

Exploration of the Nature, Scope, and Return Rules Regarding Betrothal Gifts

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Abstract: Unlike the practice of demanding property through marriage or gifts made during the romantic relationship, betrothal gifts are a form of conditional donation made with the purpose of marriage and typically involve a substantial amount of property. After defining the scope of betrothal gifts clearly, the Judicial Interpretation No. 1 [2024] of the Supreme People's Court have shifted the perspective to the improvement and application of the rules for the return of betrothal gifts. Specifically, the refinement of these return rules primarily involves clarifying the parties eligible to initiate litigation in cases involving bride prices and establishing the specific application of the concept of cohabitation under both scenarios where the marriage has been registered and where it has not. As for the specific application, it depends on the determination of the contents and exploration of the relationship of the various factors involved. Namely, the actual use of betrothal gifts and dowry are the factors determining whether to return. In addition, common life, pregnancy and fault of both parties are the criteria for determining the specific proportion of return. As well as, local customs are the overall application of the remaining factors.

Keywords: Judicial Interpretation No.1 [2024]; Legal Nature of Betrothal Gifts; Definition of the Scope of Betrothal Gifts; Rules for the Return of Betrothal Gifts.

1. Introduction

As a marriage custom with a long history in China, betrothal gifts carry a profound social and cultural heritage. From local customs to structural changes of men and women of the right age, to differences in regional economic development, corresponding associations can be found in the folk custom of betrothal gifts. However, in recent years, as the negative effects

of high betrothal gifts have become increasingly prominent, the number of cases brought to court due to the return of betrothal gifts has also been increasing. However, in the judicial system, the normative basis for disputes involving betrothal gifts is still mainly limited to Article 1042 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) and Article 5 of the Interpretation (I) of the Supreme People's Court on the Application of the Marriage and Family Part of the Civil Code of the People's Republic of China (hereinafter referred to as the Interpretation of Marriage Compilation (I)). Among them, the Civil Code only stipulates that "it is forbidden to ask for property by marriage", and does not specify how to apply it specifically. While the rules of judgment on disputes over the return of bribery gifts are detailed in the Interpretation of Marriage Compilation (I), there are still many circumstances that cannot be covered in the face of various specific cases in practice. In addition, there are many comprehensive factors that have changed in the betrothal gifts dispute cases themselves, which also make it more difficult to apply the law.

Based on this, the Provisions on Several Issues Concerning the Application of Law in the Trial of Cases Involving Bribery Disputes (hereinafter referred to as the Provisions), which were implemented by the Supreme People's Court in 2024, have made a relatively systematic response in terms of the scope of identification of betrothal gifts, the specific circumstances of return and the factors to be considered, providing behavioral guidance for the parties to handle relevant disputes. Therefore, this article will mainly take the contents of the Provisions as the starting point of analysis, and combine the existing discussions in academia and the judicial cases in practice to explore the legal nature and scope of betrothal gifts, with a view to clarifying the specific application of various factors in the rules for the return of betrothal gifts.

2. The Legal Nature of Betrothal Gifts

Article 1 of the Provisions points out that the betrothal gifts are paid for the purpose of marriage, but there are still disputes in the academic circles over the definition of the nature of the purpose, resulting in different viewpoints. Such as, the evidentiary agreement theory, the contract theory, the ownership transfer theory, the obligation-attached donation theory, the rescission-conditioned donation theory, and the purpose-driven donation theory. Although all the above-mentioned viewpoints contain certain rationality, due to the incompatibility of the times and the lack of feasibility, the focus of academic disputes mainly focuses on the latter two categories. Therefore, this section will further clarify the legal nature of betrothal gifts mainly through a detailed analysis of the existing disputes over the two doctrines.

2.1 The Rescission-Conditioned Donation Theory

This theory is not only the mainstream view of the academic community [1], but has been widely supported by scholars such as Shi [2] and Long [3]. It is also the general theory of the countries of the continental law system [4] and is embodied in the legislation of Germany, Switzerland and other countries.

