

**CHINESE CUSTOMARY LAW IN BRUNEI:
A HISTORICAL PERSPECTIVE, PAST AND PRESENT**

SITI AISYAH HAJI LAKIM

**FACULTY OF SHARIAH AND LAW
SULTAN SHARIF ALI ISLAMIC UNIVERSITY
BRUNEI DARUSSALAM**

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

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**SITI AISYAH HAJI LAKIM
08B0309**

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of the requirements for the degree of
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SUPERVISION

**CHINESE CUSTOMARY LAW IN BRUNEI:
A HISTORICAL PERSPECTIVE, PAST AND PRESENT**

**SITI AISYAH HAJI LAKIM
08B0309**

Supervisor: Prof. Dr. Mohd Altaf Husain Ahangar

Signature: _____ Date: _____

Faculty Dean: Assoc. Prof. Dr. Abdul Mohaimin Noordin Ayus

Signature: _____ Date: _____

DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic exercise is my own except for quotations and summaries which have been duly acknowledged.

Signature : _____
Name : Siti Aisyah Haji Lakim
Registration Number : 08B0309
Date of Submission : 22 Zulhijjah 1432 / 19 November 2011

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CHINESE CUSTOMARY LAW IN BRUNEI: A HISTORICAL PERSPECTIVE, PAST AND PRESENT

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ABSTRACT

CHINESE CUSTOMARY LAW IN BRUNEI: A HISTORICAL PERSPECTIVE, PAST AND PRESENT

This paper attempts to discuss about the Chinese customary law. There are various customs which has existed under this law. However, this particular paper would only be focusing on the area of marriage and divorce. These two customs, under the Chinese Law, are believed to have existed for over 2000 years ago and are still currently in practice in Brunei. It is important to note that these customs are subject to modification to fit the present condition of the country.

Discussion to be made in this paper would particularly be on how the present law of Brunei helps in regulating and protecting the old customs from the past Qing Dynasty. In addition, discussion on the application of these customs in the country of Brunei would also be made subsequently. And last but not least, this paper also hopes to highlight the strength and the importance of such customs to the society at large.

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INTRODUCTION

History proved the existence of friendly ties between Brunei and China. The earliest records dated back more than 2000 years ago as early as the Western Han Dynasty (206 BC to 23 AD) when commodity trade relations existed and official exchanges between the governments were made during the Tang Dynasty (618 AD to 907 AD). By the time of the Song Dynasty (960 AD to 1270 AD), there was official and non-governmental commercial and cultural exchanges had been officially recorded in the history of China.

Although China and Brunei have a very long history, it still does not make the Chinese to be part of the known seven ethnics of the people of Brunei - Brunei Malay, Kedayan, Dusun, Tutong, Belait, Bisaya and Murut. However, it does not deprive them from their rights to be the citizens of Brunei provided that they are born in Brunei or to be the permanent resident in the country. In fact, 15% of the whole population of Brunei are Chinese.

The paper will be giving all its attention to the Chinese living in Brunei, specifically their customs and traditions which originated from the main land China thousands of years ago. The title of this project paper is "Chinese Customary Law in Brunei Darussalam: A Historical Perspective, Past and Present". It is important to note that the paper will only be focusing on the area of marriage and divorce as such thousand years' customs and traditions are still being observed to date in Brunei.

CHAPTER I

HISTORICAL BACKGROUND

Records on the Early History of Brunei

Brunei does not have her own early records of history. Most of her early historic accounts were written by Chinese scholars, historians and also European who came and visited the country themselves.

