(2) If the other partners disagree on the assignment and refuse to exercise the priority to be transferred under equal conditions, the property income from the transfer may be partitioned;

(3) If the other partners disagree about the assignment and refuse to exercise the priority to be transferred, but they consent that the partner may withdraw from partnership or may be return part of the shares, the property returned back may be partitioned;

(4) If the other partners disagree to the transfer, refuse to exercise the priority to be assigned and oppose to the partner's withdrawal from partnership or returning part of the shares, they shall be deemed to consent to the assignment, the spouse may become a partner in accordance with the law.

第十七条 人民法院审理离婚案件，涉及分割夫妻共同财产中以一方名义在合伙企业中的出资，另一方不是该企业合伙人的，当夫妻双方协商一致，将其合伙企业中的财产份额全部或者部分转让给对方时，按以下情形分别处理：

（一）其他合伙人一致同意的，该配偶依法取得合伙人地位；

（二）其他合伙人不同意转让，在同等条件下行使优先受让权的，可以对转让所得的财产进行分割；

（三）其他合伙人不同意转让，也不行使优先受让权，但同意该合伙人退伙或者退还部分财产份额的，可以对退还的财产进行分割；

（四）其他合伙人既不同意转让，也不行使优先受让权，又不同意该合伙人退伙或者退还部分财产份额的，视为全体合伙人同意转让，该配偶依法取得合伙人地位。

（相关资料：裁判文书 2 篇 实务指南）

Article 18 With regard to a sole-investor enterprise established by the husband and wife in the name of either of them, when the people's court partitions their jointly owned property in this sole-investor enterprise, it shall handle the property according to the following circumstances:

(1) If one party insists on running the enterprise, after the enterprise assets have been assessed,

the one who obtains the enterprise shall give corresponding compensations to the other;

(2) If both insist on running the enterprise, on the basis of price competition, the one who obtains the enterprise shall give corresponding compensations to the other;

(3) If both parties are unwilling to run the enterprise, the relevant provisions in the Individual Sole-investor Enterprise Law of the People's Republic of China shall be applicable.

第十八条 夫妻以一方名义投资设立独资企业的，人民法院分割夫妻在该独资企业中的共同财产时，应当按照以下情形分别处理：

（一）一方主张经营该企业的，对企业资产进行评估后，由取得企业一方给予另一方相应的补偿；

（二）双方均主张经营该企业的，在双方竞价基础上，由取得企业的一方给予另一方相应的补偿；

（三）双方均不愿意经营该企业的，按照《中华人民共和国个人独资企业法》等有关规定办理。

（相关资料：实务指南）

Article 19 With regard to a house rented by one party before marriage and purchased by using jointly owned property after marriage, unless the house ownership certificate is registered under one party, the house shall be determined as a property jointly owned by the husband and wife.

第十九条 由一方婚前承租、婚后用共同财产购买的房屋，房屋权属证书登记在一方名下的，应当认定为夫妻共同财产。

（相关资料：裁判文书 4 篇 实务指南）

Article 20 When both parties fail to reach an agreement on the value and ownership of the house among the properties jointly owned by the husband and wife, the people's court shall handle it according to the following circumstances:

(1) If both parties claim on the ownership of the house and agree to obtain it by price competition, they shall be supported;

(2) If one party claims on the ownership of the house, an assessment shall be made by an assessment institution according to the market price, and the party who acquires the ownership of the house shall compensate the other party correspondingly;

(3) If neither of them claims on the ownership of the house, the house may be auctioned upon the application of the parties concerned, and the income arising from the auction shall be partitioned.

第二十条 双方对夫妻共同财产中的房屋价值及归属无法达成协议时，人民法院按以下情形分别处理：

（一）双方均主张房屋所有权并且同意竞价取得的，应当准许；

（二）一方主张房屋所有权的，由评估机构按市场价格对房屋作出评估，取得房屋所有权的一方应当给予另一方相应的补偿；

（三）双方均不主张房屋所有权的，根据当事人的申请拍卖房屋，就所得价款进行分割。

（相关资料：裁判文书 7 篇 相关论文 3 篇 实务指南）

Article 21 If both parties are at dispute over a house without ownership or without complete ownership and fail to reach an agreement upon negotiation, it is improper for the people's court to rule on the ownership of the house, it shall, in light of the actual circumstance, rule that the

house be used by the parties concerned.

If the parties concerned are at dispute over a house as mentioned in the preceding paragraph after having acquired the complete ownership, they may bring a separate lawsuit in the people's court.

第二十一条 离婚时双方对尚未取得所有权或者尚未取得完全所有权的房屋有争议且协商不成的, 人民法院不宜判决房屋所有权的归属, 应当根据实际情况判决由当事人使用。

当事人就前款规定的房屋取得完全所有权后, 有争议的, 可以另行向人民法院提起诉讼。

(相关资料: 裁判文书 8 篇 实务指南)

Article 22 Before the parties concerned get married, if the parents spend money on purchasing a house for them, the money shall be determined as a personal donation to their own son or daughter except that the parents clearly express that the money is donated to them both.

