

CHAPTER 29 FAMILY LAW

In this chapter, we consider the law regarding marriage, divorce, marital property, custody of children, children, guardianship, adoption and maintenance. The basic law is to be found in secs 1435-1598 of the Civil and Commercial Code.

Differences between Thai family law and that of other countries Differences that may distinguish Thai family law from that of other countries, include the following:

- **Divorce by consent at the Amphur rather than in Court** A divorce by consent may be registered at the Amphur (*district authority*) office, rather than by an order following court proceedings, provided both parties agree to the divorce being granted and provided that the marriage was registered in accordance with Thai law.
- **Where the marriage has been entered into outside Thailand** Where the marriage has been entered into outside Thailand, or at a Thai embassy or consulate overseas, and the marriage has not been registered under Thai law:
 - the parties may not obtain a divorce by consent by registration at the Amphur, or
 - the parties may obtain a divorce in the Thai Court, alleging a ground or grounds as specified in the Civil and Commercial Code. If the parties agree, the court will grant a divorce without any need to admit or prove the allegations. When taking evidence in a case where either or both of the parties is not Thai, and the marriage was registered outside Thailand, the Thai court may ask the parties to confirm whether they have any objection to the Thai court having jurisdiction.
- **Pre-nuptial agreements** Pre-nuptial agreements are in general recognised and enforceable in Thai law, subject to the requirements discussed below.
- **Clean break** A clean break, meaning a case where one spouse “buys off” the right to claim maintenance of the other spouse by e.g. offering a greater share of capital assets, may be effected with the consent of the parties and the approval of the Court. Rights of maintenance of children cannot be the subject of a clean break. A maintenance order for a child will last until age 20 (*the current age of majority*) but the court has power to extend the obligation until the completion of a first degree course.

- **Recognition of foreign civil judgments or orders** Thailand has not entered into any treaties with any countries for the mutual recognition of foreign civil judgments or orders. Therefore any orders for property adjustment or maintenance as between husband and wife, and orders regarding child custody, access or maintenance made outside Thailand, will not be recognised by the Thai courts. To enforce such rights, fresh proceedings must be issued in the Thai court. Any foreign judgments or orders made will be admissible in evidence, subject to translation into Thai, but the Thai court is entitled to give a judgment on the merits. This excludes the following:
 - (a) Thai law will, under its Conflict of Laws Act, recognise a foreign marriage or a foreign divorce if obtained in accordance with the laws of that foreign country, and
 - (b) Thai law has entered into certain limited international treaty obligations with regard to child snatching.

- **Grounds for divorce** A 'neutral' ground for divorce exists if the parties have lived apart for a period of three years, and both consent to a divorce. Otherwise, a petition for divorce may only be brought if there is some form of default or misconduct on the part of the other party. For further details, see below.

- **Same-sex civil partnership or same-sex marriage** There is currently no concept of same-sex civil partnership or same-sex marriage in Thai law. With regard to a same-sex civil partnership or same-sex marriage registered or dissolved outside Thailand, we express the tentative view that:
 - (a) the Thai courts would not recognise a foreign registered same-sex civil partnership or same-sex marriage made in a foreign country as valid and enforceable under the laws of Thailand, on the general grounds that this may be contrary to public order or the good morality of the Thai people, or for other reasons; and
 - (b) the parties to a foreign registered same-sex civil partnership or same-sex marriage, whether subsisting or dissolved overseas, may not obtain from the Thai courts, orders for property division or maintenance, either for themselves or in relation to any minor child of either party under family law. However, the property of foreign same-sex partners in Thailand may be dealt with on the basis of their being unregistered partners under the partnership law provisions of the Civil and Commercial Code, and equally divided between partners, or transferred to a minor child of either party. In addition, Thai law imposes a general duty for parents to

financially support their children until they reach the age of majority (currently 20 years).

- **Children conceived by artificial insemination or by surrogate mothers** It is a fundamental principle of Thai family law that the mother or father of a child is liable to support it. In our opinion, as to children conceived by artificial insemination, the mother of the child, or the provider of the ovum or semen, would be liable to support such a child. As to children conceived by surrogate mothers, in our opinion, the mother of the child, or the provider of the ovum or semen would be liable to support such a child. A written agreement providing otherwise, would, in our opinion, be unlikely to be upheld by the Thai courts on the grounds of public policy. The position would be different if, in either case, the child was legally adopted by the *de facto* "parents," who bring up the child as their own.
- **Adoption of adults** An adult (*meaning a person aged over 20*) may be adopted by another adult who is at least 15 years older than the adoptee, provided that the adoptee's parents consent.

Engagement

Right to enter engagement An engagement can take place when each party has attained 17 years of age. An engagement contrary to this is void.

Consent of parents to engagement If a minor (*meaning a person aged under 20 years*) is to be engaged, consent of the following is required:

1. His/ her parents, where both the father and mother are still alive;
2. His/ her parent, where the father or mother has died, or is subject to a condition or state that renders him/her unable to give consent, or where the circumstances make the minor unable to ask for such consent;
3. His or her adopter, where the minor is an adopted child
4. His or her guardian, where there is no person to give consent under 1, 2 or 3, or such person has been deprived of parental power.

An engagement concluded by a minor without such consent is voidable.

Kongman (dowry) and sinsod (marital property) An engagement is not valid until the man gives or transfers property (called *khongman*) to the woman as evidence that the marriage will take place. *Khongman* becomes the property of the woman after the engagement has taken place.

Sinsod is property given by the man to the parents, adopter or guardian of the woman, in return for the woman agreeing to marry. If the marriage does not take place caused mainly by the woman, or due to any circumstances that make the woman responsible therefore, and make the marriage unsuitable for the man, or make the man unable to marry that woman, the man may claim return of the *sinsod*.

The provisions of law concerning undue enrichment apply to the return of *khongman* or *sinsod*.