It was only around the 19th century that British historians started writing seriously about the history of Brunei. One of the major publications which carried these writings was the Journals of the Straits Settlement Branch, the Malayan Branch and the Malaysian Branch of the Royal Asiatic Society (JSBRAS and JMBRAS) published in the late 19th century.¹

These earlier writings included the Selesilah (Book of the Decent of the Rajas of Brunei) by Hugh Low published in JSBRAS(5) (June 1880), The Genealogy of the Royal Family of Brunei by W.H. Treacher published in JSBRAS(15) (June 1885), A Brunei Code by R.O. Winstedt published in JMBRAS (1)(1) in 1923 and a sketch of the History of Brunei by H.R. Hughes-Hallett published in JMBRAS(18)(2) published in August 1940.²

Remarkably in 1969, Brunei published her own Brunei Museum Journal (BMJ). It was for historians and any individuals to contribute their historical articles which will be dedicated to the advancement of knowledge of Brunei Darussalam, Borneo and Southeast Asia. To date, there are a total of 9 volumes of BMJ has been published by the Brunei Museum itself.

However, even though Brunei has her own journal since then, many writing still appear in the JMBRAS including Observations on the Brunei Political System, 1883 - 1885 by Dr Peter Leys edited by R.M. Pringle published in JMBRAS(41)(2) in December 1968, The Ending of Brunei Rule in Sabah 1878 - 1902 by I.D. Black

¹Rozan Yusof (2011) *Our Brunei Heritage: A Collection of Brunei Historical Accounts*. p.223

²*ibid.* pp.223 - 224

published in JMBRAS(41)(2) in December 1968, Batu Tersilah Genealogical Tablet of the Sultans of Brunei by P.M. Sharifuddin and Abd Latif Haji Ibrahim published in JMBRAS(47)(1) in 1974, Batu Tersilah, A Short Commentary by Amin Sweeney published in JMBRAS(47)(2) in 1974 and Tomb of the King of Brunei in Nanking by Tun Muhammad Suffian published in JMBRAS(56)(2) in 1984.³

From the above, it is safe to say that only until recently that Brunei kept their own records of history as for most of her earlier history was depended upon the writing of the Chinese scholars, historians and the well-known European visitors in the History of Brunei. However, this will not be a hindrance for us to know about the earlier history of Brunei.

Brunei before the Sultanate

The history of Brunei, before the arrival of Magellan's ship in 1521, is said to be based mostly on speculation and the interpretation of Chinese sources and local legends. Historians believed that there was a forerunner to the present day Brunei Sultanate.⁴ In fact, there were two possible predecessors. First was a state called Vijayapura, which possibly existed in northwest of Borneo in the 7th century. And second was a state called Po-ni who had contacts for the first time with the Song Dynasty and later on entered into a tributary relationship with China. However, such communication was put on hold as Po-ni was under the control of the Majapahit Empire. But it later on resumed during the Ming Dynasty in 1370 and ended officially in 1424 by the Hongxi Emperor.

Historical texts from the Song Dynasty and archaeological evidence suggest that Po-ni was heavily influenced by Hindu civilisation which came from the Hindu culture in Java and Sumatra but not directly from India. In fact, the system of writing used was also a Hindu script.

In addition, there were also evidence to show the great Chinese influence upon the

³*ibid.*

⁴http://www.museumstuff.com/learn/topics/History_of_Brunei::sub::Before_The_Sultanate 1/22/2003

country of Po-ni where Chinese coins dating from as early as the seventh century can still be found in the present-day Brunei.

*(See **Appendix A** for the timeline of Chinese History)*

CHAPTER II
BRUNEI IN THE HISTORY OF CHINA
AND
VICE VERSA

The Name of Brunei in the History of China

There are a lot of different names that were used to refer it to Brunei in the old Chinese records. Examples are Po-Li, Po-Ni, Bo-Ni, Fo-ni and even Po-Lo.

