

# Family Law and Inheritance Law in North Korea

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## Abstract

*A salient feature of the family law in North Korea is 'stabilization of the family'. In particular, the family property system is difficult to find in other legal systems. Family members including husband and wife have no share of family property and make use of it for maintenance of a family and the members' wealth. Family property is not the object of inheritance and may not be disposed of by testate inheritance. Moreover, it is considered that a relationship between step-parents and stepchildren is the same as the relationship between natural parents and their children, which is related with the stabilization of family, The same is true of the support system. All family members have the duty to support for the purpose of stabilizing the family financially.*

*The family law is based on principles such as complete equality for men and women, national protection of motherhood and children, the principle of monogamy and so on. However, under the influence of the traditional family system which adopts Confucianism as an ideal, the limits of the prohibition of marriage are broad in that a marriage between blood relatives within the eighth degree of relationship, or in-law relatives within the fourth degree of relationship shall not be allowed, and it is expressly stipulated that a child shall succeed his or her father's surname.*

*In North Korea, inheritance by will is a principle in accordance with the general principles of socialist law. An inheritor shall be appointed in accordance with the will and shares of the inheritance shall be arranged otherwise by a will, which differs from the family law of South Korea. Besides, sons and daughters and parents of a person dying intestate are equal in the first rank, and the inheritance system and the duty of support are interrelated. The State shall preferentially guarantee an interest of a person who is incapable of living for her or himself, and inheritors shall have their shares of inheritance adjusted depending on whether they had supported the testator or not, A person who has lived with and supported the testator shall inherit.*

*In contrast with our system, it is a unique feature that the governmental organ in charge of resident's affairs and not the court participates in domestic procedure. The organ shall be in charge of acceptance of adoption or the dissolution of the adoptive relationship by agreement, appointment of a guardian where there is disagreement, control of guardian's conduct, notifying an inheritor of the death of the testator, designation of an executor where there is disagreement, and designation of an administrator of inherited property where there is an absence of inheritors.*

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## I. Introduction

The object of this paper is to introduce family law and inheritance law in North Korea in general terms. In the South Korean legal system, family law and inheritance law are included in the Civil Code. But in North Korea there are separate codes of family law (1990) and inheritance law (2002), Here we examine both family law and inheritance law in North Korea. As these laws have not been introduced in English, general contents, omitting concrete and detailed analysis,<sup>1)</sup> will be considered in this paper. After examining family law(II), inheritance law(III) will be considered.

## II. Family Law

### A. In General

#### 1. History

North Korea had already enacted the 'Act of Equal Rights for Men and Women' in 1946 before the establishment of a government (1948) and Art. 9 of this law provides that 'The law and rules regarding rights for Chosun [i.e., Korean] Women under Japanese Imperialism shall be invalid as from the date of the promulgation of this Act.' With the enforcement of this Act, the previous rules of marriage became void. Thus, in order to fill the vacuum in the law, laws and rules related to the family relationship were established and enacted on an *ad hoc* basis. These circumstances continued for almost 40 years. These rules were unified by enacting 'The Act of Civil Affairs [Minsagyujeong](1986)'. The Act of Civil Affairs has regulated not only family relationships but also property relationships, civil trading relationships between citizens and administrative organs, as well as principles of compensation

1) For details, see A Study of the Civil Law in North Korea [bukhanminbeop-ui yeongu], (Dal-Gon Choe, Sechangchulpansa, 1998), The Family Law in North Korea [bukhan-ui gajokbeop] (the Office of Court Administration [beopwonhaengjeongcheo], 1998), "The System and Feature of the Family Law in North Korea [bukhan gajokbeop-ui chegye-wa teusaek]", (Young-Ho Shin, The System and Feature of the Law in North Korea [bukhanbeop chegye-wa teusaek], Sejongyeonguso, 1995), and so forth.

for damages. The part regulating property relationships in the Act of Civil Affairs was included in the Civil Code (Fourth Decision of Standing Council of the Supreme Conference, 1990. 9. 5.) while the part regulating family relationships was enacted as the Family Law (Fifth Decision of Standing Council of the Supreme Conference, 1990. 10. 24.) thereby establishing a separate Code of Family Law.

The Code of Family Law consisted of 6 chapters and 54 articles:

- Chapter One: Fundamental Principles of Family Law (Arts. 1~7);
- Chapter Two: Marriage (Arts. 8~14);
- Chapter Three: Family (Arts. 15~39);
- Chapter Four: Guardianship (Arts. 40~45);
- Chapter Five: Inheritance (Arts. 46~53); and
- Chapter Six : Discipline (Art. 54).

The core is Chapter Three which regulates the conjugal relationship, parent-child relationship, and relationships of other members of a family.

With the separate establishment of the Code of Inheritance Law (2002), the articles of Chapter Five, Inheritance, which conflicted with the Code of Inheritance Law, became invalid; inheritance law has been excluded from family law. This system is similar to the law in China which enacts the marriage law and the inheritance law separately. Family law in North Korea is also similar to the Marriage Law of China in terms of its contents.<sup>2)</sup>

The discussion on family law in North Korea will be centered on the Code of Family Law.

