

REVISITING THE LEGAL NATURE AND CONTENT OF A MARRIAGE CONTRACT IN THE MODERN LAW OF THE PRC

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Abstract

Purpose of the study: This paper deals with problematic issues related to the legal nature of a marriage contract. It also determines the contents of a marriage contract, which is regulated mainly by Article 19 of the PRC Law "On Marriage" of 2001 and the basic principles of civil law inherent in contract law in general.

Methodology: A common example is the cases when spouses agreed to transfer immovable property from one spouse to another after marriage, but in practice, the spouses did not register changes on the status of the immovable property. In the event of a divorce, one of the spouses requires to recognize the ownership of the real estate and register the changes, while the other spouse disputes that point.

Results: In recent years, marriage contracts have become increasingly popular in China, but special regulations on them in China's Marriage and Family Law are still unavailable. There are a lot of disputes and issues in practice relating to the definition of a marriage contract. In this regard, the question of the legal nature and content of a marriage contract is the subject of debatable research in Chinese legal doctrine.

Applications of this study: This research can be used for the universities, teachers, and students.

Novelty/Originality of this study: In this research, the model of Revisiting the legal nature and content of a marriage contract in the modern law of the PRC is presented in a comprehensive and complete manner.

Keywords: PRC's Law "On Marriage", marriage contract, content, non-property relationship.

INTRODUCTION

Marriage contracts regulated by the norms of the current PRC's Law "On Marriage" have been the subject of discussion research in Chinese legal doctrine for more than 30 years.

As practice shows, after the adoption of the PRC's Law "On Marriage" in 1980, which clearly enshrined the contractual regime of the property of spouses, marriage contracts have gone mainstream in China and gained popularity among the Chinese. However, today in the Chinese regulations governing family relations, a special definition of a marriage contract is missing. In practice, there are many disputes and issues relating to the definition of a marriage contract.

In this regard, it should be noted that one of the most pressing and debated issues in Chinese family law so far is the question on the application of the marriage contract rules. In particular, the question of applying to the relations connected with a marriage contract the norms of the People's Republic of China Law "On Contracts", as well as other civil-law norms of the current legislation of the PRC is not resolved. At the moment, the legislator has not given an unequivocal answer to this question; there are also different points of view in this scientific doctrine ([Wang, 2017](#); [Antúnez, 2016](#)).

In this case, the author would like to refer to the issue of the legal nature of marriage contracts under the laws of the PRC.

The legal nature of a marriage contract is based on the norms of family law, as well as on the provisions of the relevant rules of civil law. According to the most civil He Chi, "a marriage contract is considered as a civil-law transaction to the extent that the relations regulated by it constitute the subject of civil law, and when the relations regulated by it are of personal non-property nature, it cannot be considered a civil-law transaction" ([Xiaomei, 2015](#)).

Most scholars and lawyers support this point of view and believe that provisions from a marriage contract relating to civil law relations should be regulated both by family law and civil law; in particular, the provisions of the PRC Law "On Contracts" should apply to property relations. ([Masson, S. T. \(2008\)](#))

METHODS

A common example is the cases when spouses agreed to transfer immovable property from one spouse to another after marriage, but in practice, the spouses did not register changes on the status of the immovable property. In the event of a divorce, one of the spouses requires to recognize the ownership of the real estate and register the changes, while the other spouse disputes that point. ([Griswold, E. N. \(1937\)](#))

The question arises whether a marriage contract can establish conditions for the transfer of real estate from one spouse to the other; and even if this is possible, then whether the provisions of the PRC Law "On Contracts" of 1999 apply to these marriage contracts.

If the above provision is recognized by its legal nature as the gift agreement, then this requirement, as a rule, is not satisfied by the court due to the fact that in accordance with Art.186 of the PRC's Law "On Contracts", an agreement on the transfer of real estate from one spouse to another is a gift agreement, and the grantor has the right to cancel the gift, since the transfer of real estate in practice has not been made (there was no registration of changes in the status of real estate). [Ghodoosi, F. \(2015\)](#)

According to a Chinese civilist He Zhi, in the event that the spouses directly pointed to that the transaction would be carried out in the form of a gift agreement without drawing up a marriage contract, the dispute should not arise. In relation to this, no disputes arose in practice and in scientific doctrine. This is permissible, as persons with the status of a husband or wife can also make regular transactions. Being individuals, spouses are not deprived of the right to make transactions among themselves in the form of a contract of donation, sale, barter, and others. The provisions of civil law governing the property relations of individuals will be applied to these transactions ([He, 2016](#); [Kenan, 2018](#); [Zulkifli & binti Ali, 2017](#)).

RESULTS

This question was resolved only since the moment when in 2011 China adopted the Explanations by the Supreme People's Court of the People's Republic of China "On some issues of the application of the PRC Law "On Marriage (No. 3)". They contain a special provision on the question related to the ademption of real estate by a spouse to another. In accordance with Art.7 of the Explanations by the Supreme People's Court of the People's Republic of China "On some questions concerning application of the PRC's Law "On Marriage (No. 3)", spouses may agree to grant a property by one spouse to another before having entered into a marriage or during a marriage. If the property owner cancels the granting of immovable property, and the other party requires the gift, the people's court cannot satisfy this requirement, except in cases where the agreement was concluded in a notarial form ([Fuhua, 2013](#)).