Legal consequences of engagement Engagement does not give rise to an action for compulsory performance of the marriage. An agreement to pay a penalty where there is breach of the engagement agreement is void.

Consequences where there is breach of the engagement After the engagement has taken place, if either party commits a breach of the engagement agreement, such party shall be liable to pay damages. Where the woman commits a breach of the engagement agreement, the *khongman* shall be returned to the man.

Damages for breach of engagement Damages for breach of engagement may be claimed as follows:

- (1) for injury caused to the body or reputation of either party;
- (2) for appropriate expenses or debt incurred in good faith by the betrothed, his or her parents or a person acting in the capacity of his or her parents, in preparation for the marriage;
- (3) for damage suffered by either party through having taken measures affecting his or her property or other affairs, relating to his/her occupation or earnings in expectation of the marriage.

Where the woman is entitled to damages, the Court may decide that the *khongman* which has become her property is the whole or a part of damages she will receive, or the Court may order payment of damages without regard to *khongman* that has become the property of the woman.

Death of a betrothed party Where one of the betrothed parties dies before the marriage, there shall be no claim for damages. As to the *khongman* or *sinsod*, it need not be returned by the woman or on the part of the woman, irrespective of the death of either party.

Where the man may revoke the engagement Where there is an essential event happening to the betrothed woman that make the marriage to the woman

unsuitable, the man is entitled to renounce the engagement agreement and the woman shall return the *khongman* to the man.

Where the woman may revoke the engagement Where there is an essential event happening to the betrothed man that makes marriage to the man unsuitable, the woman is entitled to renounce the engagement agreement and the *khongman* need not be returned to the man.

Effect of gross misconduct If the ground that makes one betrothed renounce the engagement is gross misconduct of the other taking place after the engagement, the betrothed who committed the gross misconduct is liable to make damages to the other who has exercised his/her right to renounce the engagement agreement as if the former had committed a breach of the engagement agreement.

Claiming damages after renouncing of engagement A man betrothed to a woman may, after the engagement agreement having been renounced as above, claim damages from any man who has sexual intercourse with the woman and has known or should have known of her engagement.

Further right to claim damages A man who is betrothed may, without being required to renounce the engagement agreement, claim damages from any man who has had sexual intercourse or attempted to do so with the woman against her will, and the fact that the woman had been betrothed was known or ought to have been known to him.

Assessing damages The Court shall assess damages claimed in accordance with the circumstances.

A claim, except for one claiming expenses incurred by a betrothed or her/his parents, cannot be transferred or inherited, unless such claim has been acknowledged in writing, or an action for damages has been commenced by the injured person.

Limitation periods The limitation period for a claim for damages for breach of engagement is six months from the date of breach of the engagement agreement.

The limitation period for a claim for damages for gross misconduct is six months from the date when the commission of the gross misconduct which is the cause of renunciation, is known or should have been known to the other party, but not later than five years from the date of its commission.

The limitation period for a claim for damages against a man who has intercourse with a woman knowing she is betrothed, whether by consent or force, is six months from the date when the betrothed man knows or should have known of

the act of the man which is the cause of the claim and the person bound to pay damages is known, but not later than five years from the date of such act.

The limitation period for a claim for return of *khongman* upon breach of engagement is six months from the breach of the engagement agreement.

The limitation period for return of *khongman* where marriage has been made unsuitable is six months from the denunciation of the engagement agreement.

Formalities for marriage

General requirements A marriage can take place when a man and a woman have each reached their 17th year. The Court may, where there are appropriate reasons, allow them to marry before such age.

A marriage cannot take place if either party is an insane person or adjudged incompetent.

A marriage cannot take place if either party are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. The said relationship shall be in accordance with blood relations without regard to legitimacy.

An adopter cannot marry his adoptee.

A marriage cannot take place if either party is already married to another.

In the case of a woman whose husband died or whose marriage has become terminated, the marriage can only take place if not less than 310 days have elapsed since the termination of her previous marriage; unless:

- a child has been born during such period;
- the divorced couple remarry;
- there is a certificate issued by a qualified doctor showing that the woman is not pregnant;
- there is an order of the Court allowing the woman to marry.

In case of marriage of a minor, the provisions above concerning minors entering into engagements shall apply.

Consent to marriage Giving consent to marriage may be made:

- by a person giving consent in the Register at the time of registration of the marriage;
- in a consent document stating the names of the parties to the marriage and signed by the person giving consent;
- by a verbal declaration before at least two witnesses, in a case of necessity.

Consent having been given cannot be revoked.

Where no person can give consent Where there is no person with power to give consent as above, or if the person refuses to give consent or is unable to give consent, or the minor cannot, in such circumstances, ask for consent, the minor may apply to the Court for consent to the marriage.

A marriage must be registered Marriage can only be effected on registration being made.

Agreement of the man and woman A marriage can take place only if both parties agree to take each other as husband and wife, and such agreement must be declared before the Registrar so that it may be recorded by him.

Marriage outside Thailand A marriage outside Thailand between two Thai persons or between a Thai and a non-Thai, may be effected in accordance with the formalities of Thai law, or the law of the country where it takes place.

If the spouses desire to have the marriage registered in accordance with Thai law, the registration must be effected by a Thai diplomatic or consular officer.

Where there exist special circumstances that make marriage registration by the Registrar not possible because either or both parties are in imminent danger of death, or in the state of armed conflict or war, if a declaration of intention to marry has been made by the parties before a person of *sui juris* living there, who would have noted such intention, and if the registration of marriage between the parties was effected not later than 90 days from the date of first possible opportunity to apply for registration of marriage, with production of the evidence of intention in order to have the date and place of declaration of intention and the special circumstances recorded by the Registrar in the Marriage Register, the date on which the declaration of intention to marry has been made to the said person shall be deemed as the date of registration of marriage.