## 2. Fundamental Principles

After the establishment of the government, the family policy of North Korea has been consistently based on the family reinforcement theory, which is specified in the family law. It is stipulated in Art. 1 that ‘family law contributes to a harmonious and unified family by establishing and developing the socialist marriage and the family system.’ The doctrine of reinforcement of socialist family has continued since the

2) The Marriage Law in China consists of Chapter One : In General (Arts. 1~3), Chapter Two : Marriage (Arts. 4~8), Chapter Three : Family Relationship (Arts. 9~23), Chapter Four : Divorce (Arts. 24~33), Chapter Five : Addendum (Arts. 34~37).

1930’s when the socialist state began to become established.<sup>3)</sup> Moreover, North Korea has set forth the doctrine unifying personal interest and national interest, and domestic interest and social interest organically.<sup>4)</sup>

Other basic principles include complete equality for men and women, national protection of motherhood and children, the principle of monogamy and so on.<sup>5)</sup> In North Korea, special principles of national protection of motherhood and children are the basic principles of family law and also take on the character of fundamental rights guaranteed by the Constitution (Constitution, Art. 77). Under special principles of national protection of motherhood and children, a husband is bound to provide for his wife during her pregnancy and lactation. Even after divorce, an ex-spouse is under an obligation to support the other ex-spouse in case of there being a necessity for supporting him or her for a certain period of time.<sup>6)</sup>

## B. Marriage

### 1. Formation

There must be mutual consent for marriage between a man and a woman (Art. 8). As it is specified that marriage shall be ‘between a man and a woman’ homosexual unions shall not be recognized. The marriageable age is 18 years and over for men and 17 years and over for women (Art. 9, Para. 1) but there are also provisions for encouraging a late marriage.<sup>7)</sup>

A marriage between blood relatives within the eighth degree of kinship, or in-law relatives within the fourth degree of kinship shall not be allowed (Art. 10). These limits on the prohibition of marriage, which are broader than those of other legal systems, are similar to those of the South Korean Civil Code. This may have been

3) John N. Hazard, *Communists and their Law* (Univ. of Chicago Press, 1969), p. 306.

4) Jeong-Gum Kim, *The Family Law [gajokbeop]* (University of Kim Il-Sung Press, 1985), Abridged Version, pp. 16-23.

5) Il-Ho Jo, *The Family Law in Chosun (for university) [chosungajokbeop(daehakyong)]* (Gyoyukdoseochulpansa, 1958), pp. 29-33.

6) Though it is not stipulated in the rules of the family law, it is prescribed in Para. 2, Art. 118 of the Code of Civil Procedure.

7) The State shall promote an ethos by which youths marry after working hard for the country and the people (Para. 2, Art. 9).

influenced by the traditional family system which adopts Confucianism as an ideal.<sup>8)</sup>

A marriage violating material requirements above is null, which is adjudicated by the Court (Art. 13). Although there are no specific provisions in the law, a marriage shall be null and void in case of marrying an incompetent such as a mentally deranged person, marrying under force or temptation by a third party, marrying under duress which could constitute a crime, and fraudulent marriage for certain purposes.<sup>9)</sup> A marriage recognized to be null shall be ineffective retroactively; however, issues of bringing up children are subject to the provisions (Arts. 22, 23) of divorce (Art. 14).

A marriage is only recognized to be valid and protected by the nation when it has been registered with the marriage registration office (Art. 9). The marriage shall be registered with the couple's dwelling address in the department of social security of a city or county (a district).<sup>10)</sup> A citizen who lives abroad shall register the marriage with the Consulate of North Korea, or relevant agency if there is not a Consulate (Art. 12).

## 2. Effect of Marriage

Chapter Three of the Code of Family Law stipulates the rules about formation of marriage (Art. 16), maintaining the full name of husband and wife, having the liberty of choice of occupation and the freedom of participating in social and political life (Art. 17), conjugal equality in home life (Art. 18), and the duty of supporting one's spouse (Art. 19) as effects of a marriage.

The purpose of Art. 17, which stipulates the liberty of choice of occupation and so on, is to make women participate in social life equally with men. The duty of the supporting spouse is different from those of other legal systems and a spouse is bound to support the other only if he or she loses the ability to work (Art. 19).

The rules of matrimonial property relationships are not stipulated in the family law. Article 7 in 'Detailed Rules of the Act of Equal Rights for Men and Women

8) Il-Ho Cho, *supra* note 5, pp. 83-84.

9) Jeong-Gum Kim, *supra* note 4, p. 29; Song-Nyeo Lee, "the Family Law of the Republic is a weapon to revolutionize and stabilize a family[gonghwaguk gajokbeop-eon gajoung-eol gonggohwa-hago hyeokmyounghwa-haneun mugil]", *Beophaknonmunjip* No. 7, (Gwahakbaekwasajeonjonghapchulpansa, 1990), p. 144.