Shen Yue (441-513) in Song Shu wrote that on the Bingshen Day of the third month of the first year of Yuanhui Reign (taken to be May 2, 473), an envoy from Po-Li came to contribute their native products.⁵

Yao Silian (557-637), an official writer and editor in the early Tang Dynasty (618-907) in Liang Shu also wrote about Po-Li which is the transliteration of the Chinese word used to describe Brunei at that time.⁶

Wang Yinglin in Yu Hai wrote about the country Fo-Ni which has stopped its contract with China since 900 years ago. On the twenty fourth day of the second month of the fifth year of the Yuanfeng Reign (taken to be March 26, 1082), Fo-Ni paid tribute to China again.⁷ This actually matches with what has been stated in the history about Brunei before the Sultanate above.

Moreover, Zhao Rukuo, the head of the Custom House of Fujian Prefecture of the Southern Song Dynasty used the word Bo-Ni which again is the transliteration of the Chinese word.⁸ However, the name Po-Lo Kingdom was used instead of Po-Li, Bo-Ni or ebeb Fo-Ni by Zha Jizuo who was a native of Hining in the Chongzhen Reign of the Ming Dynasty (1638).

⁵Rozan Yusof (2011) p.231

⁶*ibid.*

⁷*ibid.* p.231-232

⁸*ibid.*

Even though there were a lot of different names used in the early Chinese records, the most often used name was Po-Ni or Bo-Ni. In fact, the name, until today is still being used as the signage at Sultan Majid Hassan tomb's in China. Ma-na-jih-chia-na, or better known as Sultan Majid Hassan was the ruler of Po-Ni who died during his visit to Nanjing, China in 1408.

According to some studies on the Chinese character "Po" and "Fo", whenever the character was used, it would make a sound of "Bu-Ni" which is said to be a close approximation to the original "Bruni" in the Chinese language. That was why the said characters were used in the early Chinese records to indicate the country of Brunei.

Early Relationship of Brunei and China

It is undeniable that the Chinese are one of the earliest groups of people who would travelled around the world either for the purpose of a mere visit, knowledge or even trade. That does not exclude Brunei from being that part of the world. History written the fact that Brunei, before she came under the British Protectorate in 1888, was a country that made out of the whole island of Borneo. It was a very geographically strategic place for trade during the earlier times as it was surrounded by water. In fact, water was an important source to transportation, food, resources, income, trades either locally or at large which made the people to build their town, houses and lived by the shore. This can be supported by a statement made in the Brunei Annual Report in 1910 which says:

"... The nature of Brunei territory has been made for water borne communication rather than for land routes, even when roads are eventually opened up, the water-ways will still most of the traffic ..."⁹

Even though the statement was made in the 1910 but it showed the significant of Brunei's water. If it was important during the 1900s then it will be much more important and useful for many years before it as not much technology was available

⁹Brunei Annual Report (1910) p.13

throughout the world and the main transportation was by water.

According to the Chinese records, the earliest recorded contact between Brunei and China was over 2000 years ago. The earliest can be traced back to during the Western Han Dynasty (206 BC - 23 AD). By 669 AD during the Tang Dynasty (618 - 907), official changes had begun.

Shen Yu (441-513), who held position that is equivalent to the Prime Minister, wrote in a book called "Song Shu" (the book of Song Dynasty) that on the third month of the first year of Yuanhui Reign (May 2, 473), an envoy from Po-Li came to contribute their native products.

In the book of Jiu Tang Shu (Old Tang History) written by Liu Xu, it stated that in the fourth year of the Zhenguan Reign (630), the king of Brunei sent an envoy following the envoy sent by the country Linyi to China as a contribution for their native products. The king is said to have the surname of Shaliyejia and Hulunapo as his first name. It was described that the king wore a crown decorated with pearls and jades and seated on the throne of gold.

During the Song Dynasty (960 - 1279), official and non-governmental commercial and cultural exchanges have become more frequent and were officially recorded in the Chinese history. It was stated that in the second year of Tai-ping-hing-koue of the Sung (977 AD), the king named Hiang Ta addressed letters to the Emperor, offering as tribute sandalwood, ivory, tortoise-shell, camphor in large pieces, camphor in power and blue powder. The letters addressed to the Emperor were enclosed in an envelope and rolled found themselves a number of times and the papers used resemble a vegetable skin, thin, polished, brilliant and greenish. The Emperor willingly received the ambassadors of the king.