These provisions do not apply to a marriage that is void if it takes place on the date of declaration of intention.

Husband and wife

Duty to cohabit and to maintain each other A husband and wife shall cohabit as husband and wife.

Each shall maintain and support each other in accordance with his or her ability and condition in life.

Permission to live separately Where the physical or mental health or happiness of either spouse is greatly imperiled by continuance of cohabitation, the spouse so imperiled may apply to the Court for permission to live apart while the danger persists; and the Court may order maintenance to be provided by one of the spouses to the other as may be proper in accordance with the circumstances.

Property of husband and wife

Pre-nuptial agreement Where the parties have not prior to marriage, concluded a special agreement concerning their property, the relations between them as regards to their property shall be governed by the provisions below.

Any clause in a pre-nuptial agreement contrary to public order or good morals, or providing that relations between them as regards such property are to be governed by foreign law shall be void.

A pre-nuptial agreement must be registered A pre-nuptial agreement is void if not entered in the Marriage Register at the time of marriage registration; or if not made in writing and signed by both spouses and by at least two witnesses and entered in the Marriage Register at the time of marriage registration stating that the pre-nuptial agreement is thereto annexed.

Alteration of a pre-nuptial agreement After marriage, a pre-nuptial agreement cannot be altered except by consent of the Court.

When there is a final order of the Court to allow alteration or cancellation of a pre-nuptial agreement, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

Effect of pre-nuptial agreement on third parties Clauses in a pre-nuptial agreement shall have no effect as regards the rights of third parties acting in good faith irrespective of whether they are altered or cancelled by order of the Court.

Agreements between husband and wife Any agreement between husband and wife during marriage may be avoided by either of them at any time during marriage or within one year from the day of dissolution of marriage; provided that the right of third parties acting in good faith are not affected.

Sin Suan Tua, and Sin somros Property of husband and wife except insofar as they are set aside as *sin suan tua*, are *sin somros*.

Sin Suan Tua (non-marital property) *Sin suan tua* means:

- (1) property belonging to either spouse before marriage
- (2) property for personal use, dress or ornament suitable for station in life, or tools necessary for carrying on the profession of either spouse
- (3) property acquired by either spouse during marriage through a will or gift
- (4) *Khongman*.

Extent of sin suan tua If *sin suan tua* has been exchanged for other property, other property has been bought or money has been acquired from selling it, such other property or money acquired shall be *sin suan tua*.

Where the *sin suan tua* has been totally or partly destroyed but replaced by other property or money, this shall be *sin suan tua*.

Management of sin suan tua Each spouse is manager of his or her *sin suan tua*.

Sin somros (marital property) *Sin somros* consists of:

- (1) property acquired during marriage;
- (2) property acquired by either spouse during marriage through a will or gift made in writing if it is declared by such will or document of gift to be *sin somros*;
- (3) fruits of *sin suan tua*.

In case of doubt whether property in *sin somros* or not, it shall be presumed to be *sin somros*.

Certain categories of sin somros Where the *sin somros* is immovable property or certain types of moveable property, or has documentary title, either party may apply to have his/her name entered in the documents as co-owners.

Rights of joint owners of sin somros In managing *sin somros* in the following cases, each spouse must be joint manager, or one spouse must obtain consent from the other:

(1) To sell, exchange, sell with the right of redemption, let property on hire-purchase, mortgage, release a mortgage to a mortgagor, or transfer the right of mortgage on immovable property or on mortgageable movable property.

(2) To create or distinguish the whole or part of a servitude, right of inhabitation, right of superficies, usufruct or charge on immovable property.

(3) To let immovable property for more than three years.

(4) To lend money

(5) To make a gift unless it is a gift for charitable, social or moral purposes and is suitable to the family condition.

(6) To make a compromise.

(7) To submit a dispute to arbitration.

(8) To put up the property as guarantee or security with a competent official or the Court.

The management of *sin somros* in any case other than those provided above can be made only by one spouse without the consent of the other.

The parties can manage the *sin somros* differently, whether wholly or partly, from the provisions above, provided that a pre-nuptial agreement has been made. In such case, management of the *sin somros* shall be in accordance with the pre-nuptial agreement.

Where the specifications for management of the *sin somros* in a pre-nuptial agreement are only partly different from the provisions above, management of *sin somros* other than that specified in the pre-nuptial contract shall be made in accordance with the provisions above.

Legal proceedings concerning sin somros Either spouse may issue legal proceedings concerning maintenance of *sin somros* or for its benefit. Debts incurred by the said litigation shall be regarded as an obligation to be performed jointly by the spouses.

Where a party refuses to give consent Where one spouse has to give consent or sign a document with the other in the management of the property, but unreasonably refuses to give such consent or to sign, or is not in a position to give such consent, the latter may apply to the Court for an order granting the necessary permission.

Consent to be given in writing Where an act by either spouse requires consent of the other, and if such act is required by law to be made in writing or registered by the competent official, such consent must be in writing.

Revocation of acts done In the management of *sin somros* which has to be made jointly or where one spouse must obtain consent from the other under the provisions above, if either spouse has entered into a juristic act alone or without consent of the other, the latter may apply to Court to revoke such act, unless it has been ratified by the other spouse, or a third party was at the time of entering into such juristic act, acting in good faith and has made a counter payment.

Any action for revocation of a juristic act by the Court cannot be issued later than one year from the date when the cause of action is known, or later than ten years since the juristic act was done.

Disposal of sin somros by will Neither spouse may dispose of *sin somros* by will in favour of others to an extent exceeding his or her own portion thereof.

Managing household affairs or providing for necessities Where one spouse is sole manager of the *sin somros*, the other spouse is entitled to manage household affairs or provide for necessities of the family, and the expenses therefore bind the *sin somros* and *sin suan tua* of both parties.

