

Apéndice A.

Texto íntegro de la ley del matrimonio de 1950.
Promulgada por la República Popular de China el primero de mayo de 1950.

Chapter 1

General Principles

Article 1. The arbitrary and compulsory feudal marriage system, which is based on the superiority of man over woman and which ignores the children's interest is abolished.

The New Democratic marriage system, which is based on free choice of partners, on monogamy, on equal rights for both sexes, and on protection of the lawful interests of women and children, shall be put into effect.

Article 2. Polygamy, concubinage, child betrothal, interference with the remarriage of widows, and the exaction of money or gifts in connection with marriages shall be prohibited.

Chapter 2

The Marriage Contract

Article 3. Marriage shall be based on the complete willingness of the two parties. Neither party shall use compulsion and no third party shall be allowed to interfere.

Article 4. A marriage can be contracted only after the man has reached 20 years of age and the woman 18 years of age.

Article 5. No man or woman in any of the following instances shall be allowed to marry:

- (a) Where the man and woman are lineal relatives by blood or where the man and woman are brother and sister born of the same parents or where the man and woman are half-brother and half-sister. The question of prohibiting marriage between collateral relatives by blood within the fifth degree of relationship is to be determined by custom.
- (b) When one party, because of certain physical defects, is sexually impotent.
- (c) When one party is suffering from venereal disease, mental disorder, leprosy, or any other disease which is regarded by medical science as rendering the person unfit for marriage.

Article 6. In order to contract a marriage, both the man and the woman shall register in person with the people's government of the sub district or village in which they reside. If the marriage is found to be in conformity with the provisions of this law, the local people's government shall, without delay, issue a marriage certificate.

If the marriage is found to be incompatible with the provisions of this law, no registration shall be granted.

Chapter 3

Rights and Duties of Husband and Wife

Article 7. Husband and wife are companions living together and shall enjoy equal status in the home.

Article 8. Husband and wife are in duty bound to love, respect, assist and look after each other, to live in harmony, to engage in productive work, to care for the children and to strive jointly for the welfare of the family and for the building up for the new society.

Article 9. Both husband and wife shall have the right to free choice of occupation and free participation in work or social activities.

Article 10. Both husband and wife shall have equal rights in the possession and management of family property.

Article 11. Both husband and wife shall have the right to use his or her own family name.

Article 12. Both husband and wife shall have the right to inherit each other's property.

Chapter 4

Relations Between Parents and Children

Article 13. Parents have the duty to rear and to educate their children; the children have the duty to support and assist their parents. Neither the parents nor the children shall maltreat or desert one another.

The foregoing provision also applies to foster-parents and foster-children. Infanticide by drowning and similar criminal acts are strictly prohibited.

Article 14. Parents and children shall have the right to inherit one another's property.

Article 15. Children born out of wedlock shall enjoy the same rights as children born in lawful wedlock. No person shall be allowed to harm or to discriminate against children born out of wedlock.

Where the paternity of a child born out of wedlock is legally established by the mother of the child, by other witnesses, or by other material evidence, the identified father must bear the whole or part of the cost of maintenance and education of the child until it has attained the age of eighteen.

With the consent of the natural mother, the natural father may have custody of the child.

With regard to the maintenance of a child whose natural mother marries, the provisions of Article 22 shall apply.

Article 16. A husband or wife shall not mistreat or discriminate against a child born of a previous marriage.

Chapter 5

Divorce

Article 17. Divorce shall be granted when the husband and wife both desire it. In the event of either the husband or the wife alone insisting on divorce, it may be granted only when mediation by the district's people's government and the judicial organ had failed to bring about reconciliation.

In the case where divorce is desired by both the husband and wife, both parties shall register with the sub district people's government in order to obtain a certificate of divorce. The sub district government, after establishing that divorce is desired by both parties and that appropriate measure has been taken for the care of children and prosperity, shall issue the certificate of divorce without delay.