The saying mainly claims that the betrothal gifts are gifts with conditions for dissolution, and the conditions attached are the dissolution of the marriage contract. Namely, the payment of the betrothal gifts is based on the conclusion of the marriage contract. If the marriage contract fails to be realized eventually, the recipient does not exist subsequently due to the payment reason, and no longer has legal basis for the betrothal gifts. Meanwhile, the payer may request the receiver to return the betrothal gifts on the basis of the claim for unjust enrichment. On this basis, some scholars further advocate that "marriage" should be interpreted purposefully, so that the rules on the return of betrothal gifts can also be applied in some cases of divorce [5]. At the same time, some scholars have limited it to an expanded interpretation of the quality of marriage, so as to provide more sufficient legal support for the exercise of the right to claim the return of betrothal gifts in the above-mentioned circumstances [4].

By contrast, some scholars have put forward different opinions. The dissenting opinions

mainly include: Firstly, the determination is made by law and may not conform to the original intention of the parties [6]; Secondly, the addition of conditions in the process of concluding a marriage relationship may impact the essential attributes of marriage relationship [7]; Thirdly, a conditional gift contract can only produce the conclusion of "all" or "none", which may lead to the imbalance of the interests of both parties [8].

2.2 The Purpose-Driven Donation Theory

This theory actually borrows the "theory of loss of the basis of conduct" in German law as the analytical framework [9]. To put it differently, if a party bases its intention of effect on an idea that is not only cognitive to the counterpart, but that does not raise any objection, then such an idea constitutes the basis of a legal act. Specifically, the rules on the return of betrothal gifts provide that betrothal gifts are paid on the condition precedent that the parties will enter into marriage. Where such condition is not fulfilled, the consideration for the gift fails. Consequently, the donor may assert a claim for restitution based on unjust enrichment, and the recipient is obliged to return the gifts received [10].

Thus, scholars who hold this theory always believe that it has the following advantages compared with the rescission-conditioned donation theory. In the first place, it can avoid the problem of inconsistent intention or true intention of the parties caused by the fiction [1]. Secondly, exploring the purpose of the payment of betrothal gifts is helpful to clarify the application and discretionary factors of the return of betrothal gifts in practice [8]. Thirdly, we can find a reasonable way of civil law interpretation, which has been recognized by both the practical and academic circles. On the contrary, the scholars who hold an opposing attitude are mainly based on the following points of view. Firstly, the failure to achieve the purpose of the gift is not the statutory reason for revoking the gift in the Civil Code, and the judgment of the achievement of the purpose is also controversial. Furthermore, the setting of the rule itself may lead to excessive abstraction and thus the risk of "escape to general clauses" [3].

2.3 The Legal Nature of Betrothal Gifts

According to the statement of the above views,

we can find that the main points of contention of the two doctrines are concentrated on. To begin with, whether the fiction may cause inconsistency between the original intention or the true intention of the parties. Next, the necessity of exploring the purpose of betrothal gifts and the legality of conditional use. Lastly, whether it can be supported by actual legal practice. Consequently, this article advocates the rescission-conditioned donation theory, mainly for the following reasons.

On the question of whether the drafting may cause the inconsistency between the original intention and the true intention of the parties, scholars who advocate the purpose-driven donation theory generally accept that the contract of gift of betrothal gifts does not expressly contain the clause "the gift is terminated if the marriage is not established". Accordingly, the so-called conditions for dissolution are merely the artificial presumption of the interpreter on the will of the parties. However, if we scrutinize the "gift for purpose" theory, its essence is nothing more than a legal fiction as to the contractual basis of the parties. Thus, it may also occur that what they themselves say is "inconsistent with the intention or true intention of the parties". As to whether the fiction really causes the inconsistency between the original intention or the true intention of the parties, it can be verified through the general handling habits of people on the question of betrothal gifts in practice. For example, the attitude of the man when paying the betrothal gifts is to hope that the marriage contract can be concluded smoothly, so that the property ownership will be transferred to the woman when paying. Therefore, the so-called fiction of "dissolution of marriage" is only a safeguard of the property rights of the man, and there is no distortion of the true intention of the man. While the fiction of "conditional contact theory" does not involve distortion of the original or true intention of the parties.

