

# FAMILY LAW OF THAILAND

By Wimolsiri Jamnarnwej\*

The Thai Government celebrated the International Women's Year by guaranteeing equal rights for men and women in Article 28 paragraph 2 of the Constitution B.E. 2517 (A.D.1974). The Civil and Commercial Code book 5 (family) has been revised on that principle to and entered into force on October 16. B.E. 2519 (A.D. 1976).

The following short article intends to give an introduction to the subject.

## A. BETROTHAL AND A PROMISE TO MARRY

A betrothal or an engagement can be effected only when a man and a woman have attained the full age of seventeen years.<sup>(1)</sup>

If each other of them is under seventeen years of age, the betrothal is void. A minor who reaches the age of seventeen but is under twenty years of age may be betrothed only when the consent of the following persons have been obtained<sup>(2)</sup>:

- (1) The father and the mother. In the case where the father and the mother are living.
- (2) The father or the mother in the case of death of the other parent or where the other parent has been deprived of parental power.
- (3) His or her adopter, in case where a minor is an adopted.
- (4) The guardian, in the case where there are no parents, or the father or the mother where the other parents has been deprived of his or her parental power.

A betrothal agreement is effective only when the man gives "Khongman" or engagement property to the woman as evidence that the man will marry the woman.<sup>(3)</sup>

The law does not require that every marriage must begin with a betrothal. But it recognizes that if a betrothal has been made, the injured party is entitled to claim damages from the party which commits a breach of the betrothal agreement.<sup>(4)</sup> The man who is betrothed to a woman can claim damages from any man who has wrongfully had sexual intercourse with such woman after he has rescinded the betrothal agreement.<sup>(5)</sup> He can also claim compensation from another man who has raped or attempted to rape his fiancée if that man knew or ought to have known that such woman had been betrothed to the claimant without the rescission of such betrothal agreement being necessary. A woman who is betrothed is not entitled to claim from another woman who has had sexual intercourse with her fiancé. She can only refuse to marry him if he cohabits with another woman as husband and wife on the ground that he has committed a misconduct and made it unsuitable for her to marry him. She can rescind the betrothal agreement without returning the "Khongman", i.e. engagement property, to the man.<sup>(6)</sup>

A promise to marry without giving property to the woman as evidence to marry her is another type of contract, not a betrothal. If either party commits a breach of that

promise, the other party is not entitled to claim compensation. There is no provision concerning a promise to marry under the present Thai family law.<sup>(7)</sup>

## **B. MARRIAGE**

### *(1) Age*

A marriage can take place only if a man and a woman have attained the full age of seventeen years, but the court may grant an age dispensation for reasonable causes.<sup>(8)</sup>

A minor who has attained the full age of seventeen but is under twenty years must receive the consent of his or her parent or guardian in the case where there are no parents or the parents have been deprived of parental power.<sup>(9)</sup>

### *(2) Prohibited Degrees of Relationship*

Thai family law forbids marriages between close relatives such as where the man and woman are blood relatives under the direct ascendant or descendant line, or brother or sister of full or half blood.<sup>(10)</sup>

Where there is a marriage contrary to this provision, the court will decide that the marriage is void.

The law also forbids marriages between the adopter to the adopted.<sup>(11)</sup> A marriage violating to this provision will result in dissolution of the adoption.<sup>(12)</sup>

### *(3) Unsound Mind*

A marriage cannot take place if the man or the woman is a person of unsound mind or a person adjudged incompetent.<sup>(13)</sup>

A marriage contrary to this provision shall be void.<sup>(14)</sup>

### *(4) Monogamy*

Prior to October 1, 1935 polygamy freely practiced in Thailand. The old family law classified wives into three categories, according to the way they become wives.<sup>(15)</sup>

1. "Mia Glang Muang" the official wife whom a man's parents acquired for him.
2. "Mia Glang Norg" the minor wife whom the man acquired by himself after his official wife.
3. "Mia Glang Tasee" slave wives whom the husband bought from the parents of the former their owners.

His children from these wives were regarded as legitimate. Registration of marriage was not required by the Law of Husband and wife.

King Chulalongkorn tried to abolish the extra-territorial rights of foreign powers by modernizing Thai laws in keeping with European standards. Monogamy has thus been adopted into Thai family law since October 1, 1935. However, polygamy still exists, is practiced, and is accepted<sup>(16)</sup>, although the law states:

"A man or a woman cannot marry each other while one of them has a spouse."<sup>(17)</sup>

Registration of marriage is required by the present family law in order to validate the marriage.<sup>(18)</sup>

#### *(5) Consent*

The law requires the consent of the man and the woman to take each other as husband and wife. Such consent must be openly give before the registrar and the registrar shall take note of such agreement in writing.<sup>(19)</sup>

Arranged marriages contrary to the consent of the man and the woman are void.