After marriage, if the parents spend money on purchasing a house for them, the money shall be determined as a donation to both the husband and wife except that the parents clearly expressed that the money is donated to one party.

第二十二条 当事人结婚前, 父母为双方购置房屋出资的, 该出资应当认定为对自己子女的个人赠与, 但父母明确表示赠与双方的除外。

当事人结婚后, 父母为双方购置房屋出资的, 该出资应当认定为对夫妻双方的赠与, 但父母明确表示赠与一方的除外。

(相关资料: 裁判文书 4 篇 相关论文 2 篇 实务指南)

Article 23 Where a creditor files a claim for the personal debt of a party before marriage against his (her) spouse, the claim shall not be supported unless the creditor is able to prove that the debt is used for their joint family living after marriage.

第二十三条 债权人就一方婚前所负个人债务向债务人的配偶主张权利的, 人民法院不予支持。但债权人能够证明所负债务用于婚后家庭共同生活的除外。

(相关资料: 裁判文书 31 篇 相关论文 1 篇 实务指南)

Article 24 During the existence of the marriage, if either the husband or wife files a claim for a personal debt in the name of one party, the debt shall be treated as a joint debt of the husband and wife, unless either the husband or wife is able to prove that the creditor and the debtor have clearly stipulated it as a personal debt or to show that the debt is under any of the circumstance as prescribed in the third paragraph of Article 19 of the Marriage Law.

第二十四条 债权人就婚姻关系存续期间夫妻一方以个人名义所负债务主张权利的, 应当按夫妻共同债务处理。但夫妻一方能够证明债权人与债务人明确约定为个人债务, 或者能够证明属于婚姻法第十九条第三款规定情形的除外。

(相关资料: 案例 1 篇 裁判文书 952 篇 相关论文 2 篇 实务指南)

Article 25 Where the divorce agreement of the parties concerned, the judgment, ruling, or letter of mediation has decided on the issue concerning the partitioning of properties, the creditor is still entitled to file a claim against the husband and wife for their joint debt.

After one party has cleared off the joint debt, if he or she file a claim against the other party for recovery on the basis of the divorce agreement or the legal writing of the people's court, the



claim shall be supported by the people's court.

第二十五条 当事人的离婚协议或者人民法院的判决书、裁定书、调解书已经对夫妻财产分割问题作出处理的，债权人仍有权就夫妻共同债务向男女双方主张权利。

一方就共同债务承担连带清偿责任后，基于离婚协议或者人民法院的法律文书向另一方主张追偿的，人民法院应当支持。

（相关资料：裁判文书 84 篇 相关论文 2 篇 实务指南）

Article 26 If either the husband or wife is dead, the existing party shall bear several and joint liabilities for the joint debt formed during the existence of marriage.

第二十六条 夫或妻一方死亡的，生存一方应当对婚姻关系存续期间的共同债务承担连带清偿责任。

（相关资料：裁判文书 52 篇 实务指南）

Article 27 After the parties concerned have gone through the divorce registration formalities in the marriage registration organ, if a party raises a claim for compensation for damage in the people's court according to Article 46 of the Marriage Law, the people's court shall accept the claim. But if the party concerned has clearly waived such claim when handling the divorce based on agreement, or when he (she) raises the claim, it exceeds one year since the completion of the divorce register formalities, such claim shall be denied.

第二十七条 当事人在婚姻登记机关办理离婚登记手续后，以婚姻法第四十六条规定为由向人民法院提出损害赔偿请求的，人民法院应当受理。但当事人在协议离婚时已经明确表示放弃该项请求，或者在办理离婚登记手续一年后提出的，不予支持。

（相关资料：地方法规 1 篇 实务指南）

Article 28 Where either the husband or wife applies for take preservative measures against the spouse's personal property or the properties jointly owned by the husband and wife, the people's court may, to the extent of the losses that may be incurred due to taking preservative measures, determine an appropriate financial assurance in light of the actual circumstances.

第二十八条 夫妻一方申请对配偶的个人财产或者夫妻共同财产采取保全措施的，人民法院可以在采取保全措施可能造成损失的范围内，根据实际情况，确定合理的财产担保数额。

Article 29 The present Interpretation shall be implemented as of April 1, 2004.

After the present Interpretation takes effect, they shall be applicable to the new cases of disputes over marriage and families accepted by the people's courts.

After the present Interpretation takes effect, if there are any discrepancies between the former relevant judicial interpretation made by the Supreme People's Court and the present Interpretation, the latter shall prevail.

第二十九条 本解释自 2004 年 4 月 1 日起施行。

本解释施行后，人民法院新受理的一审婚姻家庭纠纷案件，适用本解释。

本解释施行后，此前最高人民法院作出的相关司法解释与本解释相抵触的，以本解释为准。