*(See **Appendix B** for the Translation of the Letter written by Hiang Ta to the Emperor)*

As a result of these frequent trades between the two countries, elaborate customs and

traditions developed whenever Chinese traders arrived in Brunei to trade.¹⁰ The best description of the whole event was made by Zhao Rukuo, who was the head of the custom house of Fujian Prefecture during the Song Dynasty, in his book 'Zhu Fan Zhi' (Records of Foreign Countries) Part II.

According to Zhao Rukuo, three days after the Chinese ships arrived in Brunei, the King of Brunei would lead his family and high officials to visit the ships to greet the seafarers and traders. The ship's crew would then greet the King by lowering brocade-decorated gangplank. He stated that wine, gold, silverware, official mattress and umbrellas will be presented to the King's entourage according to their ranks. The trade will still not start even after the entourage had disembarked from that place.

Every day, they would then treat the king with Chinese meals. As a result, all ships heading for Brunei would always carry one or two skilful cooks. It was stated that the seafarers will visit the king with gifts on every first and fifteenth day of the lunar month.

Only a month later they invited the King and his high officials again to discuss about the prices of their goods. Only after both parties agreed with the prices then the Chinese merchants would beat drums to announce that the trade had officially begun. Any person would be punished if he trades privately before both parties named above agree on the prices. However, according to the ancient seafarers, Brunei held businessmen in high esteem and even if they are convicted of murder, they would only be punished and not sentenced to death, when it should be as so.

Once the trading was completed, the King then prepared a banquet for the crew, gave them camphor and local cloth. The king also gave a speech praising the seafarers and thanking them for coming to Brunei. However, this ship cannot leave just yet. They were only allowed to leave the post on the fifteenth day of June and the crew also needed to purchase sacrifices to celebrate the Buddha Festival. It was believed that if they did not do this, they will suffer stormy waves on their return to China. So, they had no other choice but to follow such believes.

¹⁰Rozan Yusof (2011) p.186

According to the Chinese records, Brunei imported goods includes gold, silver, Jia brocade, Jianyang brocade, silk of five colours, antler of five colours, glazed balls, glazed bottles, white tin, black lead, armlets, kermes, lacquered bowls and plates, celadon and on from the trade. On the other hand, Brunei would be trading plum borneol (camphor), Su borneol, Golden Foot borneol, Rice borneol, beeswax, acronychi pedunculata and hawkbill during the trade course.

The trading- buying and selling were said to be very efficient and systematic as it was supervised by a Chief Scribe during the whole time of trade. In addition, a Deputy Chief and a number of officers were also present in order to ensure that the weights and measurements were accurate throughout the trade.

Moreover, Graham Saunders in his book "A History of Brunei" also described that in 1330, a Chinese merchant by the name of Wang Ta-Yuan came to Brunei and recorded that Brunei people were lavish in their habits and that they were good accountants, a tribute to the commercial class of the Brunei port.

Around 1376, Brunei began to be an Islamic Sultanate State under the first Islamic ruler named Sultan Muhammad Shah. During the reign of Sultan Sharif Ali, the third sultan of Brunei, the country has a very well administered government and it was stated that even though the official relationship between the Brunei and China was distant at that time, it still does not affect the trade as it was still being conducted as before.

According to the "Salasilah Raja-Raja Brunei", Dato Imam Yaakub's version, since the reign of Sultan Muhammad Hassan (ninth sultan of Brunei) and up to the reign of Sultan Nasruddin (1690-1710) and Sultan Hussain Kamaluddin (1710-1730 and 1737-1740), Brunei's harbour had a good reputation among foreign traders because the sultan made trading very safe and cooperated with the traders in the distribution of their products to the market, for the benefit of the Brunei people.