10) Dictionary of the Civil Code [minsabeopsajeon] (the Department of Social Security Press, 1997), Law Research Institute in Institute of Social Science, ed., p. 425.

(1946)' specified the common property system, providing that "A husband or a wife owns his or her property which is obtained before marriage. The property gained during the marriage belongs to co-ownership of husband and wife." In the family law since then, however, the rules of the matrimonial property system have not been stipulated; instead, the home property system was established in the private property system of the Civil Law, which deals with ownership and management of matrimonial property as a part of those of the whole family members including husband and wife. This system does not exist in other legal systems. The private property system is applied; Art. 61 of the Civil Law provides that 'a citizen as a member of a family shall have co-ownership of family property', and Art. 39 of the Code of Family Law establishes different standards for the division of property on the separation of family members caused by a divorce, etc.

In North Korea, 'private property' is divided into individual property and family property. 'Property which has been acquired by family members who have lived together' belongs to family property, and 'property which has been brought in by a person who became a member of the family or property acquired before marriage, property obtained by inheritance or donation and other property which has a private character' becomes individual property. Property acquired in the process of family life becomes family property; therefore, it belongs to co-ownership of all family members, regardless of whether the property is acquired by distribution as a result of labor or by additional benefits conferred by the State or society. For example, money which members respectively deposit in their name belongs to family property.<sup>11)</sup> The family property system was introduced for the purpose of solidifying the foundation of property in the family and stabilizing the family in property by ensuring that family members have a deep interest in increasing familial wealth.<sup>12)</sup> Therefore, all the former joint property of husband and wife belong to family property. In contrast to the former situation, however, other family members besides husband and wife also have equal rights and duties in relation to family property. Even though family members do not have a share of family property in proportion to their contributions, they may decide how to use the property and make use of it for the maintenance of the family and the wealth of its members. Any individual property converts to private property when a family member leaves a family by reason of divorce or

11) *Ibid*, pp. 8-9.

12) Song-Nyeo Lee, *supra* note 9, p. 173.

other causes; however, during the ordinary course of family life, all members of the family may possess or use any individual property in common.<sup>13)</sup>

### 3. Divorce

North Korea, right after liberation, changed its position from one of stressing extremely and securing the freedom of divorce from a standpoint of sexual equality to one of restricting the freedom of divorce, highlighting the new-socialist demands for reinforcing family and protecting minors. The most important principle in divorce procedure is to treat a divorce cautiously from the perspective of the revolutionary interest. This means that when a divorce is of interest to revolution, it shall be accepted and when it is of harm to revolution, it shall be refused. This is because a divorce, which is not simply a personal problem, is linked with the national interest, social interest, and revolutionary interest. Since the socialist society is based on the principle of collectivization as epitomized in the motto of ‘one for all, all for one’, domestic interest and social interest, and revolutionary interest and personal interest are inseparably interrelated. In this way, both the principle of preventing divorces associated with “old vestiges of thought” such as individualism as well as divorces associated with “petty circumstantial or political problems” and the principle that a divorce may be denied on the basis of its social effect regardless of whether there exists a cause of divorce are derived from the principle that a divorce is treated from the viewpoint of the revolutionary interest.<sup>14)</sup>

In North Korea, husband and wife may effect divorce by a court judgment (Art. 20, Para. 1) and a divorce shall be effected ‘where a spouse betrays the other’s love and trust severely or where there is any other cause for making it difficult to continue the marriage’, thus in effect adopting the principle of no-fault divorce (Art. 21).

Upon divorce, the matrimonial relationship shall be extinguished (Art. 20), and the parties shall, for their children’s interest, determine by agreement matters concerning fostering the children. If there is no agreement, the court shall determine thereon. Unless there is an inevitable cause, children under three years old shall be fostered by their mother (Art. 22). A parent who does not foster his or her children

13) Dictionary of the Civil Code [minsabeopsajeon], *supra* note 10, p. 117.

14) Song-Nyeo Lee, *supra* note 9, pp. 159-163; The Family Law in Democratic People’s Republic of Korea Reference [Chosunminjuuimnonghwaguk gajokbeop chamgojaryo] (1986), pp. 43-47.

has to pay the expenses of bringing up the children to the parent who fosters them until they have reached the age to work. The non-fostering parent need not pay these expenses where the fostering parent refuses to accept payment. The court shall decide on the expenses of bringing up children, taking into consideration the number of children, within the range of 10~30% of the monthly income (Art. 23). If a parent who has paid the expenses loses the ability to work or a parent who has fostered the children gets married again, and accordingly the children come to be fostered by a stepfather or a stepmother, the person concerned may apply to the court for an exemption from paying the expenses (Art. 24).

After divorce, husband and wife may each have their individual property and divide the family property by agreement. If no agreement is made for a division of property, the court shall determine thereon (Art. 39).

