

Exploring the Validity of False Marriage Based on the Characteristics of Identity Behavior

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Abstract: Article 146 of the General Provisions of China's Civil Code lists conspiracy to make false statements of intent as an ipso facto cause of invalidity of a legal act, whereas in the Marriage and Family Section, the causes of invalidity of marriage include only three cases, namely, bigamy, marriage between close relatives, and being under the legal age of matrimony. Although Article 17 of the Judicial Interpretation of the Marriage and Family Section (1) denies the invalid causes other than the above three cases, the possibility of the application of Article 146 to false marriage cannot be dismissed only in view of the overarching role of the General Provisions Section, but still needs to be explored. In order to explore this possibility of application, this paper focuses on the differences between identity acts and property acts, takes the unique ethical nature of identity acts, the autonomy of the parties' meaning and the stability of social relations as the basis, advocates the limited application of legal norms to identity acts, analyses the possible impacts of invalidating false marriages, and takes the confrontation of bona fide third parties or the existence of the fact of common life status as the exceptions, which are the most important factors for the invalidation of false marriages. The validity of the hidden act of concealment is judged on the basis of the validity of the pre-existing identity act, in pursuit of the result that has the least impact.

Keywords: Identity Acts; Conspiracy to Make False Representations; False Marriage; Legal Effects

1. Introduction

In 1950, China's first Marriage Law was introduced, in the decades since then, China

has carried out four civil law development work, but there has not been a success, the General Principles of Civil Law promulgated in 1986 was the only basic law in the field of civil law at that time. 1950 Marriage Law is a separate piece of legislation and earlier than the General Principles of Civil Law, which can not be separated from the background of the times in which our country is located at that time and the state of development of the productive forces of society. At the beginning of the founding of the People's Republic of China, under the influence of the highly centralized planned economy, the development of productive forces was restricted, the concept of collective property prevailed, and the theory of property law and contractual relations had no place. However, the identity law, with its unique ethical foundation and existing social basis, was enacted earlier than the property law. On the basis of the marriage regulations of the liberated areas and the marriage laws of the Soviet Union and the New Democracies, the legislators opted for the "Soviet model" of separating civil law and identity law.

In the 1880s, with the reform of China's economic system and the deepening of reform and opening-up, the economic basis of civil law was revealed, and society at that time was in dire need of civil law adjustment. Until the 1990s, China's civil law doctrine began to emphasize the importance of the division of public and private law and reintroduce civil law as private law. To date, the Civil Code issued in 2020 has incorporated marriage law and adoption law into the civil law system, a move that is an official response to the debate over whether marriage law should be a separate branch of law.

The reason why there are two opposing views in civil law circles on the positioning of marriage and family law, namely, the return to civil law and the independent legal sector, is that marriage and family law has a family ethic

that cannot be ignored. In the view of some scholars, marriage and family law is incompatible with civil law, and the special characteristics of marriage and family law can support its existence as a legal department independent of civil law; while many scholars believe that, although the marriage and family law has its own special ethical color of humanism, but can not be rejected because of its individuality and the commonality with the civil law, attributed to the status law of marriage and family law is based on the ethics of generation, the union of the two sexes, and the continuation of the blood line and existence. The marriage and family law, which belongs to the identity law, exists on the basis of generation ethics, gender union and continuity of blood lineage, and the identity relations it regulates are equal both vertically and horizontally, and the personalities regulated by it are also absolutely equal, and it belongs to the field of private law together with civil law.

In China, although the Marriage Law predates the General Principles of Civil Law, the order in which the laws came into being does not determine the relationship between the Marriage Law and the Civil Law – Researchers were of the view that the law is ultimately determined by the material conditions of life in a society, but that its specific content is affected by other non-economic factors such as religion and custom. In the early days, the Chinese civil law profession was influenced by the "commodity economy view of civil law", which believed that the basic rules of civil law were mostly applied to property relations, and, fearing that the ethical nature of identity law would be weakened by the application of civil law rules, they excluded the application of identity-dependent property relations to civil law, thus reducing the General Principles of the Civil Code to the General Principles of the Law of Property. The misunderstanding lies in the fact that they believe that private law and ethics are irreconcilable, and that the autonomy of private law will lead to the objectification of kinship relations, and that their ethical nature will be lost in the process. It should be noted that "the factors that tend to monetize marital and family relations do not lie in the incorporation of the law on marriage and the family into the civil law system, but rather in the political, economic, moral and other factors