Up to the year 2008, the trade between the two countries reached the record of US\$355 million (BND\$490 million). Brunei exported US\$255 million worth of crude

oil to China. And over the same period, Brunei also imported garments, agriculture products and machinery worth US\$100 million.

In conclusion, Brunei and China have a very deep relationship which most of it was based on trade. The relationship between both countries develops as time passes by of which this can be seen in the amount of import and export recorded until the year 2008 reached millions of dollars. Since trade is very important to both countries, they will not let it be affected even though their relationship turned distant as it was during the reign of the third sultan of Brunei as mentioned above.

So, it is because of these early relationships that both countries still remain close to one another. This can be supported by a statement made by He Tong Xiaoling, a Chinese Ambassador to Brunei, where he noted that the booming bilateral trade and the exchange of high-level delegation reflected the warmth of relationship between Brunei and China.

Chinese Settlement in Brunei

China was in a chaotic phase during the Yuan Dynasty and legend has it that the people who lived along the coastal area of Fujian, under the leadership of Ong Sum Ping's siblings, escaped to eastern Kalimantan. They landed in the river mouth of which subsequently made the Malays to name the place as Sungai Kinabatangan. It was due to the Chinese who lost their arms at that particular place as they were terribly exhausted and had to face the shipping crisis prior to their arrival.

The legend goes on to tell how Ong Sum Ping and his sister, and the Chinese people, developed the area of Sungai Kinabatangan and how they increased their influence there. The native Malays gave him the title of a King or Raja, while the Chinese people named him "Chung Ping", which means the General as they saw the increase of his prosperity over the place. This shows that Ong Sum Ping controlled the whole place and also the Chinese military at the same time.

During the invasion of Sultan Sulu on the eastern part of the Sungai Kinabatangan,

Sultan Muhammad Shah, who just ascended the throne as their new ruler, asked Ong Sum Ping for help and assistance. During the whole course of helping the Sultan to overcome the said invasion, the Sultan married his daughter to Ong Sum Ping, while his brother to the sister of Ong Sum Ping. Both siblings were also then given the title of Maharaja Lela and Puteri Kinabatangan by the Sultan respectively since both were married to royalties of the country. It was due to this marriage which made the connection between both the Sultan and Ong Sum Ping closer. As a result of the cooperation from both parties, they were able to defeat the invasion headed by the Sultan of Sulu and to save Brunei from being destroyed.

In 1370, Brunei still paid tribute to China. This actually signifies that there was a strong influence from both the Ming Dynasty and also Ong Sum Ping's influence in Brunei. In these 30 years, the two power combined which made them successfully expanded their influence from the east of the Sungai Kinabatangan to the Northern Borneo. They also built Chinese towns and villages which on the present-day is known as Kota Kinabalu.

After the death of Sultan Muhammad Shah in 1402, his son, Sultan Abdul Majid Hasan ascended the throne of Brunei. During that time, both Ong Sum Ping and the Pengiran Temenggong became regents which eventually led to a two years power vacuum upon the death of Sultan Majid Hassan in the year 1406. It was in these two years that the Brunei's noble started a power struggle which ended with the winning of Sultan Ahmad over the Pengiran Temenggong. Ong Sum Ping then again consolidated his power after the event.

Ong Sum Ping, however, did not forget his true identity after his immigration to Brunei earlier. In fact, he continued to perpetuate Chinese cultural identity under the new Ming Dynasty. He also went back to China with his armies. Their arrival was celebrated by Emperor Yong Le himself. He saw changes in China and was overwhelmed with the whole situation of missing his own home land which resulted him to stay there until his death. History stated that upon his death, he made a request from the Emperor to make and annex Brunei and Sungai Kinabatangan as part of Chinese territories, to name the Mount Kinabalu and also to bury him in China. The Emperor agreed to his entire request. He made Awang, Ong's son, as the new ruler and

named the mountain of Brunei as Chang Ning Mountain which also means the Mountain of Peace.

