Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.33925

Determining Property Rights in Same-Sex Cohabitation Disputes in China

Xiaoduo Shang

Law and English, Tongji University, Shanghai, China
2352792@tongji.edu.cn

Abstract. This paper looks at how property disputes involving sexual minorities are decided under Chinese law. As same-sex cohabitation becomes more common in China, current family law does not recognize same-sex marriage, so these relationships fall outside the family law system. When such partnerships end, the people involved often have no clear legal rules to rely on. Based on a full review of court practices and theories about moral duties in close relationships, this paper points out problems with the general partnership approach used for same-sex cohabitation. This partnership model does not acknowledge non-financial contributions, sets high proof standards that disadvantage people with less economic power, and harms social stability. By looking at the quasi-family trend in UK court decisions, this paper shows how reasoning by analogy can extend legal protections to same-sex partners. It also puts forward a standard to identify same-sex cohabitation relationships and suggests that property division should aim for substantive fairness by taking life contributions and compensatory distribution into account. These suggestions offer workable guidelines for courts to better protect the rights and interests of same-sex partners.

Keywords: comparative law, sexuality and law, property disputes

1. Introduction

In contemporary China, same-sex cohabitation has become increasingly common. However, unlike opposite-sex married couples who can rely on the protective framework of the Marriage and Family Book of the Civil Code, same-sex partners often find themselves governed only by the general property rules designed for commercial partnerships. As a result, when a long-term same-sex relationship ends after many years of shared life, the economically weaker partner often finds that their contributions in the form of domestic labour, emotional support, and personal sacrifice carry no legal weight.

This paper uses a comprehensive research approach. It reviews legal discussions on property rights in unmarried cohabiting relationships, drawing on Barlow's analysis of cohabitation, money and property. The analysis is further supported by theories that connect intimate relationship entitlements with corresponding ethical obligations, ideas developed by Martin and Müller. It also incorporates Chinese scholarship on property division in same-sex cohabitation under the Civil Code. A review of relevant UK judicial practice shows a clear change in judicial attitudes toward

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.33925

unrecognised domestic partnerships. Early rulings strictly followed narrow and formal legal definitions and refused to provide protection to non-marital unions.

Based on this discussion, this paper sets out clear and usable standards for judges to decide property disputes between same-sex partners. It also provides a sample cohabitation agreement that same-sex couples can use directly.

2. A critique of partnership logic in same-sex property disputes

2.1. Overview of current judicial practice

In current cases, judges usually handle property disputes between same-sex partners by applying rules meant for personal partnerships. The main reason is that same-sex partnerships still lack formal legal recognition.

Article 1041 of the Civil Code of the People's Republic of China states that a marriage system based on freedom of marriage, monogamy and equality between man and woman is applied. This rule clearly shows that the legal marital system only applies to heterosexual couples [1]. As a result, same-sex partners are not covered by the legal system for marital property distribution. They cannot enjoy protections such as joint property ownership, inheritance rights, or asset division rules used in divorce cases [2].

The Interpretation (II) of the Supreme People's Court on the Application of the Marriage and Family Book of the Civil Code provides guidelines for property division in non-marital cohabitation. However, these rules do not specifically mention same-sex cohabitation, so partners cannot directly rely on them in court. In practice, courts often divide shared property based on the Property Book of the Civil Code and related principles. This way of treating relationships like business arrangements ignores the non-financial contributions made in same-sex partnerships.

2.2. The problems of commercialized approaches

The partnership model tends to focus only on equal financial input and equal return. However, in real same-sex cohabitation, many important parts of the relationship cannot be easily measured as fixed contributions. These include emotional care, housework, shared daily costs, and mutual loyalty.

For example, one partner might undertake all domestic labour or give up their own career to help the other succeed. When the relationship ends, the partner with more money can easily say the other did not invest financially and should get nothing. Under this logic, the weaker partner's daily work and emotional support count for nothing in law. This way of handling things lets one party end the relationship with almost no consequences and does little to support long-term commitment or social wellbeing.