### C. Children and Parents

#### 1. Children of Natural parents

Parents and children have a blood relationship. The relationship between a child who was born of an unmarried couple and their parents is the same as the relationship between a child who was born during a marriage and their parents (Art. 25). A child conceived by a wife during the marriage shall be presumed to be the child of the wife’s husband and a child conceived by a woman before a marriage shall be presumed to be the child of the woman’s partner only if the partner adopts the child. If the partner denies himself to be the father of the child, the court shall judge whether he is a father of the child in accordance with the civil procedures.<sup>15)</sup> This civil matter follows a decision based on a certificate of authenticity.<sup>16)</sup>

15) In North Korea, there are no rules for the procedure of domestic affairs besides civil procedure.

16) Dictionary of the Civil Code [minsabeopsajeon], *supra* note 10, p. 727.

## 2. Parents and Children by law

### a) Step-parents and Stepchildren

A relationship between step-parents and stepchildren is the same as the relationship between natural parents and their children. After forming the relationship between a stepfather or a stepmother and stepchildren, the relationship between natural parents and their children is nullified (Art. 29), which is different from the Korean Civil Law which provides that a relation between step-parents and stepchildren belongs to the in-laws. Such a position could be used to stabilize the relationship between step-parents and stepchildren and the mutual relationship between step-parents<sup>17)</sup> as a means of achieving the family policy of ‘stabilization of the family’.

### b) Adoption

North Korea was early to adopt the full adoption system. Adoption becomes effective when a report of adoption which was approved by the governmental organ in charge of residents’ affairs (juminhaengjeonggigwan) is submitted by adoptive parents (Art. 32). An adopted child must be a minor. A person who is deprived of voting rights, a person who has been suffering from a disease which could be bad for the adopted children’s health, and a person who is unable to nurture and educate the adopted children shall not adopt a child (Art. 30). Moreover, the person to adopt shall obtain the consent of the natural parents or guardian of the child to be adopted, and if the person to be adopted is six years and over, their consent shall also be obtained (Art. 31). Though it is not expressly stipulated that husband and wife have to adopt a child jointly, it is interpreted that an adoption by one party shall not be admitted.<sup>18)</sup>

After adoption, the relationship between the adoptive parents and the adopted children is the same as the relationship between natural parents and their children and

17) Song-Nyeo Lee, *supra* note 9, p. 157.

18) Jeong-Gum Kim, *supra* note 4, p. 66; Hyeon-Suk Lee, “Superiority of Adoption in the Family Law of Republic [gonkhwaguk gajokbeop-sang ipyangjedo-ui uwolseong]”, The Gazette of University of Kim Il-Sung Social Science (History&Law) [Kim Il-Sung jonghapdaehakhakbo sahoegwahak(yeoksa?beophak)] Vol. 39 No. 8 (University of Kim Il-Sung Press, 1993. 8.), p. 78.

consequently the relationship with the parents before adoption is nullified (Art. 33).

An adoption is annulled by the dissolution of the adoptive relationship. There must be mutual consent between the adopted children and the adoptive parents, or between the adoptive parents and the natural parents or the guardian of the adopted children. The dissolution of the adoptive relationship shall become effective when a report of the dissolution of adoptive relationship that has been approved by the governmental organ in charge of residents’ affairs is submitted by the adoptive parents. Where there is disagreement as to the dissolution of the adoptive relationship, the court shall settle the dispute (Art. 34). A person who is capable of making a claim for the dissolution of adoptive relationship is not restricted to the person concerned in the adoption. A third person, the State, a corporation as well as an association may, where necessary for the interest of the adopted children, bring the action.<sup>19)</sup>

## 3. Legal Relations between Parents and Children

A child shall succeed his or her father’s surname. If they do not succeed the father’s surname, a child shall succeed his or her mother’s surname, and in the case of a child whose father and mother are unknown, a new surname may be established by the governmental organ in charge of residents’ affairs (Art. 26). The theory of succeeding the father’s surname conflicts with the basic position of North Korea which is based on the principle of sexual equality, but the old tradition of paternal *jus sanguinis* is preserved.

Parents shall nurture children and become agents of children, and children shall take care of their parents who have lost the ability to work (Art. 28). In addition, in North Korea as a socialist state, parents have duties to train children as constructors of a communist community. Parents shall bring up children to become steady revolutionists and new communists (Art. 27).

Though this is not stipulated in the rules of deprivation of parental authority, it shall be admitted from the interpretational point of view.<sup>20)</sup>

19) Jeong-Gum Kim, *supra* note 4, p. 70.

20) Dictionary of the Civil Code [minsabeopsajeon], *supra* note 10, p. 627.

## D. Guardianship and other members of family

### 1. Guardianship

Guardianship is a system for protection of incompetents. A guardian shall be appointed for a minor who cannot be taken care of by parents and an incompetent with physical defect (Art. 40).

If a ward is a minor, his or her grandparents and brothers and sisters shall be guardians, and if a ward is incompetent with physical defect, the spouse, parents, children, grandparents, grandchildren, and brothers and sisters of the incompetent shall be his or her guardians. If there exist two or more persons qualified to become guardians, the person who is the most competent to perform guardianship shall be appointed (Art. 41). If there is no guardian by law or a dispute on the appointment of guardians arises, the governmental organ in charge of residents' affairs shall appoint a guardian (Art. 42).