In 1408, Awang returned back to Brunei under the protection of Imperial eunuchs and officials. He succeeded his father's influence, continued to exercise his political power and was still known as the Chung Ping by the Chinese. He also continued in paying a tribute to Emperor Yong Le in 1412. The wife of Ong Sum Ping, who later on died, was buried in Brunei at a place which the local Malays called Bukit Cina. As for the sister of Ong Sum Ping who married the brother of Sultan Majid Hasan, as mentioned earlier, have birth to a daughter who then married Sultan Sharif Ali, the third sultan of Brunei, who was the descendent of Nabi Muhammad SAW.

Even today, Bruneians still believed that Ong Sum Ping was the ancestor of the Brunei royalty. It was mainly due to their strong influence to the country. Even though the country's national philosophy is Melayu Islam Beraja (MIB), they do not rebut this said statement. In fact, the country also recorded Ong Sum Ping under the genealogy of the Sultans of Brunei, named a road after him at the capital, placed his artefacts at the Brunei's Museum and also protected the tomb of Ong Sum Ping's son which can be found also in the capital of Brunei.

In addition, the existence of Ong Sum Ping can be proven by the Salasilah Raja-Raja Sulu which recorded the fact that when Ong Sum Ping first arrived at Brunei with many Chinese, he said that he was ordered to collect jewellery in Sabah, and the mountain was named Gunung Kinabalu. The legend said that some attractive animal might appear in the forest, and they ate some people. Ong Sum Ping brought the candle with his colleague, and got the jewellery at last. He also had a sister who married Sultan Ahmad during the Ming Dynasty in 1375. The kingship was handed down 20 times until now as the daughter of Sultan Ahmad married with the Sultan Sharif Ali who was the ancestor of the present sultan of Brunei, Sultan Haji Hassanal Bolkiah.

The history of Ong Sum Ping marked the first Chinese settlement in Brunei. His influence was so strong which made the native Malays to accept him and also the fellow Chinese who came to Brunei and eventually settled in. When the immigration

of the Chinese took place in Brunei, they also brought along their culture to not let them forget their origin. As a result, such culture is still being practice presently by the Chinese living in Brunei. Even though it is not entirely the same but the base is still there.

CHAPTER III

CHINESE MARRIAGE

Although the above was more focused on the Ming Dynasty, but in order to provide a proper explanation on the Chinese Marriage, everything will be based on the times of the Qing Dynasty. The reason for this is that a proper codification of law can be seen during this particular time. The code known as the Great Qing Code was a complete code of law which governs all the law of China. Marriage law is no exceptions. Detailed explanation on the law was also given on the code. So, from herein forth, everything will be based on the said time and code.

Definition of Chinese Marriage

The definition of Chinese marriage can be seen in Section 2 of the Chinese Marriage Act (Cap.126) of Laws of Brunei Darussalam, where it is provided that,

"Chinese marriage means a marriage conducted according to established Chinese law or custom and includes a marriage constituted by the marital intercourse of persons betrothed according to such law or custom"

Although it is not stated but it is basically a contract between a man and a woman, whom he can legally marry, with the aims of establishing joint life and of procreation. [Emphasize should be given to the words contract between a man and a woman because this is what is in practice now.] Both parties now have their own choice with whom they wanted to be married with as their consent plays a vital role in constituting a marriage as opposed to marriage during the times of Qing Dynasty and even earlier.

Thousands of years previously, marriage was actually a contract between the two families and never between the bride and groom. The reason behind all of this was the fact that they cannot go against any decisions made by someone senior than them. The principle to determine seniority within family was any relative of a higher generation was senior to a relative of a lower generation irrespective of age, whereas within the

same generation seniority will be determined by age.