If such management of household affairs or provision for the necessities by either party results in undue loss, the other spouse may apply to the Court to forbid or limit his/her power.

Where an act may result in undue loss Where one spouse is sole manager of the *sin somros*, if the manager is going to commit or is committing any act in management of the *sin somros* which would appear to result in undue loss, the other spouse may apply to the Court for an order forbidding commission of such act.

Application to be sole manager of sin somros If the spouse who is the manager of the *sin somros*:

- (1) causes undue loss to it;
- (2) fails to support the other spouse;
- (3) becomes insolvent or incurs debts to an amount exceeding half of the *sin somros*;
- (4) hinders the management of the *sin somros* by the other spouse without reasonable cause;

(5) is found to have circumstances that will ruin the *sin somros*;

the other spouse may apply to the Court for an order authorizing him/her to be sole manager, or to divide the *sin somros*.

Where such an application is made, the Court may issue temporary protective measures in the management of the *sin somros*. In a case of emergency, the relevant provisions of the Civil Procedure Code shall apply.

Variation of court order Where a court order has been issued forbidding or limiting the power of either spouse to manage the *sin somros*, if the grounds for the Court order or the circumstances have subsequently changed, either spouse may apply to the Court for revocation or a change of the order forbidding or limiting the power to manage the *sin somros*. The Court may issue any order deemed suitable.

Right to apply to be appointed manager Either spouse may apply to the Court for an order authorizing him/her to be manager of any particular *sin somros* or participate in management, if such management or participation will bring about more benefit.

Notification of Registrar of marriages Where the Court has given a final judgment or given an order under the paragraphs above in favour of one spouse, or either party has been relieved upon becoming bankrupt, the Court shall notify the Registrar of Marriages in order to have it entered in the Marriage Registrar.

Seizure or attachment of property by one spouse No spouse may seize or attach property of the other during the marriage, except in proceedings for the purpose of exercising his/her duty or for maintaining rights between them as provided in law, or where the law allows one spouse to sue the other, or for maintenance and costs under a judgment of the Court.

From what property performance is to be made Where either spouse is personally liable to perform an obligation incurred before or during marriage, such performance shall be first made out of his/her *sin suan tua*; if the obligation is not performed in full, it shall be satisfied out of his/her portion of *sin somros*.

Where both spouses are common debtors Where both spouses are common debtors, performance shall be made out of the *sin somros* and *sin suan tua* of both spouses.

Debts that both spouses are jointly liable to perform Debts that both spouses are jointly liable to perform, include the following debts incurred by either spouse during marriage:

(1) debts incurred in connection with management of household affairs and providing for necessities of the family, or maintenance, medical expenses of the household and for proper education of the children;

(2) debts incurred in connection with the *sin somros*;

(3) debts incurred in connection with a business carried on by the spouses in common;

(4) debts incurred by either spouse only for his or her own benefit but ratified by the other.

Effect of bankruptcy on sin somros If either spouse is adjudged bankrupt, the *sin somros* is divided by operation of law as from the date of adjudication.

Effect of division of sin somros After the *sin somros* has been divided under the above provisions, the portion so divided becomes *sin suan tua* of each spouse. Any property obtained after division by either spouse shall be *sin suan tua* of that spouse and not be regarded as *sin somros*. Property acquired thereafter by the spouse through a will or gift made in writing shall become *sin suan tua* of both parties equally.

Fruits of *sin suan tua* accrued after the division of *sin somros* shall be *sin suan tua*.

Revocation of division of sin somros Where the division of the *sin somros* is made by order of the Court, the revocation of such division shall be made upon the request of either spouse, and the Court has made an order to that effect. If either spouse raises an objection to such request, the Court cannot make an order to revoke division of the *sin somros* unless the cause for its division has ceased to exist.

After revocation of division has been made or suspended due to one party having been relieved from bankruptcy, property which is *sin suan tua* on the date of the Court order, or the date of being relieved from bankruptcy shall remain as *sin suan tua*.

Disposal of sin somros Where *sin somros* has been disposed of, both spouses are liable to pay for household expenses in proportion to the amount of their respective *sin suan tua*.

Void marriages

What marriages are void A marriage which is made where either party is insane or adjudicated incompetent, or in the case of parties in close family relationships,

or where a party is already legally married, or made without the consent of both parties, is void.

Only a court judgment is effective to declare void a marriage where either party is insane or adjudicated incompetent, or in the case of parties in close family relationships, or made without the consent of both parties.

The spouses, parents or descendants of the spouse may apply for a court judgment to declare a marriage void. If there are none of the said persons, any interested person may request the Public Prosecutor to apply to the Court for such judgment.

Where a party is already married to another Any interested person may apply for a court judgment declaring a marriage void where a party is already married to another.

Notification of Registrar of Marriages Where there is a final judgment of the Court declaring a marriage void, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

Effect on property of the parties A declaration that a marriage is void will not create property relations between husband and wife.

Where a marriage has been declared void, property possessed or acquired by either party before or after the marriage and the fruits thereof remain that party's property. As for property jointly paid for, it shall be divided equally unless the Court deems it proper and orders otherwise taking into consideration the obligations of the family and earnings of both parties as well as their station in life, including all other circumstances.

A marriage adjudged void where either party is insane or adjudicated incompetent, or in the case of parties in close family relationships, or made without the consent of both parties, shall not prejudice rights acquired through such marriage before pronouncement of the voidness of the marriage by a party who has married in good faith.

A marriage adjudged void on the grounds of bigamy shall not prejudice rights acquired through such marriage before the grounds for voidness are known to the man or woman. But such a marriage shall not make one spouse become statutory heir of the other or acquire the right of inheritance from the other spouse.