This provision complies with the provisions of the Law "On Contracts". Thus, from the point of view of the legislator, the provisions of the PRC's Law "On Contracts" should be applied to the provisions of a marriage contract governing property relations between spouses. [Kirby, W. C. \(1995\)](#)

To establish the legal nature of the marriage contract, it is necessary to identify the differences between the marriage contract and the contractual regime related to the property of the spouses, as well as the differences between the marriage contract and other agreements establishing the property rights and obligations of the spouses. [Lubman, S. B. \(1997\)](#)

First, the legal provision on the contractual regime of marital property established by the PRC's Law "On Marriage" is the legal basis for concluding a marriage contract. In the early 1980s, the first marriage contracts appeared after the entry into force on January 1, 1981, of the PRC's Law "On Marriage" 1980. Article 13 of the Law provides that "the property acquired by the spouses during the marriage term is their joint property unless otherwise established by both parties", and then a contractual regime was first introduced for the property of the spouses. Especially after April 28, 2001, the Law of the People's Republic of China "On Marriage" was adopted with an amendment, where a precise definition of the contractual regime with regard to the property of spouses was given and the term "agreement on the spousal regime of property relations" was applied at the legislative level. A marriage contract may be entered into by spouses or future spouses freely; it may allow multi-variance with respect to the legal regulation of property relations between spouses and the marriage contract purpose is not only the determination of the regime of spouses' property. [Delimatsis, P. \(2011\)](#)

On the other hand, due to the fact that the family law of the People's Republic of China does not include any definition of a marriage contract in the provision on the contractual regime of the property of spouses, an agreement on the contractual regime of the property of spouses may exist not necessarily in the form of a marriage contract. Moreover, the definition related to the agreement is not completely related to the marriage contract. That is, a marriage contract is not a specific type of contract fixed by the law, which changes the legal regime of the property of spouses. In Chinese scientific doctrine, most scholars support the view that, although the contractual regime of spouses' property is a mandatory element of the marriage contract content, it may not be included in the marriage contract. However, in addition, a marriage contract may also allow any conditions that do not contradict the law regarding property rights and obligations of the spouses being in a marriage and in the event of its dissolution ([Fuhua, 2013](#); [Haghshenas et al, 2015](#); [Yazdekhashti et al, 2015](#)). That is, the contractual regime can be established by entering into a marriage contract, and other property relations, as well as some personal non-property relations between the spouses, can be established by concluding a marriage contract. [Barbalet, J. \(2016\)](#)

DISCUSSION AND CONCLUSION

The question of interaction with other civil contracts, which also establish the property rights and obligations of spouses, is rather complicated and it is necessary to continue its research. It should be noted that in practice there are different types of contracts that draw up the property relations of the spouses, in particular, the contract of sale, barter, donation, etc. Thus, it can be said that the existence of marriage relations does not prevent spouses from entering into various types of civil law transactions. In practice, in order to reveal the legal nature of a marriage contract, it is necessary to distinguish it from other types of civil law contracts ([Barlow et al, 2005](#); [Zhang, 2017](#); [Luo et al, 2018](#)).

Although the law does not contain a definition of a marriage contract, Art.19 of the Marriage Law of 2001 indicates the

basis for the existence of a marriage contract relating to the contractual regime of marital property. In practice, there is no clear regulation in Chinese law regarding marriage contracts, and there is no special rule regarding its regulation. It should also be added that in addition to the above aspects, in China a marriage contract can be concluded by spouses in a free form, and spouses or future spouses have sufficient freedom to determine the content of this contract.

The content of a marriage contract is governed by Article 19 of the PRC's Law "On Marriage" of 2001 and by the basic principles of civil law peculiar to contractual law in general.

Firstly, art. 19 indicate the possibility of entering into a contract regarding the property of the spouses. This defines the property rights and obligations of spouses in a marriage or in the event of its dissolution. It should be noted that this article exclusively regulates property relations, whereas the marriage contract is not limited to the regulation of property relations between spouses. In their marriage contract, spouses can settle both property and personal non-property relations. However, only property relations are subject to legal regulation as to this article. [Parsons, T. \(1970\)](#)

Secondly, the basic principles of civil law, such as the permissive rule principle in civil law regulation (Article 4 of the general provisions of the PRC's civil law in 2009) and the contract freedom principle (Articles 4 and 12 of the People's Republic of China Law "On contracts") provide an opportunity to determine the content of a marriage contract in different ways. The legislator thus provided for the possibility for the spouses of choosing a relationship that is subject to regulation in a marriage contract.

However, the law does not fully clarify the extent (concerning the content of a marriage contract) to which its parties may dispose of the freedom provided by law to determine their property and certain non-property rights in the contract. The doctrine also lacks uniformity in determining the scope of the freedom to form the content of the marriage contract.

In China, legislation on marriage and the family is always characterized by simplicity and generality, similarly to the institution of the marriage contract. Based on the above, as well as taking into account the peculiarities of the legal nature and content under the family law of the People's Republic of China, lawmakers and scholars of China should bear in mind that within the framework of a marriage contract provisions they will face with an urgent need to improve legislation. Laws relating to marriage contracts may have a direct impact on family relations, as well as on the regime of property relations between spouses. In particular, the content of a marriage contract and its application are of great legal significance. In the PRC legislation, the provision on a marriage contract should be more clearly and in detail established due to the fact that the resulting legal relations between the spouses need to be clearly regulated by the state.

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