With regard to the necessity of discussing the purpose of the betrothal gifts and the legality of conditional use, the author does not deny the necessity of discussing the purpose of payment, but it should not become the act or transaction basis of the contract for the gift of betrothal gifts. The essence of the purpose-driven donation theory is to introduce the loss of the subjective and objective basis of conduct in the "theory of loss of the basis of conduct" of the German Civil

Code. However, although Article 533 of the Civil Code of China clearly stipulates the loss of the basis of objective conduct of "change of circumstances", it is not enough to cover all the existing circumstances of the return of betrothal gifts. Meanwhile, the determination of "common mistake" as a ground for the loss of the transactional basis is itself fraught with inherent abstraction, and there may be a suspicion of escaping to the "general clause". Hence, the theory is more suitable for application as a theoretical interpretation in China. On the other hand, the "theory of gift with conditions for rescission" has a clear legal basis, which is Articles 158 and 159 of the Civil Code. In addition, given the objection voiced by certain scholars that marriage should not be made a conditional element in the doctrine of gift-giving, the author considers that such gifts with conditions for dissolution do not constitute interference with the freedom of marriage, but rather a protection of the freedom of marriage. Namely, a guarantee of property rights that can be given to the payer when both men and women fail to conclude a marriage agreement on the basis of freedom of marriage. At this point, it can be further explained that "conditionality may not achieve the balance of interests between the two parties" as pointed out by some scholars. Accordingly, the author believes that in actual marriage practice, if the general clause of "conditional dissolution" is blindly followed, the legitimate rights and interests of the woman may not be well protected. In the meantime, the balance of interests of both parties can be better realized through the expanded interpretation of "marriage purpose", "marriage quality" and other factors pointed out by the above-mentioned scholars.

On the question of whether it can be supported by actual legal practice, the scholars who advocate the theory of "purpose donation" are mainly based on the conclusion made by the Supreme Court that the payment of betrothal gifts itself implies the premise that marriage is the condition [7], and thus obtain the support of judicial practice for their claims. Specifically, where both parties fail to marry and the betrothal gifts are retained by the receiving party, not only will the purpose of payment not be realized, but the original true intention of the paying party will also be forced to run counter to it [7]. Nevertheless, such a claim is undoubtedly a distortion of the assertion that the nature of the

payment of betrothal gifts is only to point out that the purpose is marriage, and if the purpose fails, the return may be requested, but it does not specify what legal nature the purpose belongs to. On the other hand, the "theory of gift with conditions for dissolution" has definite theoretical support in judicial practice. That is to say, as stated by the Supreme People's Court's Reply on Whether Parents of the Opposite Party Can Be Listed as Co-defendants in Betrothal Gift Dispute Cases (hereinafter referred to as the Reply), the act of marriage donation is a conditional donation in nature. For that matter, once both parties fail to conclude marriage or the marriage relationship is eventually terminated, the conditions attached to the donation will no longer exist.

3. The Definition of the Scope of Betrothal Gifts

Article 3 of the Provisions points out that when determining the scope of betrothal gifts, the people's court may make a comprehensive determination according to the purpose of one party's payment of property, and in combination with the local customs and habits of both parties, the time and specific method of payment, the value of property, the payer and the recipient and other factual factors. From the practical level, the difficulties in the application of the definition of the scope of betrothal gifts mainly focus on the distinction between property obtained through marriage and gifts during love. Therefore, this section will start with the specific definition of the above two categories of circumstances to further clarify the scope of application of betrothal gifts.

3.1 The Different between Demanding Property through Marriage and Betrothal Gifts

In recent years, some regions have frequently exposed the phenomenon of women defrauding high-value betrothal gifts in the name of marriage, which has caused considerable impact on the local social order and even evolved into a certain grey industrial chain [11]. Faced with this reality, Article 2 of the Provisions has made a clear response, that is, the people's court shall support the payer's request for the return of property obtained through marriage in the name of betrothal gifts. From the perspective of normative functions, the clause not only constitutes a concrete development of the

prohibitive provision of Article 1042 of the Civil Code "prohibiting the extortion of property by marriage" in the field of betrothal gifts, but also sets a clear legal consequence for the act of extortion in the name of betrothal gifts from the judicial level.