In the case of a marriage adjudged void where either party is insane or adjudicated incompetent, or entered into bigamously, or in the case of parties in close family relationships, or made without the consent of both parties; if one party only acted in good faith, such party may claim damages. However, if such

marriage makes the party acting in good faith destitute, deriving insufficient income out of his or her property or business which used to be carried on before a final court judgment, or before the grounds for voidness becoming known, that party can also claim maintenance.

The limitation period for claiming damages or maintenance shall be two years from the date of the final judgment of voidness in the case of a marriage where either party is insane or adjudicated incompetent, or in the case of parties in close family relationships, or made without the consent of both parties; or from the day when the voidness becoming known in the case of a bigamous marriage.

Position of children where marriage is held void In case of the marriage adjudged void, any agreement between the spouses as to which shall exercise parental power over any child, or either party or both of them to be responsible for maintenance of the child shall be in writing. If agreement cannot be reached, the Court shall decide the matter. In making such decision, if there are grounds for depriving that spouse of parental power, the Court may make an order depriving that spouse of the same and appoint a third party as guardian taking into consideration the happiness and interests of the child.

Position of third parties in relation to void marriages A marriage adjudged void shall not prejudice rights acquired by third parties acting in good faith before entry of the order for voidness in the Marriage Register.

Termination of marriage

Grounds for termination of marriage Marriage is terminated by death, divorce or cancellation by the Court.

Voidable marriages A voidable marriage terminates upon cancellation by Court order.

Application to the court An application to the Court for cancellation of marriage on the grounds of its being voidable shall be made only where either spouse was aged under 17 years, mistake as to identity of a party, fraud, duress, or without consent (where consent is required).

Who may apply An interested person other than the parents or guardian who have given their consent to the marriage is entitled to apply for cancellation of the marriage on the ground that it is voidable.

If the court has not cancelled the marriage until both man and woman have completed the age required for marriage, or if the woman has become pregnant before such completion, the marriage shall be deemed to be valid from the time it was made.

Mistake as to identity of a party A marriage made due to mistake as to the identity of the other spouse shall be voidable.

The right to apply for cancellation of the marriage on account of mistake as to the identity of the spouse shall be lost after 90 days from the date of marriage.

Fraud A marriage is voidable if made by the spouses on account of fraud to such an extent that without it the marriage would not have been made.

This provision shall not apply in a case where the other spouse has not known the fraud committed by a third party.

The right to apply for cancellation of the marriage on account of fraud shall be lost after 90 days from the date on which the spouse has known or should have known of the fraud, or after one year from the date of marriage.

Duress A marriage is voidable if made by the spouses on account of duress to such an extent that without it the marriage would not have been made.

The right to apply for cancellation of marriage on account of duress shall be lost after one year from the date on which the spouse is free from duress.

Only the innocent party may apply Where the marriage is voidable due to mistake as to the identity of the spouse, fraud or duress, only the spouse who mistook the identity of the other, or was induced by fraud or duress to contract the marriage may apply for cancellation of such marriage.

Where the person entitled to apply for cancellation of the marriage has been adjudged incompetent, the person who may apply to the Court for an order effecting an insane person to be an incapacitated person, may also apply for the cancellation of such marriage. Where the person entitled to apply for the cancellation of the marriage is an insane person but not yet adjudged incompetent, the said person may apply for the cancellation of the marriage but must apply concurrently to the Court for an order effecting him to be an incapacitated person. If the Court makes an order revoking the application for an order effecting him to be an incapacitated person, the Court shall also order revocation of the application for cancellation of the marriage.

An order of the Court revoking an application made by a person for cancellation of the marriage does not effect the right of the spouse to apply for the cancellation of the marriage; provided that the spouse exercises his/her right within the remaining period of time. If the remaining period of time is less than six months from the date of the Court order revoking the application made for cancellation of the marriage, or if there remains no such period, the period of time shall be extended to six months from the date when the court order revoking the application for cancellation is given.

Marriage by minors without consent A marriage made a minor without consent of the persons required by law to consent is voidable.

Where the marriage is voidable for this reason, only a person who can give such consent may apply for the cancellation of the marriage.

The right to apply for the cancellation of the marriage is extinguished when the spouse has attained 20 years of age or when the woman has become pregnant.

An action for cancellation of marriage is barred after one year from the date when the marriage is known.

Rights of third parties A marriage cancelled by court judgment shall be deemed to have terminated on the date when the judgment becomes final; provided, however, that it may not be set up to prejudice of the rights of third parties acting in good faith, unless cancellation of the marriage has been registered.

Preservation of rights The provisions concerning the consequences of divorce by court judgment shall apply to cancellation of marriage *mutatis mutandis*.

Knowledge of grounds of voidability of marriage If it appears that the spouse sued for cancellation of the marriage had known of the grounds for voidability, such spouse is required to make damages for any losses to the person, reputation or property of the other arising from such marriage taking into account all the circumstances by one payment or payment by installments.

If the other spouse becomes destitute due to cancellation of the marriage and derives insufficient income out of his/her property or business which used to be carried on during the marriage, the spouse against whom the action has been brought is also required to be liable to pay maintenance.

Divorce

Divorce permitted either by consent or by court judgment Divorce may be effected by mutual consent or by judgment of the Court. Divorce by consent must be made in writing and certified by the signatures of at least two witnesses.

Both parties must register the divorce Where the marriage has been registered, divorce by mutual consent is valid only if registration is effected by both parties.