#### *(6) Foreign Marriage*

Thai family law recognizes a Thai marriage in a foreign country between Thai citizens or a Thai citizen to a foreigner if the marriage follows the from prescribed by Thai law or by the law of the country where it takes place.

If the married couple desire to register their marriage according to Thai law, such registration shall be effected by a Thai Diplomatic or Consular Officer.<sup>(20)</sup>

### ***DISSOLUTION OF MARRIAGE***

Marriage is terminated by death, divorce, or the cancellation of the court.<sup>(21)</sup>

A violable marriage will be terminated by annulment of the court upon the request of the interested party within a certain period, prescribed by law, on these grounds:<sup>(22)</sup>

- (1)The man or the woman is under seventeen years old.
- (2)The marriage is performed on account of mistaken identity of the spouse.
- (3)The marriage is performed on account of fraud by either spouse.
- (4)The marriage is performed on account of duress of either spouse, when, without such duress, the marriage would not have been contracted.
- (5)Either spouse is a minor contracted the marriage without the written consent of his or her parents at the time of registration of the marriage.

## **DIVORCE MAY BE EFFECTED BY<sup>(23)</sup>**

- (1) Mutual consent which is made in writing, certified by signatures of at least two witnesses, and evidenced by registration of the written agreement at the office of the District Officer.
- (2) Judgment of the court.

### **C. GROUNDS FOR DIVORCE**

Divorce by judgment of the court can be granted if there are reasonable grounds. One of the following ground is sufficient for petitioning for divorce.<sup>(24)</sup>

#### *(1) Adultery*

If the husband maintains and supports or makes known the taking of another woman as wife or the wife has committed adulter, the other spouse may petition for divorce.

Before October 16, 1976, only the husband could petition on this ground. The wife has the right to petition likewise since the enforcement of the revised family law at the date mentioned.

#### *(2) Gross misconduct*

The law does not specify what behavior is supposed to constitute a gross misconduct, but gives a guideline that such conduct does not necessarily connote a criminal offence. Gross misconduct arises where one party causes the other party:

- (a) to be much ashamed.
- (b) to be insulted and hated due to having to continue being the husband or wife of the spouse who has misbehaved or
- (c) to be undue injured or troubled, if the condition, status, and common well being as husband and wife are taken into consideration. In each case mentioned above, the other spouse may petition for divorce.

#### *(3) Cruelty*

If either spouse has caused bodily harm or torture, mental or physical, has seriously insulted or has looked down upon the other spouse or his or her ascendants, the other spouse may petition for divorce.

Thai family law protects the ascendants of the other spouses because the newlywed couple usually stay with parents of either side. Therefore, the son-in-law or the daughter-in-law should pay respect to them and create a good rapport within the family. If one spouse looks down upon the other spouse's parents this will destroy such a rapport and is a ground for divorce.

#### *(4) Deserted*

If one spouse has willfully deserted the other spouse for more than one year, the other spouse may petition for divorce.

(4/1) If one spouse has been sentenced by a final judgment to imprisonment and has been kept in prison for more than one year in an offence which the other spouse has not contributed or consented to or connived at and the continuance to cohabit will cause undue injury or inconvenience to the other spouse, the latter may petition for divorce.

(4/2) If both spouse have agreed to live apart by the reason of failure to cohabit peacefully for a continuous period of more than three years or have live apart by separation order of the court for more than three years, either spouse may petition for divorce.

#### *(5) Disappearance*

If one spouse has been adjudged to have disappeared or has left the domicile or residence for the period of more than three years and it has been uncertain whether that spouse is living or dead, the other spouse may petition for divorce.

The Court will adjudge a person to have disappeared if such person has left his domicile or residence and it is uncertain for five years whether or not he is still alive. In the case where such person has gone to war, or was on a ship which was lost, or has come face to face with any other perils and it is uncertain for two years whether he is still alive, the court will deem that such person has disappeared.

#### *(6) Non-Support*

It is the duty of the husband and wife to maintain and support each other according to his or her ability and status of life.<sup>(25)</sup> If one spouse has failed to give proper maintenance and support to the other or has committed acts adverse to the relationship between husband and wife thus causing undue trouble the other spouse, such spouse may petition for divorce.

#### *(7) Insanity*

If one spouse is of unsound mind continuously for more than three years and such unsoundness of mind is difficult to cure such that the continuance of cohabitation as husband and wife cannot be expected, the other spouse may petition for divorce.

#### *(8) Breach of a bond of good behavior*

In the case where the husband and wife make a written agreement concerning good behavior as specified by mutual consent, that agreement is a "bond". If one spouse has broken that bond, the other spouse may petition for divorce.