The so-called "extortion of property by marriage" refers to the act of one party to a marriage contract forcibly demanding property from the other party in the name of establishing the marriage contract. Unlike the "voluntary" and "bona fide" acts of ordinary betrothal gifts, such acts are more of a "forced" and "malicious" act of escaping or repenting of marriage, which constitutes a violation of public order, good customs and the principle of freedom of marriage. Consequently, the acts demanding property through marriage should be resolutely combated. However, as the judgment is mainly based on the discussion of subjective state, it is difficult to distinguish and adduce evidence in practice. At the same time, the parties who pay the betrothal gifts may fabricate their subjective state due to their failure to achieve the expected marital state, which further increases the difficulty of identifying demanding property through marriage [12]. Therefore, when defining the specific form of asking for property through marriage, we cannot simply take whether there is a will to marry as a single judgment standard, and we should also make a comprehensive determination in light of the specific facts at the objective level [8]. For example, whether there is a disappearance of money after receiving the betrothal gifts, or whether there is repentance without justified reasons after receiving high betrothal gifts repeatedly in the name of marriage in a short period of time.

However, it may still be difficult to determine whether to ask for property through marriage only by relying on the above two clear provisions. At this point, we may as well take the subjective motive of the woman to "ask for property through marriage" as the cause of wrong doing, and appropriately increase the amount and proportion of return on the basis of the existing return [13]. For example, a illustrative case is *Tu A Xiong v. Jiang A Zhen*, decided by the Intermediate People's Court of Quzhou City, Zhejiang Province. In that case, the court after comprehensively considering such factors as the intention of communication, the mode of coexistence and the emotional status of both parties, considered that the defendant was

indifferent to the feelings of both parties. Hence, the act of continuously demanding property from the plaintiff on the condition of being willing to marry has already constituted demanding property through marriage, and all the property paid by the plaintiff should be returned. This not only provides a good reference for us to specifically define the situation of "demanding property through marriage", but also conforms to the emphasis in Article 5 of the Provisions on "including the fault of both parties in the reference factors of the rules on the return of betrothal gifts".

3.2 The Distinction between Gifts during Love and Betrothal Gifts

Article 3 of the Provisions provides a clear definition of the types of property that should not be recognized as dowries. In other words, gifts or gifts of little value paid on special commemorative occasions such as holidays and birthdays, daily consumer expenses for expressing or enhancing emotions, and other property of little value paid. This provision not only clarifies the two main situations applicable to general gifts during the period of love, but also proposes universal conditions for other possible general gifts which is "property of little value".

That being the case, what are the differences between dowries and typical gifts given during a romantic relationship? In terms of the stage of occurrence, gifts during love often occur in the daily stage of communication between both parties, while dowries usually appear during the specific period when the relationship between the two parties enters the stage of discussing marriage. At the same time, there are differences between the two with respect to the nature of the gift. For instance, the payment of dowries is usually for the main purpose of entering into a marriage relationship, while gifts during the period of love are mostly for the purpose of connecting emotions and enhancing the relationship between the two parties, given voluntarily and free of charge by one party to the other. Moreover, distinctions also exist between the two with respect to the objects of payment. To illustrate, the payment of dowries is mainly manifested as gifts from men to women, while gifts during love are mainly manifested as gifts from one party to the other, and are not limited to payments from men to women. In addition, the value of the gifted property also differs

between the two. Accordingly, the property paid as a dowry is mostly a relatively large living expense, while the general value of the property given as a gift during a romantic relationship is generally not significant.

Based on the aforementioned distinctions and relevant regulations of the Provisions, the general act of gifting during a romantic relationship should be defined as a voluntary and gratuitous expression of intention by the parties involved to give valuable property to the other party during the existence of the relationship. At this point, we may clarify the definition of the scope of dowry payment based on three criteria: "marriage as the purpose", "existence of dowry customs", and "significant property value" [13]. Specifically, Article 3(1) of the Provisions establishes the first two criteria from a positive perspective, while Article 3(2) in turn clarifies the specific criteria for determining "significant property value" through reverse exclusion.