The rationale behind all junior must respect seniors was because they need to maintain the harmony within the family and society at large. Harmony is secured through the exercise of kindness, protection and benevolence by the senior and of respect and submission by the inferior.¹¹ Only through a proper maintenance of the family and social hierarchy entails harmony in society, achieved through the harmonious working of its fundamental relationships. Moreover, people during the Ming and Qing Dynasty were into Confucianist thought which highly believed in the concept of the Five Relationships and the Three Bonds within the society in order to have peace and harmony as well as to maintain their cosmic order. The Five Relationships were those between ruler and subject, father and son, husband and wife, younger and elder brother, and friend and friend, whereas the Three Bonds were the first three of mentioned earlier.

From the Five Relationships and the Three Bonds concept, there was nothing mentioned about women on where they stand and rights in the society. The truth is, women do not have any position in society before as their existence was not significant when compared to men. This is because women do not have and carry the same responsibility as men. They cannot make any offerings to ancestors, become a leader of the house, inherit property and so forth. In fact, their roles and responsibility highly depended upon their status whether as a daughter, wife or widow.

By looking at all of the above, that was basically why marriage was said as a contract between two families. Children must obey their parents and not go against them in order to maintain the peace and harmony in the society. Although there were situations where they chose their own partner but it happened so rare that it almost did not happen at all. Only the rich people may do so and only if their partners are of the same level as they do. If not, it will not be possible.

¹¹MacCormack (1996) *The Spirit of Traditional Chinese Law*. p.72

The Importance of Chinese Marriage

Mencius described marriage as the most important human relationship. From one point of view, the wife was recognised as her husband's equal but rated as the 'junior' in the relationship in which her husband counted as 'senior' in the other.

From the perspective of the groom's family, marriage is important to them especially in respect of producing an heir hence continuing the family line and also joining her husband in the worshipping of the ancestors. In fact, failure to do as such may be a ground for divorce which will be explained in detail later on. Meanwhile, from the point of view of the bride's family, marriage is important because they believed from the day she born, a daughter symbolically "belonged to other people" and her marriage was seen as the final "transfer of rights" over her.¹²

As oppose to the present time, its importance are still the same but not to the extreme level like before. Failure of a wife to perform any of the roles will not give power to the husband to divorce her.

In fact, Man and woman are of the same level now. Both have their own duties and responsibilities in marriage of which they are obliged to do so by law. Previously, the law which governed their marriage does not provide any proper enactment prescribing forms and procedures to be followed like now. What has been provided to the people were not laws but only fundamental rules of etiquette guiding the participants in marriages which will be explained in the procedures of Chinese marriage below.

Procedures of Chinese Marriage during the Qing Dynasty and Earlier

It is important to note that during the previous time, marriage was a contract between two families and this can be clearly seen from the procedures which will be discussed below.

¹²Maurice Freedman (1970) "Ritual Aspects of Chinese Kinship and Marriage," in *Family and Kinship in Chinese Society*, p.181

The idea of marriage must be brought about by the parents or grandparents or by a senior member of the family who invariably becomes master of matrimony.¹³ They were the ones who must initiate the whole process that will be ended with a marriage ceremony. It will be the groom's side and not of the bride's side as marriage is important to them in order to continue their family lineage and so forth.

Once such intention has been formed, they will look for the bride-to-be from a go-between. 'Go-between' is a person who acts as an intermediary or messenger between both parties. This person will be responsible in searching for a suitable bride for their son or grandson as well as the negotiations for marriage between the two families. Only when the two parties consented to the marriage then a formal contract will be drawn through the go-between.