A guardian shall manage the property of the ward and be their agent (Art. 43), and nurture and educate the ward and take care of his or her living and health (Art. 44).

The governmental organ in charge of residents' affairs shall supervise the guardian's conduct (Art. 45). The governmental organ in charge of residents' affairs as the supervisory office shall control all acts of the guardian pursuant to the supervisory regulations on guardians, and may order appropriate instructions for the guardian who neglects their duties.<sup>21)</sup>

### 2. Relationship between other members of family

Members of the family are members of the basic unit of society who live with each other based on marriage or a very close blood relationship.<sup>22)</sup> Although the Code of Family Law has no general provision on the relationship of the other family members, there are provisions on the duty of grandparents and grandchildren to support (Art. 35), the duty of brothers and sisters to support (Art. 36), and the duty of other members of family to support (Art. 37) family members.

If there is a person in need of support among the family members, all members who are able to support shall be bound to support jointly and the duty to support

21) *Ibid.*, p. 698.

22) *Ibid.*, p. 10.

other members of family is no longer a secondary duty. Therefore, the duty to support a mother who has lost the ability to work shall be imposed on the spouse, children, daughter-in-law, and remaining members of family, and the duty to support children who are minors shall be jointly imposed on grandparents, parents, brothers and sisters and the remaining members of family equally.<sup>23)</sup> This support system is related with the stabilization of family. To ensure the financial stability of the family, family property should be maintained and the division of family property should be prevented; therefore, all family members shall have a duty to support cooperatively.<sup>24)</sup>

In short, if there is a person needing to be supported among family members, primarily all members who have the ability to support shall have the duty to support jointly (Para. 2, Art. 37), but if there is no person who is able to support, then secondarily parents, children, grandparents, grandchildren, brothers and sisters living separately<sup>25)</sup> shall be obliged to support (Para. 2, Art. 37), and if there is no person under a duty to support, the State shall be bound to support as a last resort (Art. 38).

## III. Inheritance Law

### A. Introduction

There have been many changes in the inheritance system of North Korea. Early in the establishment of the government, inheritance law was a part of the Civil Law. The 'Draft Code of Civil Law' of 1958 consisted of five chapters: General Provisions; Property Law; Copyright Law; Invention Law; and Inheritance Law.<sup>26)</sup> This system was changed when the Code of Family Law was enacted (1990), so that

23) Song-Nyeo Lee, *supra* note 9, pp. 179-183.

24) *Ibid.*, p. 180.

25) According to the concept of family members, persons who actually do not live together for a living shall not become family members even though they are parents, children, grandparents, grandchildren, and brothers and sisters.

26) Chang-Seop Seo, "Upon the system of the Civil Code of Republic [gonghwaguk minbeopjeon chegye-e daehayeo]", *Minjusabeop* No. 5 (1959. 5.), p. 32.

the inheritance part came to belong in the new Chapter Five, Family Law. It was explained that the purpose of the system, which was different from legal systems in other socialist states, was to ensure the financial stability of the family.<sup>27)</sup> Subsequently, the rules were rearranged so as to be a separate body of law; the Code of Inheritance Law was established in 2002 (2002. 3. 13. Ordinance No. 2882, the Standing Commission of the Supreme Conference).

The Code of Inheritance Law consists of four chapters:

- Chapter One: Fundamental Principles of Inheritance Law (Arts. 1~14);
- Chapter Two: Legal Inheritance (Arts. 15~26);
- Chapter Three: Inheritance by Wills and Donation (Arts. 27~40); and
- Chapter Four: Execution of Inheritance (Arts. 41~57).

Such a structure is similar to that of the Inheritance Law in China which consists of five chapters and 37 articles:

- Chapter One: Fundamental Principles of Inheritance Law (Arts. 1~8);
- Chapter Two: Legal Inheritance (Arts. 9~15);
- Chapter Three: Inheritance by Wills and Donation (Arts. 16~22);
- Chapter Four: Execution of Inheritance (Arts. 23~34); and
- Chapter Five: Addendum (Arts. 35~37).

The Code of Inheritance Law of North Korea specifies principles such as protection of succession rights in respect of private property (Art. 2), equality of heirship, inheritance by a will (Art. 3) and so forth. Also, there are many provisions which link inheritance and the duty of support in accordance with the general principles of socialist law. It is provided that the State shall preferentially guarantee the interests of a person who is incapable of living for herself or himself (Art. 4), and inheritors shall be subject to adjustment of their shares of the inheritance depending on whether they had supported the testator or not (Proviso, Art. 19), and a person who has lived with and supported the testator shall be entitled to inheritance (Art. 56).

The inheritance system will be considered below, centering on the Code of Inheritance Law.

27) Song-Nyeo Lee, *supra* note 9, pp. 176-178.