of society". The idea of using the law as a tool for the pursuit of interests in the sphere of kinship can only be developed under the influence of undesirable ideologies [1]. Moreover, the counterpart of private lawfulness is public lawfulness, where private law is about individual interests and public law is about the public sphere and public power. As for ethicality and private law, there is no conflict between private law attributes and ethicality because the law itself contains intrinsic justice, and "law without ethical and moral foundations cannot be respected and conscientiously observed by people". Furthermore, from the point of view of the object of adjustment, the General Principles of Civil Law in 1986 covered the personal relationship into the object of adjustment of civil law, personal relationship includes personality relationship and identity relationship, the kinship relationship adjusted by the marriage and family law has evolved from the original status domination and obedience relationship of the hierarchy of status to the relationship of mutual assistance and common life relationship which is equal and focuses on the protection of the interests of the weakest members of the family, and the independence and equality among the subjects have appeared in the field of marriage and family, and the independence and equality among the subjects have been realized [2]. The independence and equality between subjects have been manifested in the field of marriage and family, and it is indisputable that marriage and family law is categorized under the civil law system.

Marriage and family law has a qualitative connection with civil law, and the unique human nature of marriage and family law ensures its independence in the civil law system, as scholars have said when exploring the assimilation and modification of marriage and family ethics by kinship law, "the ethical nature of kinship does not 'return to civil law' because of the 'return to civil law' of kinship law], and civil law does not become unethical because of its private law attributes". The ethical nature of kinship does not change into a contractual relationship between equal subjects, and civil law does not become unethical because of its private law attributes" [3].

2. Inappropriateness of the General Part to the Marriage and Family Part

The mismatch between the General Part and the Marriage and Family Part is reflected in the significant tension between the "materialistic" nature of the General Part and the humanistic concerns of the Marriage and Family Part. As the basic framework of the legal system, the General Provisions tend to focus more on the regulation of property relations and transactional behaviors, emphasizing the stability and predictability of legal relationships such as property rights and contracts. This attribute of "valuing things over people" has, to a certain extent, neglected the subjective will and emotional factors of people, whereas the Marriage and Family Title focuses on the regulation of marital and family relations, with an emphasis on the protection of personal emotions, family ethics and human dignity. In dealing with marital and family disputes, the principles and rules of the General Provisions may not be able to fully satisfy the humanistic and emotional considerations of the Marriage and Family section, leading to conflicts and contradictions in the application of the law.

2.1 Property Attributes behind the Generality of the General Part

Codification is systematization, which includes not only the formation of a formal system, i.e., "from a simple alphabetical or numerical order, to a dogmatic abstraction based on the matters stipulated, and finally to a perfect, complex and systematic order, but also the formation of a substantive system, i.e., the spirit of the law's intrinsic value is shared among the various sectors of the law. In the process of the development of China's civil law theory, many German civil law theories have been borrowed and absorbed, and in compiling the civil law system, the legislator followed the logical rule of "from abstract to concrete" and "from general to special", and adopted the general and sub-structures of the German Pandecton system. The establishment of the general-part model indicates that the general-part structure of each law is a general one. The establishment of the general and sub-general model indicates that the specific rules are subject to mutual logical connection [4]. The general part is an abstraction of the basic rules in the sub-parts, and should be the common principle of the

specific parts, and the part on marriage and family is no exception.

2.2 Identity Behavior and its Specificity in the Marriage and Family Codification

The General Principles should be the common general principles of property law and identity law, the application of identity law to the General Principles is not a problem, and it is because of the General Principles of China's Civil Code to adjust the rules of property relations, and the natural existence of property behavior and identity behavior of the heterogeneity of the civil code of China's civil code of marriage and family and the General Principles of the application of the issue of how to apply.