After a formal contract has been entered into, they will have to proceed to the betrothal stage which will only be completed by the giving of marriage presents. Under the Qing law, betrothal is a condition precedent to marriage.¹⁴ A betrothal is concluded with the payment of money by the prospective bridegroom's family to the prospective bride's family and/or by a formal document written by the prospective bridegroom's family to the prospective bride's family who usually reciprocates by writing a reply thereto in the same formal way.¹⁵ A betrothal document is one of the three documents in the so-called "Three Documents and Six Rites" of which it is a phrase used by a Cantonese to designate that the marriage contracted is an old-fashioned wedding. The other two documents are first, a document written by the prospective bridegroom's family to the prospective bride's family enclosing the records or pedigrees of the prospective bridegroom, those of his parents, grandparents and great grandparents as well as a list of the gifts presented to the prospective bride's family.¹⁶ And second is a marriage document written by the prospective bride's family on the day of the wedding.¹⁷ In short, either payment of money or delivery of the betrothal document is sufficient to constitute a valid betrothal without which the

¹³Chiu (1966) *Marriage Laws and Customs of China*. p.77

¹⁴*ibid.* p.76

¹⁵*ibid*

¹⁶*ibid*

¹⁷*ibid*

betrothal is invalid and the marriage that comes after it is null and void.¹⁸

However, there are consequences if there is anything which happens in between the period of drawing up the formal contract and betrothal that will subsequently lead to the cancellation of marriage. All of these consequences which came under the form of punishment were given by the Great Qing Code. It was believed that anything which affects the marriage will also affects the order and harmony within family and the society in general. Punishments will then be given to those who caused such disharmony in order to restore back the order within the society.

Punishment will be given as early as after a formal contract has been drawn up. According to Section 101 of the Great Qing Code, if either the intended husband or wife is deformed or affected with an incurable disease, or is aged, or a minor, or the offspring of a concubine, or a formally adopted child of the same kindred or one informally adopted of a different name, such facts must be fully communicated to the other side before a formal contract is being drawn up. Punishment of 50 blows will be given to the principal contracting the marriage on behalf of the family if such facts were only made known to the other party after a contract has been entered into.

Second is the situation after the betrothal. If after the betrothal the girl is engaged by her family to some third party, the principal of her family shall be liable to 70 blows, and if not only engaged but actually married, the principal shall be liable to 80 blows and such marriage may be annulled at the option of the first intended, who may, if he chooses, claim his bride.¹⁹ If he does not choose, he may recover his marriage presents and the marriage shall stand good. But if the family of such third party were aware of the former betrothal, the principal contracting shall be punishable equally with that of the bride's family, and the marriage presents shall be forfeited, if not, they shall be entitled to receive back the presents.²⁰

Third is if after betrothal either party is guilty of theft or criminal intercourse, the contract shall not be binding on the other party. Fourth is if the family of the bride

¹⁸*ibid*

¹⁹Section 101 of the Great Qing Code

²⁰*ibid*

wilfully mislead the husband's family, the representative of the family contracting the marriage shall be liable to 80 blows and the marriage presents shall not be recoverable. But, if the deception is practiced by the family of the bridegroom then the contractor of the marriage shall be punishable one degree more severely and the presents are irrecoverable.²¹

Fifth is if after betrothal and payment of the engagement money the husband carries off the bride by force before the time agreed upon, or if after the time agreed upon the bride's family decline to carry out the ceremony, the representative of the family offending shall be liable to 50 blows.²²

The "principal" who has been used in all of the above situations, according to the Great Qing Code, are the grandparents or the parents or the nearest relative if the previous were no longer alive. In short, they were the ones who will be responsible with the marriage and for whatever happens before and after the marriage. They had an important role to ensure that everything goes smoothly with the wedding in order to maintain the harmony within the society as well as within the family because any disorder caused by them will result to them being punished as prescribed by the Great Qing Code.

The Present Chinese Marriage in Brunei

From Legal Perspective

In Brunei, the Chinese customs on marriage are still applicable nationwide as long as it does not go against the limit which has been set by the Government that is not to practice it in an extreme manner to the point of it disturbing the practice of Islam, the national religion of the country. In fact, in order to provide for the control and registration of marriages contracted according to established Chinese law or custom, an act was made especially for them. The act shall be cited as Chinese Marriage Act (Cap.126) of Laws of Brunei which is in commenced since the 31st July 1955.

²¹*ibid*

²²*ibid*

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