## B. General Principles of Inheritance Law

### 1. Commencement of Inheritance

Inheritance shall commence with the death of the testator and by certification of death by a notary's office (Art. 7). Inheritance shall commence at the place of domicile of the testator, or where this is not reasonable, be commenced at the place of property or death of the testator (Art. 8).

### 2. Inheritance Qualification

In the essence of inheritance, a cooperative group or the State shall not become an inheritor and a citizen shall become an inheritor. An unborn child (Art. 17) and an incompetent shall become inheritors but only his or her agent shall exercise the heirship (Art. 10).

A person who has severely assaulted or not taken care of the testator intentionally, a person who forges or destroys a will on inheritance, a person who, by fraud or duress, causes the testator to make a will on inheritance, and a person who has not inherited by will shall not become the inheritor (Art. 9).

### 3. Coverage of Inherited Property

An inheritor succeeds, from the time of the commencement of the inheritance, to rights and duties pertaining to the property of the testator. However, this shall not apply to rights which are inseparably related to the testator's personality vis-à-vis the inheritor, such as the right to support (Art. 11). The inheritable property includes: i) property which is acquired by distribution as a result of labor, ii) additional interests from the State or society, iii) assets realized through a side business, and iv) houses, books, money, savings, goods for domestic use and culture, and vehicles such as automobiles, v) rights of claim and duties on property, vi) other property legally achieved by donation from other citizens (Art. 13).<sup>28)</sup> If there exist two or more inheritors, they become co-

28) In the inheritance law of China, it is provided that the inherited property shall include: i) income; ii) houses, savings, and goods for domestic use; iii) trees, domestic animals, poultry; iv) things and books; v) means of production passed into the citizen's possession by law; vi) citizen's property of a copyright and a patent right; vii)

owners of the inherited property such as the private home (Art. 12).

Here, however, we are mostly concerned with ‘individual property’, which is different from ‘private property’ as stated above. The inheritable property is not family property but individual property of the inheritee.<sup>29)</sup> The family property is maintained by organization of the family which makes a home, and only if there is no member of this organization, does it pass into the possession of a family not living with or close to relatives, according to the order of inheritance.<sup>30)</sup>

### C. Legal Inheritance

Without alteration, the socialist legal system applies the doctrine of legal inheritance where there is an absence of a will according to the stipulated priority of wills. The legal inheritance applies where: i) there is an absence or nullity of wills, ii) there has been renunciation by an inheritor or a donee according to a will, iii) an inheritor or donee according to a will has died before the death of the person dying intestate, and iv) there exists property which is not indicated on a will (Art. 16).

#### 1. Inheritor and Priority of Inheritance

In legal inheritance, persons become inheritors in the following order (Art. 17):

1. Spouse, sons and daughters, adopted children, stepchildren, unborn children, parents, adoptive parents, and step-parents;
2. Grandchildren, grandparents, brothers and sisters, the adopted brothers and sisters, and step-brothers and sisters;
3. Blood relatives within the fourth degree of kinship.

Generally in socialist law, sons and daughters and parents of the person dying intestate are equal in the first rank. In the third rank, the third degree of relationship is prior to the fourth degree in accordance with the principle of closer kinship.<sup>31)</sup>

and other legal property (Art. 3).

29) Dictionary of the Civil Code [minsabeopsajeon], *supra* note 10, p. 117.

30) Song-Nyeo Lee, *supra* note 9, p. 179; Jong-Cheol Yoon, “A Theory of Property in Socialistic Society [sahoejuuisahoe-eseoui soyugwon-e gwanhan iron]”, *Beophaknonmunjip* No. 5 (Gwahak baekgwasa jeonjonghapchulpansa, 1985), p. 127.

31) Dal-Gon Choe, *supra* note 1, p. 327.

The court, where there are considerable grounds, may distribute the inherited property to a person who has lived with and supported the person dying intestate or has been supported by the person dying intestate or in close connection with the person dying intestate upon the request of that person (Art. 56). This may be applied to a person who is not a legal inheritor.

If children or brothers and sisters as inheritors have died before the death of the person dying intestate, their children shall become inheritors according to their priority (Art. 18).

#### 2. Shares of Inheritance

If there are two or more inheritors of the same rank, their shares of the inheritance shall be equally divided (Text, Art. 19). However, the portion of a person who has supported the person dying intestate during their life or a person of small income who is incapable of living for herself or himself may be increased and the portion of a person who has the ability to support but has not performed that duty may be decreased (Proviso, Art. 19).

#### 3. Acceptance and Renunciation of Inheritance

An inheritor may, within six months after she or he is informed of the commencement of inheritance, apply for an acceptance or a renunciation to the court orally or in writing; if not, they shall be deemed to have expressed an acceptance (Art. 20). If an inheritor expresses an acceptance, she or he shall succeed without limitation to the rights and duties of the person dying intestate (Text, Art. 21). However, if an inheritor has effected a renunciation or a qualified acceptance, she or he shall not succeed to or succeed only partially to the rights and duties of the person dying intestate (Proviso, Art. 21).