Compared with property relations, kinship relations have the characteristics of human nature, unity of union, stability of continuity and jointness of change [5]. And these characteristics determine the identity relationship as the object of identity behavior is different from property behavior. This article will discuss the essential characteristics of identity behavior from the following three aspects:

2.2.1 Limited content

An act of status is constituted by an expression of meaning, but the meaning of the purpose is not included in that expression. Both the previous Marriage Law and the current Civil Code provide for the principle of marital autonomy, reflecting the freedom of meaning in the form of the spirit of values throughout the whole series. Autonomy of meaning is the core element of property behavior and the soul of the entire civil law. The parties complete the transaction of consideration on the basis of autonomy of meaning, and the scope of the expression of meaning is not limited, and the actors can contribute to the realization of the transaction based on their own interests and needs, so as to achieve the purpose of each getting what he or she needs [6]. However, the scope of expression in identity behavior is limited. "An identity act is designed to change the identity or identity relationship of the subject, and the content of this change is arranged in the human order, i.e., either to form a legally established identity relationship or to eliminate an existing identity relationship, and the perpetrator is not allowed to arbitrarily create, by subjective will, a type of identity

that does not exist in the human order. The theory of "factual precedence" put forward by the Japanese scholar Professor Yoshinosuke Nakagawa points out that "the 'fact' of the law has already existed first, and the statute is only recognized later." It is emphasized that the ethical order regulates the social life of human beings before the law, and that the norms of the law of identity are created in accordance with the ethical order, and are declarative of human ethics. Identity relations, as the object adjusted by identity acts, are first permitted by the ethical order, and reasonably exist before the recognition of the law, which is the "stereotyping" of identity relations. And the property behavior of the claim relationship is artificial combination of interests, its content according to the will of the parties to be fully shaped, is 'the fact after the law' ", but shall not exceed the expectations of the law, such as the principle of the legal principle of the right to property of the right to act on the limitation of the property. This limitation is based on the security and convenience of the transaction order, and is very different from the limitation on the expression of meaning of identity acts due to the human nature of identity relations.

2.2.2 Emotionality of the behavioral basis

Identity acts regulate identity relations based on blood, marriage and legal fiction, and they do not lack an emotional element compared to the material benefits of property relations. The social relations of human beings can be divided into two categories: "essential social relations" and "purposeful social relations" [7]. Identity relations, based on emotional conclusion and human order, are covered by the "essential social bond" and emphasized as the essential, natural and whole-personal bond; property relations, based on the realization of economic benefits, belong to the "purposeful social bond" and emphasized as the pursuit of material benefits. The property relationship, with the purpose of the union being the realization of economic benefits, is a "social union of purpose", emphasizing a transient union based on the pursuit of material benefits. Identity behavior is based on a certain emotional depth, which not only affects the property interests of the relative, but also affects the social life of the relative, while the union of property relations does not require an emotional connection between the parties, and its consideration is the convenient material

exchange and the win-win situation for the interests of all parties. The field of marriage and family is more humane than commercial relations, therefore, the combination of identity relations should be more careful than property relations, and the field of marriage and family should pay more attention to the intention of the parties [8].

2.2.3 Finality and certainty of the effects of an act

As mentioned earlier, the identity relationship is an "essential social bond", and its change affects the whole life of an individual, which is a manifestation of the joint nature of the identity relationship. Based on the joint nature of identity relationship, the law should do its best to maintain the fact of identity relationship that has been accomplished, that is, the finality of identity behavior. In order to avoid the "empty window" of the identity relationship and the fluctuating validity of the act, once the identity act is established in fact, the validity should be determined, and it cannot be easily withdrawn or ruled invalid, which is the embodiment of "certainty". Stable human order is the foundation of social stability, and focusing on the finality and certainty of the validity of an act of identity is a sign of respect for the fact of established identity and the maintenance of the stability of identity relations.

2.3 Inappropriateness of the General Part to the Marriage and Family Part

The law of identity relations is a legalization of the ethical order, and the rules and provisions it contains are more about affirming the ethical order and reinforcing it through the authority of the law and the coercion of the State. The combined basis of identity relations gives identity behavior an ethical nature that distinguishes it from property behavior, but it also highlights the deep-seated connection between identity behavior and legal behavior - the importance attached to the expression of meaning [9]. However, most of the rules in the General Principles of China are basically abstracted from property behavior, which makes the Marriage and Family Law Section have concerns when applying the provisions of the General Principles. Under the influence of German law, which emphasizes objects rather than persons, civil law scholars have favored the study and research of property acts, making

the relevant systems of property law more developed than those of identity law.