Grounds for divorce The grounds for divorce are as follows:

(1) the husband has given maintenance to, or honored another woman as his wife, or the wife has committed adultery;

(2) one spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offence or not, if it causes the other:

(a) to be seriously ashamed;

(b) to be insulted or hated on account of continuance of being the husband or wife of the spouse having committed the misconduct; or

(c) to sustain excessive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration;

(3) one spouse has caused serious harm or torture to the body or mind of the other, or has seriously insulted the other or his or her ascendants;

(4) one spouse has deserted the other for more than one year;

(4/1) one spouse had been sentenced by a final judgment of the Court and has been imprisoned for more than one year in the offence committed without any participation, consent or knowledge of the other, and cohabitation as husband and wife will cause the other party to sustain excessive injury or trouble;

(4/2) The husband and wife voluntarily live separately because of being unable to cohabit peacefully for more than three years, or live separately for more than three years by the order of the Court;

(5) one spouse has been adjudged to have disappeared, or has left his or her domicile or residence for more than three years and it is uncertain whether he or she is alive or dead;

(6) one spouse has failed to give proper maintenance and support to the other, or committed acts seriously adverse to the relationship of husband and wife to such an extent that the other has been in excessive trouble where the condition, position and cohabitation as husband and wife are taken into consideration;

(7) one spouse has been an insane person for more than three years continuously and such insanity is not curable so that the continuance of marriage cannot be expected;

(8) one spouse has broken a bond of good behavior executed by him or her;

(9) one spouse is suffering from a communicable and dangerous disease which is incurable and may cause injury to the other;

(10) one spouse has a physical disadvantage so as to be permanently unable to cohabit as husband and wife.

Estoppel of divorce No divorce may be instituted by a party if he/she has consented to or connived at the acts under (1) and (2) above upon which the action for divorce is based.

If the ground for divorce under (10) above resulted from the act of the other spouse, he/she may not institute a divorce on such ground.

Where the divorce is based upon (8) above, the Court may not issue a divorce if the behavior of either party that causes the bond to have been executed is a minor cause, or of no importance, in relation to peaceful cohabitation as husband and wife.

Effective of forgiveness The right to issue a divorce case is terminated if the spouse entitled thereto has committed any act showing his/her forgiveness to the act done by the other that has created the right to claim a divorce.

Deciding rights over children In a case of divorce by mutual consent, the spouses shall agree in writing regarding the exercise of parental power over their children. In the absence of agreement, or an agreement thereon cannot be reached, the matter shall be decided by the Court.

In the case of divorce by court judgment, the Court shall also order that parental power over the children shall belong to a party. If, in such trial, it is deemed proper to deprive that spouse of the parental power, the Court may deprive that spouse of the same and appoint a third party as a guardian, taking into consideration the happiness and interests of the child.

If it appears that the person exercising parental power or the guardian behaves improperly or there is a change of circumstances after appointment, the Court has power to make an order appointing a new guardian taking into consideration the happiness and interests of the child.

Provision for maintenance of children In a case of divorce by consent, an arrangement shall be made and contained in the agreement to divorce as to who, whether both spouses or one spouse, will contribute to the maintenance of the children and how much is the contribution.

In a case of divorce by court judgment, or where the divorce agreement contains no provisions concerning maintenance of children, the Court shall determine the issue.

Where a party may claim damages from another party In case of divorce by judgment of the Court on ground (1) above, the husband or wife is entitled to damages from the other spouse and the other woman or adulterer, as the case may be.

The husband is entitled to claim damages from any person who has wrongfully taken liberties with his wife in an adulterous manner, and the wife is entitled to claim damages from the other woman who has openly shown her adulterous relations with the former's husband. However, such spouse is not entitled to claim damages if he or she has consented to, or connived at, the act done by other party, or allowed the other person to act as such.

Further right to claim damages If the ground of action for divorce is under (3), (4) or (6) above and has arisen through an act of the party at fault, with the intention to make the other party so intolerable that an action for divorce has to be entered, the other party is entitled to damages from the party at fault.

Determination of damages Damages under the forgoing paragraphs shall be decided by the Court in accordance with the circumstances, and the Court may make an order for a single payment or payment by instalments.

Where the person who has to pay the damages is a spouse of the other party, the share of property received by the former from liquidation of the *sin somros* on account of divorce shall also be taken into consideration.

Right to apply for maintenance If the ground for divorce derives from the guilt of only one party, and the divorce will make the other destitute deriving insufficient income out of his/her property or business which used to be carried on during the marriage, the latter is entitled to apply for maintenance to be paid by the party at fault. The Court may decide whether the maintenance be granted or not, taking the ability of the grantor and the condition in life of the receiver into consideration.

The right to claim maintenance is extinguished if it is not raised in the plaint or counterclaim.

Maintenance in special cases If divorce is effected on the grounds of insanity or on the ground of suffering from a communicable and dangerous disease, the other spouse shall pay maintenance to the spouse who is insane or is suffering from the disease.

Effect of re-marriage If the party receiving maintenance remarries, the right to receive maintenance is extinguished.

Limitation period applicable to certain grounds for divorce Rights of action based upon (1), (2), (3) or (6) above, or to claim damages, are extinguished after one year from the date when the facts were known or should have been known to the claimant.

Grounds upon which a claim for divorce can no longer be based may still be proved in support of another claim for divorce based upon other grounds.

Court may make provisional orders Where an action for divorce is pending, the Court may, on application of either party, make a provisional order which it thinks proper such as those concerning the *sin somros*, the lodging, the maintenance of the spouses and the custody and maintenance of children.

Date when divorce becomes effective Where a marriage has been registered, divorce by mutual consent takes effect from the time of its registration.

Divorce by court judgment takes effect from the time when the judgment becomes final; however, such judgment may not be set up to the prejudice to the rights of third parties acting in good faith unless the divorce has been registered.

Division of property After divorce, the property of the parties shall be subject to liquidation. As between the spouses,

(a) in case of divorce by mutual consent, the liquidation shall apply to the property of both parties as it was on the date of registration of divorce;

(b) in case of divorce by judgment, the liquidation shall apply to the property of both parties as it was on the day when the action for divorce was commenced in Court.

Equal division of sin somros Upon divorce, *sin somros* shall be divided equally between the parties.