A qualified acceptor shall perform the obligations and testamentary donation of the person dying intestate only to the extent of the property to be acquired through the inheritance (Art. 22). The qualified acceptor shall pass any rights unto the donee after performing the inherited obligations (Art. 23). If there are two or more obligees, the qualified acceptor shall perform the obligations in proportion to the amounts of their respective claims. However, the obligations to the State or the social group and cooperative are performed preferentially. If inheritors cannot

perform the obligations connected with inherited property, they may not effect performance to the testamentary donees (Art. 24).

A renunciation of inheritance shall be effective retroactively from the time of the commencement of the inheritance (Art. 25). The portion of an inheritor who has renounced inheritance among the inheritors of the same rank shall be passed unto the other inheritors of the same rank (Art. 26).

#### *D. Inheritance by Will and Donation*

##### 1. Capacity

A citizen may make a will relating to inheritance and donation (Art. 27, Para. 1) and a testator shall be a capable person. However, a person who reaches the age of sixteen and also has a job may make a will within the property she or he achieved by her or his income (Art. 34).

##### 2. Effects of Will

If a testator dies, her or his property shall be succeeded and donated by a will (Para. 2, Art. 27). A will shall be effective upon the death of the testator and a conditional will shall become effective upon the fulfillment of the condition (Art. 30).

Where the contents of a will differ from one of the previous wills because of making a will several times, the last will shall be in effect (Art. 40, Para. 2.) and a will by fraud or duress shall be void (Art. 35, Para. 2). The nullity of wills is adjudicated by the court upon the request of the persons interested or the prosecutor (Art. 39).

A testator may withdraw or revoke his will (Para. 1, Art. 40).

##### 3. Acceptance and Renunciation of Inheritance by a Will or Donation

An inheritor by a will or a donee may effect an acceptance or a renunciation to the inherited or donated property and, if not within six months after she or he is informed of the commencement of inheritance by a will or donation, shall be deemed to have effected an acceptance. The management of property which is renounced by

inheritance by a will or donation follows the legal inheritance procedure (Art. 32).

##### 4. Inheritance by a will

In North Korea, an inheritor shall be appointed in accordance with the will (Art. 28, Para. 1) and shares of the inheritance shall be arranged otherwise by a will (Art. 29), which differs from the family law of South Korea. However, if an inheritor has died before the death of a testator, the will shall be ineffective (Art. 31, Para. 1). In case of inheritance by will, inheritance by representation shall not be executed (Art. 31, Para. 2).

##### 5. Freedom and Limitation of Testation

A testator may, in accordance with the law, give the whole or part of the property to a person who is not an inheritor (Text, Art. 36). A donee shall succeed to the rights and duties of the testator in accordance with the will (Para. 2, Art. 28, Art. 33). However, in that case, for spouses, children and parents, there shall be reserved one half or more of the inherited property, and for grandchildren, grandparents, and brothers and sisters, one third or more of the inherited property shall be reserved (Proviso, Art. 36). Though it is not expressly stipulated in the law, family property may not be disposed of in inheritance by a will if a testator has not contributed to the increase of family property.<sup>32)</sup>

A will shall be ineffective if a donee by the will dies before the death of a testator (Art. 31, Para. 1).

##### 6. Forms of Will

A will shall be made by obvious and sincere intention (Text, Art. 35). There shall be four forms of wills: i) a holograph will, ii) a verbal will, iii) a sound recording, and iv) a notarial deed (Art. 37).

In order to make a will by a holograph document, the testator must write with his own handwriting the whole text, the date, and must affix his signature or seal

<sup>32)</sup> Song-Nyeo Lee, *supra* note 9, p.178.

thereto. No witnesses need to have attended. In order to make a verbal will, two or more witnesses shall have attended. In that case, one of the witnesses must write the will and the testator and each witness, after their having acknowledged the writing to be correct, must affix their signatures or seals and write the date thereto. In case of making a will by a sound recording, the statement of witnesses and the date shall be recorded in the presence of two or more witnesses. In order to make a will by a notarized deed, in the presence of two or more witnesses, the testator must orally state the tenor of his will in front of a notary<sup>33)</sup> and the notary must write it down with the date, and then the testator and each of the witnesses must affix their signatures or seals to the writing after acknowledging it to be correct. The writing must be notarized by a notary.

A person falling under one of the following subparagraphs may not become a witness to the preparation of a will: i) an inheritor or a donee, ii) relatives of an inheritor or a donee, iii) an incompetent, and iv) any interested person by inheritance or the will (Art. 38).

### *E. Execution of Inheritance*

#### 1. Notice to Inheritor

An inheritor who is informed of the death of the testator shall inform the other inheritors of it at once and if all inheritors are not informed thereof, the governmental organ in charge of residents' affairs in the district in which the testator has lived shall inform inheritors thereof (Art. 41).