4. The Improvement of the Rules for Returning Dowries

The current rules on the return of betrothal gifts are mainly based on Article 5 of the Interpretation of Marriage Compilation (I). Namely, if the parties request the return of the betrothal gifts paid according to customs, the people's court shall support such request upon finding that: (i) the parties have not completed marriage registration; (ii) they have not cohabited after registration; or (iii) the pre-marital payment has caused hardship to the payer. [7]. Among them, the second and third cases also require divorce between the two parties. Although the judicial interpretation has refined the trial rules of betrothal gifts disputes, there are still many circumstances that have not been taken into account. By way of illustration, the determination of the subject of litigation and how the above unregulated circumstances apply. For this purpose, Articles 4, 5 and 6 of the Provisions have been improved from both procedural and substantive aspects.

4.1 Procedure Improvement: Clarifying the Litigation Subject Involved in Bribery Disputes

According to the traditional marriage customs, the conclusion of the marriage contract is mostly "the order of the parents and the words of the matchmaker". Although modern society advocates freedom of marriage, both parents are

still widely involved in the process of receiving and paying betrothal gifts. At this point, whether the parents who actually receive or pay the betrothal gifts are included in the main body of litigation of the disputes over betrothal gifts has become a controversial issue. To this end, the Supreme People's Court made the relevant expression for the first time in the Reply that "both men and women and their parents and relatives may become parties to the lawsuit for the return of betrothal gifts" [7]. However, the expression only stipulates the possible scope of the parties involved in the proceedings, but does not elaborate on why the above-mentioned scope can be delimited and how it should be applied in practice. Therefore, Article 4 of the Provisions further analyzes two common applicable situations involving disputes over the return of betrothal gifts divorce disputes and marital property disputes.

In divorce dispute litigation, the subject of action is usually limited to both parties to the marriage. While the request for the return of betrothal gifts can be combined into a divorce lawsuit and tried together, the main purpose of the divorce lawsuit is still to terminate the marriage relationship, and the property division and child support involved are mostly based on the identity relationship between husband and wife [8]. Consequently, it is not appropriate to take other persons other than marriage as parties. Simultaneously, Article 4(2) of the Provisions clearly points out that if a claim is made for the return of betrothal gifts in a divorce dispute, the scope of the parties shall still be limited to both husband and wife.

However, it is often not limited to the parties to the marriage contract in a simple marriage property dispute. On the contrary, the subject can be appropriately expanded to the parents who actually receive, pay and apply according to local customs. Nevertheless, since the marriage property dispute still mainly involves the parties to the marriage contract, it is not appropriate to take the parents as the defendants or plaintiffs in the betrothal gifts dispute lawsuit alone. Thus, Article 4(1) of the Provisions further clarifies that "in a dispute over the property of a marriage contract, one party to the marriage contract and his parents who actually pay the betrothal gifts may be co-plaintiffs; the other party to the marriage contract and his parents who actually receive the betrothal gifts may be co-defendants". This practice not only reflects respect for customs and habits, but also helps to find out the

facts of cases such as the amount of betrothal gifts and the actual use of betrothal gifts [12]. As for why the subject of action has not been further extended to the close relatives of the parties to the engagement, it is mainly to prevent the excessive number of participants in the proceedings from affecting the efficiency of the proceedings and even intensifying unnecessary contradictions between the parties [8]. Furthermore, where the parents of the parties to the engagement die early, and other relatives actually assume the obligation of upbringing and perform their parents' duties on their behalf in the process of payment and acceptance of the betrothal gifts, the court may also, in accordance with the provisions of this article [13], replace the relatives who actually support and pay or accept the betrothal gifts as co-plaintiffs or co-defendants if it is deemed necessary to refer to the application after examination.

4.2 Substantial Improvement: Improving Specific Circumstances of the Rules for the Return of Betrothal Gifts

As pointed out in Article 1 of the Provisions, betrothal gifts should be "for the purpose of marriage", and "marriage" is a continuous state rather than a temporary sexual act, so the payment of betrothal gifts is not only for the purpose of marriage registration, but also for the purpose of long-term common life [12]. From this, we can infer that marriage registration is the legal formal requirement for the effective establishment of marriage, and that living together constitutes the essential characteristics of marriage. Accordingly, we may further classify marital status into four specific scenarios by combining the above two factors: (i) no registration and no cohabitation; (ii) no registration but cohabitation; (iii) registration but no cohabitation; and (iv) registration and cohabitation.