2.4 Extent of Application of the Provisions of the General Part to the Marriage and Family Part

The positioning of identity acts as both legal acts and different from property acts provides a logical basis and path guide for their systematization. The pain point of "emphasizing things over people" in the General Principles has not been improved in the Chinese Civil Code [10]. Problems are still problems. Under the consideration of this layer of factors, the Marriage and Family Code cannot be required to fully apply the rules of civil legal acts in the General Principles, but it cannot be completely inapplicable either, or else it will make the Marriage and Family Code, after being incorporated into the Civil Code, still appear to be in harmony with the civil law system.

Therefore, the author believes that the Marriage and Family Part should not be too difficult to apply, nor should it be applied for the sake of application, nor should it be forced to apply the rules of the General Part to the sub-rule of the Marriage and Family Part in order to realize the internal logic of the Code, nor should it be sacrificed for the purpose of safeguarding the overarching role of the General Part in terms of the identity of the relationship and the identity of the act. The basic rules of the General Provisions should be applied differently to the Marriage and Family Provisions, i.e., when the Marriage and Family Provisions have special provisions, they should be applied in accordance with the special provisions of the Provisions, and when there are no special provisions but general provisions in the General Provisions, they should be applied or not applied, taking into account whether they are in line with the ethical nature of marital status behaviors.

3. Limited Application of Article 146 of the Civil Code to the Recognition of the Validity of Sham Marriages

As mentioned above, the Marriage and Family Code, as an area of identity with special characteristics, cannot simply apply the provisions of the General Provisions on false indications of intent to the legal effects of the act of marriage. Article 146 aims to safeguard

the authenticity of legal acts, but the marriage relationship involves emotional, ethical and other complex factors, and the determination of its validity needs to take into account the special characteristics of identity acts in the Marriage and Family Section. If the validity of a sham marriage is denied solely on the basis of article 146, the social relationship defined by the fact of living together may be undermined. Therefore, this paper takes identity behaviour as the basis and reasonably draws on the general provisions of article 146, balancing the unity of the law with the ethical nature of marriage.

3.1 Constitutive Elements of Identity Acts

Identity act belongs to one kind of legal act, identity act should be applied in the theory of constituent elements of general legal act, so it adopts the dual structure of "establishment elements" and "effective elements" [11]. The establishment elements of general identity behavior include the parties, the subject matter, the meaning of the effect and the form of expression and other elements. Because of the formality of the identity act, the identity act requires formal elements, and its effect is established when all the elements are complete. As for the validity of an identity act, it is consistent with the validity of general legal acts stipulated in the General Principles, and can be broadly divided into the private interest element and the public interest element, with the private interest element specifically including the possession of the corresponding capacity to act in the capacity of identity as well as the soundness of the expression of the meaning, and the public interest element covering the content of the lawfulness and the act does not contravene the public order and morality requirements.

The legal act pursues the autonomy of meaning, and when there is a defect in the meaning of the expression, its effectiveness will be deeply affected. Legal behavior in the meaning of the expression requires the expression of the intention of the internal meaning and the expression of the meaning of the effect of consistency, and in the external factors and their own subjective reasons, there will be the internal effect of the meaning of inconsistent with the expression of the meaning of the situation, that is, the expression of the meaning of the defects. Meaning defect

is divided into meaning inconsistent and meaning not free two cases. Inconsistency of meaning mainly refers to the reservation of the true meaning, conspiracy to false representation, error and other circumstances; meaning is not free to include fraud, duress and other circumstances. In this paper, we will focus on the effect of the marriage act in the case of conspiracy to make false representations [12].

3.2 Marriage by "Conspiracy to Make a False Representation"

Article 146 of the General Provisions of China's Civil Code lists conspiracy to make false statements of intent as an ipso facto nullity of a legal act, and article 155 stipulates that a legal act that is null and void or revoked is not legally binding from the outset. In the Marriage and Family Code, the only three cases of marriage nullity are bigamy, marriage between close relatives, and being under the legal age of marriage. Although article 17 of the Judicial Interpretation of the Marriage and Family Section (1) denies the grounds for nullity other than the above three cases, it is still necessary to explore whether there is any room for the application of the relevant provisions of the General Provisions that cannot be dismissed on this basis alone.