#### 2. Executor

A testator may designate an executor by the will. However, if there exists no designated executor by a will, then an inheritor becomes an executor. If there exist two or more inheritors, then they appoint an executor by consensus and report it to the governmental organ in charge of residents' affairs. If the inheritors have not reached

<sup>33)</sup> Under the Notarial Law, the notary's office shall be charged with a notarial act (Art. 5) and the notary's office where the applicant is domiciled or seated shall exercise the jurisdiction (Art. 14). The central court shall be in charge of an unified guidance (Art. 7).

an agreement thereon, the organ shall appoint an executor upon the application of an interested person. An incompetent may not become an executor (Art. 42).

An executor is entitled to manage the inherited property and to perform acts necessary for carrying out the inheritance. An inheritor and any interested person shall not interfere with the execution of inheritance (Art. 43).

### 3. Division of Inherited Property

An inheritor and any interested person may inquire as to the procedures for the execution of the inheritance and if they have opinions on the execution of inheritance, they shall apply to the court (Art. 44).

An executor shall inform inheritors of the division of inherited property after separating the individual property from the property which has been acquired by the testator and family members who have lived with her or him cooperatively (Art. 45).

The inherited property may be divided after the acceptance and performance of the obligations by the testator's obligees. If inheritors have effected the division of the inherited property without performing the inherited obligations, they shall perform the obligations according to their respective shares (Art. 46). An executor shall request the testator's obligees to certify the obligations and inheritors may refuse performance of the obligations which the obligees do not prove to be valid (Art. 47).

In case of the division of inheritance, an executor shall reserve the portion of an unborn child, based on the documents recognized by a medical institution (Art. 48). If inheritors have executed the inherited property without reserving the portion of an unborn child, they must return the portion to her or him and if she or he dies, her or his portion shall be succeeded by the other inheritors (Art. 49).

In case of disagreement of the opinion on the inheritance, inheritors may solve the problem by agreement, and if not, they may make a claim to the court (Art. 57).

### 4. Absence of inheritors

If it is unknown whether an inheritor exists or there is an unqualified inheritor, the governmental organ in charge of residents' affairs shall designate an

administrator of the inherited property. If a testator has appointed an administrator of the inherited property in accordance with her or his will, his or her appointment shall be respected. A competent citizen, a judicial person, a corporation and an association may become an administrator of the inherited property (Art. 50).

The administrator shall manage the inherited property with the same care with which she or he takes care of her or his own property and if she or he neglects her or his duty, she or he is liable for the damage caused thereby (Art. 51). In addition, the administrator is entitled to perform acts necessary for carrying out the management of the inherited property and exercise the claims or perform the obligations inherited. However, if the testator's obligees and donees by will are not identified, the inherited property shall not be succeeded by the inheritors (Art. 52).

If it is unknown whether an inheritor exists, the administrator may accept a will on the inheritee's obligation or donation. If it is unknown whether an inheritor exists within six months after the acceptance, the administrator may perform the obligations or testamentary donation (Art. 53).

In case the administrator finishes the execution of the inherited property, he shall present the document thereof and expenses for inheritance may be paid out of the inherited property (Art. 54).

If there is no inheritor, donee, and or if all inheritors are unqualified or have effected the renunciation of inheritance, the inherited property shall be escheated to the State (Art. 55).

#### IV. Conclusion

A salient feature of the family law in North Korea is 'stabilization of the family'. In particular, the family property system is difficult to find in other legal systems. Family members including husband and wife have no share of family property and make use of it for maintenance of a family and the members' wealth, and they may decide how to use it. Family property is not the object of inheritance and may not be disposed of by testate inheritance. Moreover, it is considered that a relationship between step-parents and stepchildren is the same as the relationship between natural parents and their children, which is related with the stabilization of family, and the same may be said of the support system. All family members shall have the duty to support for the purpose of stabilizing the family financially.

Besides, the family law is based on principles such as complete equality for men and women, national protection of motherhood and children, the principle of monogamy and so on. However, under the influence of the traditional family system which adopts Confucianism as an ideal, the limits of the prohibition of marriage are broad in that a marriage between blood relatives within the eighth degree of relationship, or in-law relatives within the fourth degree of relationship shall not be allowed, and it is expressly stipulated that a child shall succeed his or her father's surname.

In North Korea, inheritance by will is a principle in accordance with the general principles of socialist law. An inheritor shall be appointed in accordance with the will and shares of the inheritance shall be arranged otherwise by a will, which differs from the family law of South Korea. Besides, sons and daughters and parents of a person dying intestate are equal in the first rank, and the inheritance system and the duty of support are interrelated. The State shall preferentially guarantee an interest of a person who is incapable of living for her or himself, and inheritors shall have their shares of the inheritance adjusted depending on whether they had supported the testator or not. A person who has lived with and supported the testator shall inherit.

In contrast with the South Korean system, it is a unique feature that the governmental organ in charge of residents' affairs and not the court participates in domestic procedure. The organ shall be in charge of acceptance of adoption or the dissolution of the adoptive relationship by agreement, appointment of a guardian where there is disagreement, control of guardian's conduct, notifying an inheritor of the death of the testator, designation of an executor where there is disagreement, designation of an administrator of the inherited property where there is an absence of inheritors and so on.