At first sight, the existing Interpretation of Marriage Compilation (I) may involve two cases of "not having registered for marriage" and three cases of not living together in "having registered for marriage". However, the rule set forth in Item (1) of Article 10(1) of the Interpretation (II) on Several Issues Concerning the Application of the Marriage Law made by the Supreme People's Court in the Summary of the National Civil Trial Conference in 2011, provides that "The failure of both parties to go through the formalities of marriage registration is not aimed at the situation

that both parties have lived together". Therefore, the previous provision, which has been completely incorporated into Item (1) of Article 5(1) of the existing Interpretation of the Marriage Compilation (I), only stipulates two circumstances in which they do not live together "without marriage registration" and "with marriage registration".

Therefore, the provisions of Articles 5 and 6 are in essence the improvement of areas not stipulated in the existing judicial interpretations. As far as Article 5 is concerned, it mainly makes more detailed institutional arrangements for "registration and cohabitation". According to the general understanding, both men and women have registered for marriage and actually live together, have met the formal requirements of marriage in principle, and the paid betrothal gifts will not be returned. Nevertheless, in view of the high value of betrothal gifts and the short duration of marriage in practice, the rule of exception is specially set up in this article. That is, "the time of living together is relatively short and the amount of betrothal gifts is too high", the application of the above-mentioned principle may be excluded. In the meantime, it should be noted that the application of the exception rule is based on the dissolution of marriage, and needs to be made in light of the actual use of betrothal gifts and the allocation of dowry. In addition, Article 5 also provides an operable reference standard for the determination of "high betrothal gifts" in judicial practice. To be specific, judges may determine whether a high betrothal gift is constituted in a case at their discretion on the basis of factual factors. Namely, the per capita disposable income of the residents in the place where the party paying the betrothal gifts is located, the economic status of the family of the party paying the betrothal gifts and local customs.

By contrast, article 6 of the Provisions mainly stipulates that "both parties have not registered for marriage but have lived together". In other words, while the parties have not met the legal formal requirements of marriage, they have objectively lived together. Under such circumstances, it is obviously unfair to directly order the woman to return all the betrothal gifts only because the law does not recognize the factual marriage. Therefore, the impact on the physical and mental health of the recipient of the betrothal gifts due to the marriage relationship should be taken into account, and the specific

proportion of return should be comprehensively determined in light of local customs and habits, rather than supporting full return. This idea can be traced back to the relevant expression in the Reply at the earliest. That is, if the unmarried man and woman really live together but fail to go through the marriage registration formalities eventually, the party who pays the betrothal gifts requests to return the betrothal gifts, and the people's court may determine whether to return and the specific amount of return according to the time of their common life, the amount of the betrothal gifts and local customs. Although Article 6 is developed on the basis of the above-mentioned norms, it further increases the factor of "fault of both parties" and makes the system of rules for the return of betrothal gifts more thorough and perfect.

5. The Application of the Rules for Returning Dowries

Articles 5 and 6 of the Provisions on how to determine whether to return and the specific proportion of return are as follows: "the people's court shall, in accordance with the actual use of the betrothal gifts and the dowry, take into account the facts of common life and pregnancy, the fault of both parties, and combine local customs". From this, we can distinguish several factors that judges should consider in the actual judgment process: local customs, the actual use of betrothal gifts and dowry, common life, pregnancy and the fault of both parties. Among them, "the actual use of betrothal gifts and dowry" are the factors determining whether to return, and the other three factors can be used as the criteria for determining the specific proportion of return. As for "local customs", they apply primarily to the remaining unspecified factors.

5.1 The Actual Use of Betrothal Gifts and Dowry

For the return of betrothal gifts, the actual use of betrothal gifts can be specifically divided into two categories. Specifically, betrothal gifts used for the common life of both parties, which cannot be returned upon request [14]. On the contrary, bribery gifts used for the expenses of the recipient and his family may be returned upon request [14]. As a marriage custom accompanied by the betrothal gifts, dowry still exists widely and in various forms, but basically supports the judicial practice of "the dowry kept

at the time of divorce shall belong to the woman" [12]. Therefore, the Provisions do not provide separately for the return of dowry, but rather provide for the application of deduction for the return of dowry as one of the "actual use of dowry and dowry".