2.3. Difficulties in presenting evidence

Within a partnership framework, the victim, typically the economically weaker party, faces significant difficulties in proving the partnership nature of each item of household expenditure. In the context of real-life same-sex cohabitation, financial arrangements between partners are often informal and intertwined. For instance, one partner may cover the payment for real property, while the other assumes responsibility for living expenses. However, in judicial proceedings, courts tend to require direct evidence such as bank transfer records, promissory notes, or written contracts. Mere

DOI: 10.54254/2753-7048/2026.33925

proof of an intimate relationship is generally deemed insufficient. In Zhao v. Jiang, although the property was registered under Zhao's name and Jiang had borne substantial shared living expenses, Jiang was unable to demonstrate any financial contribution to the acquisition of the property itself and was therefore held to have no proprietary interest. Similarly, in Fu v. Lü, the court of first instance found that factors such as the parties' intimate relationship, cohabitation, and financial exchanges did not, in themselves, constitute a sufficient basis for the division of real property [3]. If same-sex partners are required to enter into detailed partnership agreements in advance to specify each financial contribution, such formalization risks undermining the trust and emotional foundation of the relationship.

3. The interplay of sexual rights, moral obligations, and property distribution

3.1. The legal positioning and extra-legal effects of sexual rights

Sexual rights in same-sex relationships give rise to moral obligations similar to those in opposite-sex marriages.

First, exclusive commitment gives rise to a duty of fidelity. Martin notes, citing the classic definition of marriage in Hyde v. Hyde, that marriage is understood as the voluntary union for life of one man and one woman, to the exclusion of all others [4]. In practice, same-sex partners often form similar exclusive commitments. They agree to refrain from sexual relations with others and to belong exclusively to each other emotionally and physically. Such commitments generate the same moral obligations that attach to opposite-sex marriage.

Second, long-term commitment creates a duty of care. Müller observes that long-term commitment serves as a framework for love [5]. The law acknowledges the emotional bond generated by long-term commitment by conferring specific rights, such as medical decision-making authority and guardianship, upon spouses. Same-sex partners, in practice, form equally enduring commitments. They cohabit for years or even decades, care for each other during illness, and provide support during periods of unemployment. These factual commitments give rise to moral obligations comparable to those in marriage.

Third, intimate relationships generate reliance interests and shared risks. Based on the expectation that the relationship will continue, partners make economic sacrifices and arrangements, such as forgoing career development to attend to domestic responsibilities or financially supporting a partner's education or professional advancement. Oswald observes that, in marriage or opposite-sex cohabitation, property transfers motivated by affection, compensation or domestic labour are considered justified grounds [6]. This suggests that the law acknowledges contributions made within intimate relationships as valid consideration for property arrangements.

3.2. Duty of fidelity and compensation mechanism

Given that same-sex relationships give rise to moral obligations comparable to those found in opposite-sex marriage, the rights to fidelity and compensation that opposite-sex spouses enjoy within marriage should likewise be protected. However, such judicial decisions remain rare in China, as there is currently no legal basis for granting such relief.

In opposite-sex marriage, if one partner commits serious fault, such as cohabiting with another person or engaging in domestic violence, the no-fault party is entitled to claim damages upon divorce, and the court may take the no-fault party into account when dividing the marital property. In same-sex relationships, however, infidelity generally does not constitute a legal wrong unless the

DOI: 10.54254/2753-7048/2026.33925

conduct simultaneously infringes other legally protected interests. The enforceability of cohabitation agreements between same-sex partners, including fidelity pacts or compensation promises, remains highly contested. Courts typically examine whether such agreements violate public order and good morals under Article 153 of the Civil Code. Purely emotional fidelity clauses that stipulate liquidated damages or compensation are often held unenforceable on public policy grounds.

This differential treatment has several deficiencies. First, it creates a lack of economic security. Since no comparable remedies are available to same-sex partners, a party who has invested more emotionally, in time, or financially may lose both the relationship and any economic stake without meaningful protection. Second, the absence of compensation linked to fidelity increases the risk of power imbalance and exploitation, as economically stronger parties face little legal cost in transferring jointly funded assets held in their own name or engaging in infidelity [7]. In addition, compensation also serves an important function of emotional solace and affirmation of justice for the injured party, and the absence of such a mechanism places a heavier emotional and psychological burden on same-sex partners when relationships break down.

3.3. The quantification of domestic contribution

The same concern applies to same-sex cohabiting partners, whose domestic contributions are still not legally recognized.

In opposite-sex marriages, the economic value of domestic work, such as taking care of elderly family members, raising children, or running the household, is mainly acknowledged through the household contribution compensation rule in Article 1088 of the Civil Code. This system recognises that a party who undertakes more family duties may sacrifice personal interests to maintain the household and may therefore claim compensation upon divorce.