3.2.1 Elements

The so-called "false marriage", that is, the marriage formed by the two parties to the marriage who conspire with each other and jointly make a declaration of marital intent that is contrary to their true intent, but neither of them has the true intent to enter into marriage. The specific constituent elements are as follows: (1) both parties exist the expression of marital intent, the marriage registration act is valid; (2) both parties for the expression of marital intent is inconsistent with their true intention, that is, there is no true marriage consent; (3) the party's untrue marital intent is made in the state of freedom of its meaning; (4) the party's subjective existence of intent, that is, knowing that it does not have the effectual meaning of the marriage, but still make the relevant act of expression; [13] (5) the parties through the meaning of contact, reached a consensus to make contrary to the true intention of the marriage intention. The parties not only understood the inconsistency between the other party's true meaning and the

act of representation, but also formed a common will to maintain such inconsistency.

3.2.2 Recognition of the validity of sham marriages

The "soundness of meaning" in the validity of an act of status requires that the intention of the parties be voluntary and true [14]. The meaning of the expression presented in the "false expression of conspiracy" is so different from the internal effect of the parties' meaning that the expression of meaning should be recognized as defective and the validity of the act of marriage should be questioned.

In doctrine, there are two opposing views on the content of the meaning of an act of capacity: the "substantive meaning" and the "formal meaning". The "substantive meaning theory" holds that the content of the meaning of an act of identity consists of both the meaning of effect and the "meaning of expression" that expresses the act of identity, of which the meaning of effect is aimed at materializing the identity relationship stereotyped by social customs and emphasizes that it is inseparable from the fact of life of the identity and is not accompanied by facts. The effectual meaning aims at materializing the identity relations stereotyped by social customs, and emphasizes that it is inseparable from the facts of life of the identity, and is not accompanied by the mere meaning of the facts, which is not the true effectual meaning. The "Formal Meaning Doctrine" holds that the meaning of expression (the meaning of registration) is the only meaning of an identity act without regard to the true meaning, and emphasizes the formal elements in order to maintain the formality of the identity act and the stability of the identity relationship.

Based on the differences in the understanding of the content of the meaning, there are differences in the validity of the marriage act of "conspiring to make a false representation". The "substantive meaning theory" advocates invalidation due to the lack of "effective meaning" of the act, while the "formal meaning theory" advocates that it is difficult for outsiders to guess the subjective meaning of the parties, and that in order to maintain the stability of the social order, the validity of the marriage should be measured by the meaning of the expression, regardless of the lack of the true meaning of the parties. In order to preserve the stability of the social order, the

validity of a marriage should be measured by the meaning of the expression and not be affected by the lack of the true meaning of the parties.

3.2.2.1 Effect of a sham marriage on the parties

In my opinion, the "substantive meaning" can better balance the tension between the stability of identity relationship and the party's autonomy. "Formal Meaning" focuses on the legal appearance of marriage, and advocates the validity of marriage by conspiracy and false representation, in order to avoid the over-pursuit of party autonomy, which makes the application of law fall into subjective speculation, and to insist on the "formality of identity behavior" is the stability of the identity relationship, but the emphasis on objective behavior and neglect of the real meaning of the parties, it is not too much. Insisting on the "essentiality of identity behavior" is a stable identity relationship, but emphasizing the objective behavior and ignoring the real meaning of the parties is too mechanical and dull, which is not conducive to the stability of the identity relationship. The "formal meaning" is intended to maintain the stability of the marriage and family relations, but the form to abandon the meaning of the sacrifice of the freedom of the parties to the continuation of the identity relationship, not only violates the principle of self-governance of private law, but also deviates from the value of the marriage and family, more detrimental to the long-term development of the identity relationship and stability. Marriage is the product of the common emotional pursuit of two independent individuals, is the law of the relationship between the two parties to the conclusion of the recognition and maintenance of public power with coercive force to interfere in the marriage of other people, the two sides of the main contradictions have not been resolved, the relationship between the breakup of the inevitable end, then the marriage is still need to be protected is questionable. "Substantial meaning" adhere to the respect of the party's autonomy, marriage conspiracy false intention usually with improper profit-making color, the parties to the pursuit of certain property interests, the marriage as a tool for profit-making, such as this case, the two sides did not have the fact of common life after registration, did not occur in the family, the

social relations of the the essence of the union, a woman and the marriage concluded by man C is only a cover to hide the appearance of behavior, the marriage as a tool for profit beyond the normal understanding of marriage, more with the principle of public order and good morals contrary to the validity of the false marriage should be denied.