As regards the specific application of the "dowry situation", we can grasp it separately from several circumstances in which the dowry may fall within the scope of adjustment of the rules on the return of betrothal gifts. Firstly, if the betrothal gifts have returned to the newly formed family in the form of dowry and have been transformed into the joint property of the husband and wife accordingly, they should be divided as joint property at the time of divorce, and should not be considered separately from the dowry. Secondly, where the dowry is accompanied by the woman's family in addition to the betrothal gifts, the remaining dowry may be returned to the woman with reference to the relevant provisions on the return of the betrothal gifts. Thirdly, if the dowry has been consumed in the common life or attached to the man's personal property, the amount of deduction at the discretion of the return of the betrothal gifts may be comprehensively determined in light of such factors as the fault of both parties [12]. Having said that, the above situation is only a rough summary of the possible situation, and it is inevitable that the above classification cannot cover the situation in practice, which can be handled with reference to the general judgment idea of the return of betrothal gifts.

5.2 The Situation of Common Life

As mentioned above, "marriage" is not a temporal act, so it is necessary to include "living together" in the consideration of the proportion of return of betrothal gifts. Nonetheless, it is a difficult problem to determine the "common living situation" in specific judicial practice.

First of all, we can see from the amendment of the exposure draft of the Provisions that "living together time" can be considered as part of the "common living situation". To this end, the duration of cohabitation may be taken as a relevant factor in determining restitution. While Article 1079 of the Civil Code uses a two-year separation period as a ground for divorce on the ground of incompatibility, the same temporal threshold may provide a useful reference for evaluating whether the parties' cohabitation has been sufficient to fulfill the purpose of the

betrothal gift [15]. In the specific application of this standard, it is still necessary to take into account other circumstances such as "high price betrothal gifts" and "marriage registration". Among them, the situation of "marriage registration" has been explained in detail in the above "specific circumstances of improving the rules for the return of betrothal gifts", and will not be repeated here.

With respect to the combination of "high price betrothal gifts" and "living together", we can further divide the situation of "having registered for marriage and living together" according to whether there are high price betrothal gifts. That is to say, if there are high price betrothal gifts and the life time is relatively short, the return of lottery gifts shall apply [8]. On the contrary, where the betrothal gifts are not of high value and the marriage has been of relatively long duration, the court will generally not support a claim for their return. [8]. Accordingly, it is also necessary to comprehensively consider when determining the specific proportion of return in practice. For instance, whether they actually live together and the reasons for not actually living together. This differentiated approach not only conveys the firm position of the Provisions in dealing with the problem of high price betrothal gifts, but also reflects the judicial value orientation of seeking balance between the interests of both parties.

5.3 The Situation of Pregnancy

The so-called "pregnancy" refers to the woman's pregnancy, childbirth, abortion, upbringing and other circumstances. Unlike the previous concept of "giving birth to children", the Provisions also include the termination of pregnancy in the consideration of the return of betrothal gifts. This reflects the consideration of the negative impact on the woman's health, social evaluation and the possibility of remarriage [10]. Admittedly, some people hold critical opinions on this, and think that the essence of this practice is the materialization of women's pregnancy, which is not conducive to the protection of women's rights and interests. In fact, this approach is precisely based on the protection of women's rights and interests. To be specific, taking into account the physical and mental changes women may face in the actual process of marriage and childbearing, the impact of professional development and other contents, and effectively recognizing the contributions

made by women in maintaining marriage and family.

As to how to apply the discretionary standard of "pregnancy" in practice, a consensus has basically been formed in the current judicial practice. That is to say, if both men and women have lived together and have children, they do not support the request for the return of the betrothal gifts in principle, but they still need to make a comprehensive judgment in light of the actual situation of their common life. For example, where both parties have not given birth but the woman was pregnant or aborted during the marriage, the amount returned may be reduced as appropriate on the basis of other considerations. This view has also been verified in Model Cases I and II issued by the Supreme People's Court in 2023 and Model Case II of Family Disputes by Jiangsu Courts [16]. Specifically, the "Case of Divorce Dispute between Wang and Li" and the "Case of Marriage Property Dispute between Zhang and Zhao" issued by the Supreme People's Court mainly proceed from the perspective of having given birth to children but living together for different lengths. While the "Case of Marriage Property Dispute between He and Zhang" adjudicated by the Intermediate People's Court of Huai'an City, Jiangsu Province mainly involves the impact of termination of pregnancy on the return of betrothal gifts.