#### *(9) Communicable and dangerous disease*

If one spouse is suffering from a communicable and dangerous disease which is chronic and incurable which may cause injury to the other spouse, the other spouse may petition for divorce.

#### *(10) Incompetence*

If one spouse is physically and permanently unable to have sexual intercourse, the other spouse may petition for divorce.

The spouse who has caused the other to be physically unable to have sexual intercourse is prohibited from petitioning to the court on this ground.<sup>(26)</sup>

If the court grants the divorce decree on the ground that the wife has committed adultery, the husband is entitled to claim damages from any person who has wrongfully taken liberties with the wife. Like wise, if the court grants the decree on the ground that the husband has maintained, supported, or made known the taking of another woman as his wife, the wife may sue the other woman in the case where the latter makes it clear openly that she has had an affair with the husband.

The right to petition for divorce on this ground and to claim damages from the spouse or the other man or woman, as the case may be, is limited to the period of one year from the day when the claimant is cognizant of the relevant ground for divorce.

If the party who is bound to pay damages cannot pay all the damages at once the court may allow such party to pay by installments as the court thinks fit.

### **D. PROPERTY OF HUSBAND AND WIFE**

Prior to the revision of the Civil and Commercial Code, Book 5 (Family) which become effective on October 16, 1976, the law provided that:<sup>(27)</sup>

"The husband is the head of the conjugal union. He chooses the place of residence and directs what is to be done for maintenance and support."

According to the old family law a married woman had no right to manage the common property without the consent of her husband.

This provision has now been abolished. The husband and wife have equal rights to manage the property which they earn together during marriage.

Property of the husband and wife can be classified into two categories according to the present family law i.e. private property and common property.

#### **Private Property ("Sin Suan Tua")**

Private property consists of:<sup>(28)</sup>

- (1) property belonging to either spouse before marriage;

- (2) property for personal use, clothing or dress, bodily decoration according to the status of life, tools or instruments necessary for carrying on the occupation or the profession of either spouse;
- (3) property acquired by either spouse during marriages through a will or a gratuitous gift;
- (4) "Khongman" i.e. property given at the engagement ceremony by the man to the woman as evidence to marry.

### **Common Property ("Sin Somros")<sup>(29)</sup>**

Common Property consists of:

- (1) all property acquired by either spouse during marriage;
- (2) property acquired by either spouse during marriage through a will or gift in writing if it is declared in such will or document of gift that the property will be owned jointly by both husband and wife.
- (3) Fruits of private property.

In case of doubt as to whether a property is private property or common property, the law presumes that property to be common property.

### **HOW TO MANAGE PROPERTY?**

The husband and wife can enter into an ante-nuptial agreement concerning the management of their property at the time of registration of their marriage. There are three limitations to the ante-nuptial agreement.

- (1) the agreement must not be contrary to the public order or immoral;
- (2) the agreement must not provide that such property is to be governed by foreign law.
- (3) the agreement must be in writing, signed by both spouses and by at least two witnesses and registered at the time of registration of the marriage.

After marriage, the ante-nuptial agreement cannot be modified or rescinded except by authorization of the court.

If the couple do not enter into the ante-nuptial agreement, the management of their property will be governed by general rules of Family Law as follows:

1. Either spouse has the right to manage his or her private property.<sup>(30)</sup>
2. Both spouses must manage the common property jointly or with the consent of the other spouse in any of the following cases:<sup>(31)</sup>
  - (1) Selling , exchanging, selling with right of the redemption, letting and selling on the term of hire-purchase, mortgaging, releasing mortgage or transferring the right of mortgage on immovable

- property or movable property which is mortgagable;
- (2) Creating or extinguishing the whole or a part of a servitude, a right of habitation, a right of superficies, a usufruct, or a charge on immovable property;
  - (3) Letting immovable property for more than three years;
  - (4) Making a loan of money;
  - (5) Making a gift, except with due regard to the family's station in life for charitable or social purpose, or in compliance with a moral duty;
  - (6) Making a compromise;
  - (7) Submitting a dispute to arbitration;
  - (8) Putting up property as guarantee or security to the official or court.

The management of the common property other than those provided in paragraph one, can be done by either spouse without the consent of the other.

If either spouse has committed a juristic act mentioned above without the consent of the other spouse, such juristic act shall be valid only when it has been confirmed by the other spouse.

If the other spouse does not give consent to the act concerned or does not confirm it, he or she, as the case may be, may apply to the court to revoke such juristic act. However if it appears that a third party acted in good faith at the time of concluding such juristic act, such act cannot be revoked.