However, same-sex cohabiting partners are left out of this framework. When their relationship ends, the partner who has done more household work usually has no legal way to claim compensation. Even if they tried to make private agreements about this issue, courts might not enforce them because there is no clear legal basis for doing so.

This difference causes real issues. The person who has invested substantial time and effort could end up financially vulnerable after separation, while the other receives all the benefits from that work without having to compensate them. This outcome is unfair and may also harm social stability.

4. The quasi-familial turn in judicial decisions in the United Kingdom

4.1. Case analysis

In earlier decisions like Harrogate Borough Council v. Simpson, the court took a strictly formal approach. In that case, Ms Simpson wanted to take over a statutory tenancy after her same-sex partner, Ms Rodrigo, died. She argued that she should be seen as a member of the deceased's family. The court turned down the claim because a same-sex relationship could not count as living together as husband and wife [4]. That meant it was excluded from the statutory idea of family. A very different approach appeared in Ghaidan v. Godin-Mendoza. The surviving partner tried to inherit a protected tenancy under the Rent Act. The House of Lords held that interpreting the legislation to leave out same-sex partners would go against the right to respect for private and family life and the ban on discrimination under the European Convention on Human Rights [8]. By reading the statutory provision in a way that included same-sex cohabitants, the court moved from a formal to a

DOI: 10.54254/2753-7048/2026.33925

purposive analysis, focusing on the real nature of the relationship. This change shows a shift toward recognizing same-sex cohabitation as equal to opposite-sex family life.

4.2. The legal basis for analogical application

Three main arguments support the judiciary's willingness to interpret existing legal frameworks to fit same-sex partnerships.

First, same-sex partners can form stable and committed relationships just as well as opposite-sex couples. Therefore, they are in a similar position when it comes to needing legal recognition and protection. Waaldijk argues that same-sex partners are in a relevantly similar situation regarding legal acknowledgment of their relationships, which provides a foundation for equal treatment [9].

Second, official recognition of a relationship matters more than just its material legal effects. Legal acknowledgment itself is seen as giving dignity and social legitimacy. Same-sex partners who share their lives need mutual support and assistance just like opposite-sex couples do. Comparative research on legal recognition in Europe also shows that legal status can carry both symbolic and practical consequences for same-sex couples.

Third, the necessity test limits how much exclusionary rules can be justified. A total ban on same-sex relationships receiving specific legal benefits, such as tenancy succession, cannot be justified simply by saying it protects the traditional family. That kind of restriction is not strictly needed to reach that goal [10].

4.3. The role of intended guardianship

In China, the intended guardianship system is one of the important means for same-sex partners to safeguard their rights and interests. Voluntary guardianship under Article 33 of the Civil Code provides same-sex partners with a legal mechanism to designate one party as the other's guardian in the event of incapacity due to age or illness, thereby granting authority over personal care, medical decisions, and property management.

5. Move towards substantive justice in the settlement of non-marital cohabitation

5.1. Establishing criteria for recognizing de facto families

To move toward substantive justice in settling non-marital cohabitation cases, China needs to create a structured standard for recognizing de facto families formed by long-term stable cohabitation. Courts should be guided to check whether such relationships exist by looking at a mix of objective and contextual factors. The modern legal definition of family also supports a more functional approach to family protection.

Relevant factors might include how long the cohabitation lasts, with at least two years as a general reference. There is also the degree of economic interdependence shown through shared expenses. Besides, courts should consider how publicly the relationship is presented as a partnership shown through social interactions and recognition in their shared community. The way family responsibilities are divided, such as doing household labour, taking care of elderly relatives or children, and supporting each other when sick, further shows the characteristics of a family unit.

When these elements are clearly present, courts should assume that a de facto family relationship exists. They should apply principles similar to those for marriage when dividing property, instead of only using general co-ownership rules.

DOI: 10.54254/2753-7048/2026.33925

5.2. Adjustment of property division principles

At the same time, when dividing property, courts should move away from a strict proportional co-ownership approach. Instead, they should use one that considers the realities of shared life. In practice, this means looking at not just direct monetary input but also non-market contributions. Contributions such as domestic labour, caregiving, and long-term support that keep the relationship going should also count. When one party has taken on more of these responsibilities, courts should add a compensatory part when dividing property. This approach makes property division reflect substantive fairness, not just formal equality.