5.4 The Fault of Both Parties

Meanwhile, Articles 5 and 6 of the Provisions consider the proportion of return of betrothal gifts for the first time in terms of the fault of both parties. In this regard, Judge Wang pointed out that although the fault itself does not affect the exercise of the right to terminate the marriage contract, nor will it make the wrong party lose the right to request the return of the gift of course, but it cannot ignore the consideration of the fault of both parties. Specifically, where the party giving the gift or the recipient has serious faults such as family violence, making a separate marriage agreement with others or marriage, the proportion of return may be reduced or increased as appropriate [8]. On the other hand, if marital discord arises merely from incompatibility between the parties, it would not be justified to impute fault to either party [8].

Then is it reasonable to set up the above return standards? The attitude of the academic

community is mixed. Some scholars, based on the position that marriage is not prohibited or protected by the Civil Law of China, maintain that marriage should not be binding on both men and women. Accordingly, if the fault of both parties is taken as a reference factor for the return of betrothal gifts, it may lead to confusion in the distinction between "law" and "illegal" and defects in the application of unjust enrichment [1]. Furthermore, they draw the conclusion that relief should be obtained through analogy with the liability for contracting negligence, tort damage liability, divorce property division and divorce damage compensation [10]. Conversely, scholars who hold a supportive attitude point out that the setting of the discretionary factor is in essence based on the consideration of the marriage custom [13] and the principle of good faith [2] of "the man who repents without reason and refuses to return the betrothal gifts, and the woman who repents shall return the betrothal gifts".

For this reason, the author believes that "the right to terminate the engagement is not restricted due to fault" is in essence a response that does not have compulsory binding force on the engagement, and "the right to request the return of gifts is not lost due to the fault of one party" is a recognition that "unjust enrichment" should be returned within the framework of receiving payment when the purpose of payment is not achieved. Hence, it does not constitute a confusion in the distinction between "law" and "illegal" as pointed out by scholars who oppose this view, as well as a defect in the application of unjust enrichment. With respect to the establishment of an appropriate increase and decrease in the proportion of return of betrothal gifts can be regarded as an abstract application of traditional marriage customs, which is not only conducive to balancing the interests of both parties, but also helps to complete the protection of the principle of good faith. Finally, where an engagement is dissolved due to incompatibility or other similar reasons, no fault should be imputed to either party. Rather, this approach is meant to correct the concept of "one party voluntarily proposes divorce, violates the engagement or ends the common life, and if the other party is not at fault for this, the act itself is deemed to be at fault" [17].

6. Conclusion

Unlike asking for property through marriage and

giving during love, betrothal gifts, as a gift with conditions for dissolution, are payment acts with marriage as the purpose and greater property value. After defining the scope of betrothal gifts clearly, the provisions of Interpretation No. 1 [2024] of the Supreme People's Court have shifted the perspective to the improvement and application of the rules for the return of betrothal gifts. Among them, the improvement of the rules on the return of betrothal gifts is mainly manifested in the clarification of the subject of action involved in the dispute over betrothal gifts and the specific application of the establishment of "common life" in the two circumstances of registered marriage and unregistered marriage. Specifically, whether the betrothal gifts are returned mainly depends on the comprehensive consideration of their actual use and dowry allocation. While the length of common life, whether they have children and the fault liability of both parties during the existence of the relationship are the criteria for determining the specific proportion of return. As for local customs and habits, they are more as supplementary references for the application of the above-mentioned standards in individual cases.

Notably, since the betrothal gifts themselves have the characteristics of "greater property value", the Provisions not only provide a specific basis for the confirmation of "high price betrothal gifts", but also incorporate them into the conditions for return under the condition that "both parties have registered for marriage and live together". At the same time, this also shows the distinct attitude of the Provisions in dealing with the problem of "high price betrothal gifts". That is to say, by setting forth clear rules of conduct for the parties, encouraging the public to adopt a more reasonable view of betrothal gifts, and returning such gifts to their intended ceremonial significance, the provisions help channel the special regulation of high-value betrothal gifts toward more effective results.

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