The right to revoke is limited to the period of one year from the time when the spouse is cognizant of the cause of revocation or ten years since the juristic act was done.<sup>(32)</sup>

The power to manage common property jointly between husband and wife does not mean that the couple must ask for consent from each other for every act. Either spouse has power to manage household affairs or to provide necessaries for the family.<sup>(33)</sup>

Debts incurred by either spouse during marriage are common debts which are binding on both spouses equally, as follows:<sup>(34)</sup>

- (1) debts incurred for the necessary management of household affairs, maintenance, and medical expenses of the household and proper education of the children.
- (2) debts incurred in connection with the common property.
- (3) debts incurred in connection with a business carried on by the spouse in common.
- (4) debts incurred by either spouse only for his or her own benefit but confirmed by the other.

Upon termination of the marriage, the common property shall be returned to each spouse equally.<sup>(35)</sup> Both spouse are liable for common debts to the same proportion.<sup>(36)</sup>

## E. MAINTENANCE

The husband and wife have the duty to maintain and support each other according to his or her ability and status of life.<sup>(37)</sup>

Since the status of women in Thailand is very similar to the status of women all over the world, i.e. lower than men, most husband are expected to maintain and support their wives rather than the wives being expected to support their husbands.

When the party entitle to receive maintenance (usually the house wife and the children) has not been paid the sum concerned or has been paid a sum insufficient for the party's station in life, he or she may apply to the court for an order compelling the party under the duty provide the maintenance (usually the husband) to perform the duty. The amount of maintenance is considered by the court with due regard to the ability of the party who has the duty to provide it and the station in life of the receiver or the circumstances of the case.

Maintenance may be paid by periodical payment in pecuniary or other forms according to the agreement of both parties.

Any maintenance order made by the court may be modified, cancelled, increased or reduced if the circumstances have changed since the original order.

It is usually the case that the husband obeys the court order (in providing maintenance to his divorced wife and children) for the first few months but then discontinues.

Husbands who honestly comply with the maintenance order are very rare. The poor wives always turn to the Women Lawyers Association for help. Under the new Family Court Procedure Act B.E. 2534 article 114 the Family Court has authority to compel the employer of the husband to pay the maintenance due to the wife out of the husband's earning directly to the wife. Unfortunately, for the time being there are only 10 Family Courts in big cities such as Bangkok, Chaing Mai, Songkhla, Nakhon Rathasima, Ubon Ratchathani, Rayong etc. and there are 19 Provincial Courts such as Nonthaburi, Samut Prakan, Pathum Thani and Ayutthaya etc. which has Family section to enforce the Family Court Procedure Act. It is hope that the well being of women and children will be more protected if this law can be enforced through the whole kingdom.

---

\* Associated Professor of Law, Dean Faculty of law, Saint John's University, Former Minister of Office of Universities Affairs. Article of Spring 2001 published in the Thailand Law Journal.

- (1) Civil and Commercial Code , Article 1435.
- (2) Civil and Commercial Code , Article 1436.
- (3) Civil and Commercial Code, Article 1437.
- (4) Civil and Commercial Code, Article 1439.
- (5) Civil and Commercial Code, Article 1445.
- (6) Civil and Commercial Code, Article 1443.
- (7) Supreme Court decision, No. 1971/2517.
- (8) Civil and Commercial Code, Article 1448.
- (9) Civil and Commercial Code, Article 1454.
- (10) Civil and Commercial Code, Article 1450.

- (11) Civil and Commercial Code, Article 1451.
- (12) Civil and Commercial Code, Article 1598/32.
- (13) Civil and Commercial Code, Article 1449.
- (14) Civil and Commercial Code, Article 1496.
- (15) Law of Husband and Wives B.E. 1904.
- (16) Chintana Yossoonthorn, Women in Thailand, Proceedings of the Peace Corps Conference on Women and Development Bangkok, 1979, p. 11.
- (17) Civil and Commercial Code, Article 1452.
- (18) Civil and Commercial Code, Article 1457.
- (19) Civil and Commercial Code, Article 1458.
- (21) Civil and Commercial Code, Article 1501.
- (22) Civil and Commercial Code, Article 1503.
- (23) Civil and Commercial Code, Article 1514.
- (24) Civil and Commercial Code, Article 1516.
- (25) Civil and Commercial Code, Article 1461.
- (26) Civil and Commercial Code, Article 1517 Paragraph 2.
- (27) Civil and Commercial Code, Article 1454 (Before revision).
- (28) Civil and Commercial Code, Article 1471.
- (29) Civil and Commercial Code, Article 1474.
- (30) Civil and Commercial Code, Article 1473.
- (31) Civil and Commercial Code, Article 1476.
- (32) Civil and Commercial Code, Article 1480.
- (33) Civil and Commercial Code, Article 1482.
- (34) Civil and Commercial Code, Article 1490.
- (35) Civil and Commercial Code, Article 1533.
- (36) Civil and Commercial Code, Article 1535.
- (37) Civil and Commercial Code, Article 1461.