5.3. Legal recommendations

A practical way to enhance protection for same-sex partners is to develop a model cohabitation agreement that clarifies rights and obligations in advance. Such an agreement may set out arrangements on property ownership, including whether assets are held jointly or separately and how jointly acquired property should be divided upon separation. It may also address the allocation of daily expenses and the degree of financial support between partners, particularly in situations where one party reduces employment to undertake caregiving or household responsibilities. In addition, the agreement can include provisions on compensation in the event of relationship breakdown, designed to reflect both financial and non-market contributions over time. Clauses concerning major life decisions may further strengthen clarity and reduce future disputes. To improve legal certainty, parties are advised to formalize the agreement through notarization, update its terms periodically as circumstances change, and preserve relevant evidence of performance.

In reviewing such agreements, courts should balance contractual autonomy with fairness. The validity of the agreement should generally be upheld unless it clearly violates public order or involves coercion or exploitation. Clauses should be examined to ensure they do not improperly restrict personal freedom, while compensation terms should remain proportionate to the duration of cohabitation and the parties' economic circumstances. Courts should also assess whether the agreement reflects genuine consent and whether its terms are sufficiently clear and capable of enforcement.

6. Conclusion

The partnership logic is improperly applied in cases involving same-sex property disputes, failing to accommodate non-economic contributions such as emotional labour and household division of chores. The proof requirement makes it difficult for the economically disadvantaged party to prove their substantial contribution to the joint property; the requirement of signing detailed agreements in advance contradicts the inherent logic of an intimate relationship. The same-sex cohabitation relationship has generated moral obligations similar to those in heterosexual marriages, and these obligations should be legally recognized and protected. The trend toward quasi-family law in British judicial practice provides a useful reference for China: through purposive interpretation and analogical application, the court can incorporate long-term stable cohabitation relationships into the quasi-family protection scope without changing the definition of marriage.

This paper provides criteria for family recognition, revised principles for property division, and a suitable cohabitation agreement, providing practical tools for courts to handle such disputes and for sexual minorities to protect their rights and interests. Future research could focus on a comparative

DOI: 10.54254/2753-7048/2026.33925

study of more judicial jurisdictions to explore the evolution of protection systems for non-marital cohabitation under different legal traditions.

References

[1] Dong, J. Judicial Determination of Property Division in Same-Sex Cohabitation Relationships: Legal Framework and Practical Dilemmas Under China's Civil Code.
[2] Rei, P. (2023) Research on the Determination of Property Rights During Cohabitation of Same-Sex Couples. Master's Thesis, China Foreign Affairs University.
[3] Yu, L. (2019) Strangers in the Family: Same-Sex Cohabitation from a Critical Legal Perspective. China Law Review, 6, 171-185.
[4] Martin, J. (1994) English Polygamy Law and the Danish Registered Partnership Act: A Case for Consistent Treatment of Foreign Polygamous Marriages and Danish Same-Sex Marriages in England. Cornell International Law Journal, 27, 419.
[5] Müller, C. (2002) An Economic Analysis of Same-Sex Marriage. German Working Papers in Law and Economics, 14.
[6] Oswald, R.F., Goldberg, A., Kuvalanka, K. and Clausell, E. (2008) Structural and Moral Commitment among Same-Sex Couples: Relationship Duration, Religiosity, and Parental Status. Journal of Family Psychology, 22(3), 411.
[7] Waaldijk, K. (2004) Levels of Legal Consequences of Marriage, Cohabitation and Registered Partnership for Different-Sex and Same-Sex Partners: Comparative Overview. In Same-Sex Couples, Same-Sex Partnerships, and Homosexual Marriages: A Focus on Cross-National Differential. Institut National d'Etudes Démografiques.
[8] Barlow, A. (2008) Cohabiting Relationships, Money and Property: The Legal Backdrop. The Journal of Socio-Economics, 37(2), 502-518.
[9] Waaldijk, K. (2014) Legal Family Formats for (Same-Sex) Couples. Families and Societies Working Paper Series, 7, 42-55.
[10] Jancic, O.C. (2010) The Definition of Family in Modern Law and Its Legal Protection. International Journal of Jurisprudence of the Family, 1, 77.