Disposal of sin somros Where either spouse has disposed of the *sin somros* for his/her exclusive benefit, or has disposed of it with an intention to cause injury to the other, or disposed of it without the consent of the other in a case where the law requires consent of the other, or has willfully destroyed it, it shall, for the purpose of division of the *sin somros* under the preceding section, be regarded as if such property had still remained. If the share of the *sin somros* that the other will receive is not complete to what he or she should have received, the party at fault must make up the shortfall from his/her share of the *sin somros* or his/her *sin suan tua*.

Liability for debts of husband or wife Upon termination of the marriage, each spouse shall be liable for common debts equally.

Parent and child

Presumption of legitimacy A child born to a woman during marriage or within 310 days after the termination of the marriage, is presumed to be the legitimate child of the husband, or the man who was formerly the husband.

This also applies to a child born to a woman before the marriage that has been pronounced void by final court judgment, or within 310 days from the date of such final judgment.

Where the woman has made a new marriage and gave birth to a child within 310 days from the date of termination of the marriage, the child shall be presumed to be the legitimate child of the new husband, and no presumption under the penultimate paragraph above saying that the child is the legitimate child of the former husband shall apply; unless there is a judgment pronouncing that the child is not the legitimate child of the new husband.

Further presumptions Where a man or woman had married bigamously, a child born during such marriage shall be presumed to be the legitimate child of the husband who has the last marriage registered.

The provisions above shall also apply to the child born within 310 days from the date of a final judgment pronouncing void a bigamous marriage.

Right of repudiation by the father Where the child is presumed to be the legitimate child of the husband or man who was formerly the husband, the husband or the man who was formerly the husband may repudiate the child by issuing court proceedings against the child and mother jointly, and proving that he did not cohabit with the mother during the period of conception, namely, the period from 180 days to the 310 days inclusive prior to the birth of the child, or that he could not have been the father of the child on other grounds of impossibility.

An action may be brought against the child alone, if at the time of commencing the action, the mother of the child has deceased. Where the child has deceased, regardless of whether the mother of the child is alive or not, the Court may be requested to declare that the child is not his legitimate child. Where the mother of the child or the heir of the child is still alive, the Court shall send a copy of the request to the said person and may, if it thinks proper, send a copy of the request to the Public Prosecutor for consideration of taking proceedings on behalf of the child.

Limitation of actions for repudiation An action for repudiation of a child cannot be entered by the husband or the man formerly the husband, if it appears that the latter cause the birth of the child to be entered in the Register of Births as his legitimate child, or arranges or agrees to have it entered in the Register of Births.

An action for repudiation of a child may be entered by the man who is or who was formerly the husband within one year after the birth of the child. In any case, no such action can be entered later than 10 years after the birth of the child.

Where there is a judgment pronouncing that a child is not the legitimate child of the new husband, or of the husband in the last marriage, if the man who was formerly the husband and is presumed to be the father of the child, desires to commence proceedings for repudiation of the child, he shall issue proceedings within one year from that date the final judgment became known to him.

Effect of death of the husband Where the man being or formerly the husband has entered an action for repudiation of the child, but deceases before the case becomes final, a person who has the right of inheritance together with the child or a person whose right of inheritance would be excluded on account of the birth of the child, may issue proceedings to substitute himself or may be summoned to substitute for the deceased.

Right to bring an action for repudiation An action for repudiation of a child may be entered by a person who has the right of inheritance together with the child, or by a person whose right of inheritance would be excluded due to the birth of the child in the following cases;

(1) where the man who is or was formerly the husband died before the expiry of the period within which the action could have been entered by him;

(2) where the child was born after the death of the man who is or was formerly the husband.

An action for repudiation under (1) must be commenced within six months from the death of the man being or having ever been the husband becoming known to that person.

Regarding an action for repudiation under (2), it must be commenced within six months from the birth of the child becoming known to that person. In no case may such action be commenced later than 10 years after the birth of the child.

Position of Public Prosecutor A child may request the Public Prosecutor to enter an action for repudiation to be the legitimate child of the husband of his/ her mother, if it becomes known to the child that he/she is not an inherited child of the husband/ the mother.

If it becomes known to the child before he/she attains majority, that he/she is not the legitimate child of the husband of his/her mother, no action can be entered by the Public Prosecutor after one year from the date of he/she becoming *sui juris*. If it becomes known to the child after he/she becoming *sui juris*, no action can be entered by the Public Prosecutor later than one year since the date when the facts come to his/her knowledge.

Where the child's mother is not married to the father A child born to a woman who is not married to a man, is deemed to be the legitimate child of such woman.

Subsequent legitimation A child born of parents who are not married to each other, is legitimated by subsequent marriage of the parents, or by registration made on application by the father, or by a judgment of the Court.

Legitimation by the father When legitimation is applied for by the father, the child and the mother must consent to the application.

Where the child and the mother do not appear before the Registrar to give consent, the Registrar shall notify the child and the mother of the father's application for registration. If the child or the mother does not object or does not consent within 60 days after acceptance of the notification by the child or the mother, it is presumed that the child or the mother does not consent. The period of time shall be extended to 180 days where the child or the mother has been outside Thailand.

Where the child or the mother contends that the applicant is not the father, or does not consent, or is unable to consent, registration for legitimation must be effected by a Court order.

After the Court had issued a judgment effecting registration of legitimation and the judgment has been produced to the Registrar for registration, the Registrar shall effect such registration.

Rights of child or mother to challenge legitimation Where the Registrar has notified the child and the mother of the application for legitimation, notwithstanding whether the child and the mother object to the application or not, either party may, not more than 90 days from the notification reaching the child or mother, notify the Registrar to record that the applicant is not a suitable person for exercising parental powers, partly or wholly.