When only one party insists on divorce, the sub district people's government may try to effect a reconciliation. If such mediation fails, it should, without delay, refer the case to the district or city people's court for decision. The sub district people's government shall not attempt to prevent or to obstruct either party from appealing to the district or city people's court. In dealing with a divorce case, the district or city people's court must, in the first instance, try to bring about a reconciliation between the parties. In case such mediation fails, the court shall render a verdict without delay.

In the case where, after divorce, both husband and wife desire the resumption of matrimonial relations, they should apply to the sub district people's government for a registration of remarriage. The sub district people's government should accept such a registration and issue a certificate of re-marriage.

Article 18. The husband shall not apply for a divorce when his wife is with child. He may apply for divorce only one year after birth of the child. In the case of a woman applying for divorce, this restriction does not apply.

Article 19. The spouse of a member of the revolutionary army on active service who maintains correspondence with his (or her) family must first obtain his (or her) consent before he (or she) can ask for divorce.

As from the date of the promulgation of this law, divorce may be granted to the spouse of a member of the revolutionary army who does not correspond with his (or her) family for a subsequent period of two years. Divorce may also be granted to the spouse of a member of the revolutionary army who has not maintained correspondence with his (or her) family for a further period of one year subsequent to the promulgation of the present law.

Chapter 6

Support and education of Children after Divorce

Article 20. The blood ties between parents and children do not end with the divorce of the parents. No matter whether the father or the mother acts as guardian of the children, they still remain the children of both parents.

After divorce both parents still have the duty to support and educate their children.

After divorce, the guiding is to allow the mother to have custody of a baby still being breast-fed. After the weaning of the child, if a dispute arises between the two parties over the guardianship and an agreement cannot be reached, the people's court shall render a decision in accordance with the best interests of the child.

Article 21. After divorce, if the mother is given custody of a child, the father shall be responsible for the whole or part of the necessary cost of the maintenance and education of the child. Both parties shall reach an agreement, regarding the amount of the cost of the duration of such maintenance and education. In the case where the two parties fail to reach an agreement, the people's court shall render a decision.

Article 22. In the case where a divorce woman remarries and her husband is willing to pay the whole or part of the cost of maintenance and education for the child or children by her former husband, the father of the child or children is entitled to have such a cost of maintenance and education reduced or is entitled to be exempt from bearing such cost in accordance with the circumstances.

Chapter 7

Property and Maintenance after divorce

Article 23. In case of divorce, the wife shall retain such property as belonged to her prior marriage. The disposal of other household properties shall be subject to agreement between the two parties. In the case where an agreement cannot be reached, the people's court shall render a decision after taking into consideration the actual state of the family property, the interest of the wife and the child or the children, and the principle of benefiting the development of production.

In the case where the property allocated to the wife and her child or children is sufficient for the maintenance and education of the child or children, the husband may be exempt from bearing further maintenance and education costs.

Article 24. After divorce, debts incurred during the period of marriage shall be paid out of the property acquired by husband and wife during this period. In the case where no such property has been acquired or in the case where such property is insufficient to pay off such debts, the husband shall be held responsible for paying these debts. Debts incurred separately by the husband or wife shall be paid off by the party responsible.

Article 25. After divorce, if one party has not remarried and has difficulties in maintenance, the other party should render assistance. Both parties shall work out an agreement with regard to the method and duration of such assistance; in case an agreement cannot be reached, the people's court shall render a decision.

Article 26. Persons violating this law shall be punished in accordance with law. In the case where interference with the freedom of marriage has caused death or injury, the person guilty of such interference shall bear criminal responsibility before the law.

Article 27. This law shall come into force from this date of its promulgation. In regions inhabited by national minorities, the Military and Political Council of the Administrative Area of the provincial people's government may enact certain modifications of supplementary articles in conformity with the actual conditions prevailing among national minorities in regard to marriage. But such measures must be submitted to the Government Administration Council for ratification before enforcement.

Fuente: Yang, C.K. (1972) *Chinese Communist Society: The Family and the Village*, Cambridge: MIT Press, pp. 221-226.