While the "substantive meaning theory" emphasizes the true meaning of the intentional person's heart and strives to uphold the spirit of private law autonomy, the instability arising from the excessive emphasis on the freedom of meaning is something that should be avoided in order to maintain the identity relationship. Although the two parties do not have the intention to marry, but also can not exclude the possibility of mutual affection and the formation of the fact of common life during the false marriage. Even if the intention to marry is not present, a false marriage with the fact of living together cannot be arbitrarily assessed negatively, out of respect for the common life of the parties, the joint management of their family relations and the common social personality that they have developed. If this provision is applied directly in the area of marriage and the family, the effects of the marriage in question will be null and void ipso facto, and the spousal status of the parties to the marriage, as well as the legitimacy of the children born of the marriage, will be denied at the legal level, thus placing the parties and their children in an awkward situation. The "factual precedence" of identity acts determines that even if an identity act is invalid and retroactive, it cannot be restored as in the case of a property act, and once a marital and family identity relationship has been created, the fact of its past cannot be erased [15].

3.2.2.2 Effect of a sham marriage on third parties

Once the parties have completed the registration of a false marriage, they use their new status for their own benefit, and when they engage in commercial transactions in the name of the couple, they inevitably involve third parties. The legal act of conspiracy to commit a false representation is absolutely null and void as between the parties, but that effect is not opposable to bona fide third parties involved in the act. This provision of the General Part is also applicable in the field of

marriage and family. The state of the marriage is expressed in a registered act, for the third party, the true meaning of the marriage parties is difficult to guess, and the reasonable trust arising from the legal act of marriage registration is worthy of protection, the parties to the false marriage can not rely on the invalidity or revocation of the marriage as a reason to fight against the bona fide third party, even if the marriage is invalid due to invalidity or revocation of the effects of the marriage, but still can not fight against the claims of the bona fide third party. If a third party knows of the false representations of the parties to a marriage and still enters into a transaction with the other party, the law does not protect his or her interests and the third party may not claim that the marriage is valid.

In summary, the author believes that, as the "substantive meaning" claimed, the meaning of the identity act contains the effect of the meaning and expression of the act, but taking into account the possibility of the formation of the identity of the fact of living together, the lack of effect of the meaning of the marriage should not be invalidated in its entirety, if there is the fact of living together for a long period of time and stability, the meaning of the defect should be considered as If there is a long and stable fact of living together, the defect of meaning should be regarded as a correction, and the marriage is still valid. At the same time, the invalidity of the false marriage involving the property interests of the third party shall not be opposed to the bona fide third party, i.e., the bona fide third party shall have the right to claim the validity of the marriage to prevent the parties from evading the fulfillment of their obligations.

3.2.3 Effect of concealment

False marriages are often intended to cover up hidden acts that are genuinely intended to be performed. In contrast to the relevant acts in property law, the act of concealment in the context of identity acts is usually premised on the establishment of a specific identity relationship in order to obtain a property benefit that can only be enjoyed on the basis of a specific identity. While the General Provisions provide that the effects of concealment shall be dealt with "in accordance with the provisions of the relevant laws", in view of the special nature of identity acts, concealment premised on the establishment of

a specific identity relationship shall be considered in conjunction with the effects of the relevant identity acts. When the identity act on which the hidden act is based is still valid, the hidden act is valid; the opposite is true.

4. Conclusion

The return of marriage and family law to the Civil Code is an affirmation that identity law belongs to the civil law system, indicating that identity law is equal to property law. The Civil Code adopts a general and divisional system, which requires that the general part of the Code governs the various sub-parts. The application of the general provisions of the General Part to the Marriage and Family Part is the key to breaking the separation between the Marriage and Family Law and the Civil Code and realizing the substantive integration of the two. However, since most of the general provisions of the Civil Code of China focus on the rules of property behavior and there is heterogeneity between identity behavior and property behavior, there are certain difficulties in applying the general provisions to the Marriage and Family Law. Therefore, out of respect for the characteristics of identity behavior, when the general provisions of the General Provisions are incompatible with the ethical nature of the Marriage and Family Part, the provisions of the General Provisions cannot be forced to be applied for the sake of the logical system, even if there are no special provisions in the Marriage and Family Part.

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