Although registration of legitimation has been made, if there has been a notification of the child and the mother under the paragraph above, the child's father will not be able to exercise such parental power partly or wholly as notified by the child or the mother, until the Court will give judgment requiring the child's father to exercise parental power partly or wholly, or 90 days had elapsed since the Registrar was notified by the child or the mother of the unsuitability of the applicant to exercise parental power partly or wholly and that no request has been made to the Court by the child or the mother for a judgment concerning the applicant to be a person unsuitable to exercise parental powers.

Where the Court holds that the applicant for registration of legitimation is not a suitable person for exercising parental power partly or wholly, the Court may rule that whoever will exercise parental powers, or be the guardian.

Further rights of child or mother Where there is objection to the applicant for registration of legitimation due to his not being the child's father, if the applicant for registration has issued proceedings for a judgment declaring him to be the child's father, the child or the mother may apply for an order that the applicant is not a suitable person to exercise parental power, even though he is the real father of the child.

Where the child has no mother Where the child has no mother or has a mother but she has been deprived of her parental powers, and another person has been appointed by the Court to be guardian before registration of legitimation, the father who effected registration of legitimation to be made may, if he thinks that for the benefit of the child he should be the person exercising the parental powers, apply for an order to remove guardianship from the guardian and appointing the father to be the person exercising parental powers. If the father may, in the opinion of the Court, bring more happiness and benefit to the child, the Court may order removal of guardianship from the guardian and appoint the father to be the person exercising the parental power.

Right to apply to cancel registration of legitimation An interested person may, within three months from when registration of legitimation comes to his knowledge, apply to the Court for cancellation of registration on the grounds that the applicant for legitimation is not the father of the child; no such action may be entered after 10 years from the date of registration.

Limitation on right to apply for legitimation An action for legitimation may be entered only in certain cases and prior to the child attaining 15 years of age, or by the child him/herself within a certain period of attaining majority.

Rights and duties of parent and child

Right of child to use name A child has the right to use the family name of the father. Where the father is unknown, a child has the right to use the family name of the mother or a close relative of such person.

Limitation of action No person can issue civil or criminal proceedings against his ascendants, unless the case is proceeded by the Public Prosecutor.

Duties of parents and children towards each other Children are bound to maintain their parents.

Parents are bound to maintain their children and to provide proper education for them during their minority.

When the children are *sui juris*, parents are bound to maintain them only when they are infirm and unable to earn their living.

Application for maintenance Regarding an application for maintenance of children or for any other form of maintenance to be given to children, this may be made by the father or mother or by the Public Prosecutor.

Position of a child A child is subject to parental powers as long as he/she is not an adult. Parental power is exercised by the father or the mother in the following cases, where:

- (1) the mother or father is deceased;
- (2) it is uncertain whether the mother or father is alive or deceased;
- (3) the mother or father has been adjudged incompetent or quasi-incompetent
- (4) the mother or the father is placed in a hospital due to mental infirmity;
- (5) the parental power has been granted to the father or mother by Court order;
- (6) the father and mother have agreed to such exercise, as provided by law.

Rights of person with parental power A person exercising parental power has the right:

- (1) to determine the child's place of residence;
- (2) to punish the child in a reasonable manner for disciplinary purposes;
- (3) to require the child to undertake work as may be reasonable for his ability and condition in life;
- (4) to demand the return of the child from any person who unlawfully detains him.

Other provisions The Code contains other provisions that apply in the case of remarriage of a parent, incompetence of the minor etc, and the scope of parental power.

Guardianship The Code contains provisions that apply to a child without parents to obtain a guardian and the rights of a child and duties of a guardian.

Adoption

Eligibility for adoption A person who is not less than 25 years of age may adopt another, provided he is at least 15 years older than the adopted person.

If the person to be adopted is under 15 years of age, the adoption can take place only with the consent of the adopted person.

If the person who is to be adopted is a minor, the adoption can take place only with the consent of his parents, but if one of his parents has died or has been deprived of his or her parental power, consent has to be given by his father or mother who has parental power.

If there is no person to give consent or the father or mother, or parents cannot express his/her consent thereto or refuses to give his/her consent, and the refusal has been made unreasonably and has adversely affected the health, progress and welfare of the minor, the mother or father, the person intending to be the adopter or the Public Prosecutor may apply to the Court for an order allowing the adoption in lieu of giving consent.

Further provisions The Civil Code contains further provisions regarding the rights and duties of adoptive parents and the rights of an adopted person.

Maintenance as between husband and wife or parent and child

Right to claim maintenance Maintenance may be claimed between husband and wife or parent and child, when the party entitled to maintenance has not been furnished with maintenance or has been furnished with maintenance insufficient to his condition in life. How much and to what extent the maintenance would be granted or not will be decided by the Court, taking account the ability of the person bound to provide maintenance, the condition in life of the receiver and the circumstances of the case.

Variation of maintenance When an interested person can show that there has been a change in circumstances or in the means or condition in life of the parties, the Court may vary the maintenance by cancelling, reducing, increasing or re-establishing the maintenance.

Where the Court refuses to order maintenance on account of one party not being in a position to provide maintenance at present, it may be requested to alter its order if the circumstances, means or condition in life of the other have changed and the claimant, after having taken account of his circumstances, means and condition in life, should be furnished with maintenance.

Form of maintenance Maintenance shall be provided by periodical payments in money, unless the parties agree otherwise. In the absence of agreement and for special reasons, the Court may if deemed proper, determine the maintenance to be provided and whether the payment is to be made in money. In the case of maintenance of a child, if there are special reasons and it is deemed proper, the Court may determine the maintenance to be provided by any means other than those agreed upon by the parties, or other than what has been applied for by any

party for example to send the child to an educational or vocational institution and the expenses incurred thereby are to be borne by the person bound to provide the maintenance.

The right to maintenance cannot be renounced, attached or transferred and is not subject to execution.

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