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## MARRIAGE #3: ANNULMENT

*Our last article outlined the ways the legal status of a marriage comes to an end. To recap, Thai law provides that a marriage can end in one of three ways: death, divorce or by being cancelled by the court (annulment). This month we look to conclude our series on marriages by looking at annulments and explaining the differences between annulments and divorces.*

An annulment is often defined as a “declaration by the court that a marriage was never legally valid”. This legal definition transcends jurisdictions and also applies to Thai marriages. Annulments in Thailand are governed by Sections 1494 – 1535 of the Civil and Commercial Code (the “Code”). Before we begin analyzing annulments, an important distinction should be made between divorces and annulments. An annulment is a declaration that the marriage between the two parties never existed, whereas a divorce is the legal termination of a marriage that did exist. The formal existence/non-existence of a marriage can have severe implications in regard to the assets of the marriage, child support obligations and

inheritance. Though the distinction between the two was of more importance in that past where many religions and societies condemned divorcees which could have substantial negative consequences, including in some an inability of a woman to remarry. Thus despite many societies having progressed beyond stigmatizing divorcees, annulments are still frequent today due to the legal effect they have.

For a court in Thailand to declare a marriage void, the court must issue an order declaring that marriage is void based on one of the relevant provisions under the Code. At this point it is worth distinguishing between a “void marriage” and a “voidable marriage”. A voidable marriage is one that is valid until it is declared otherwise by the Court, on the other hand, a void marriage is considered by Thai law to never have existed in the first place. For a voidable marriage to be declared void by a court, a petition must be submitted to the court within a prescribed time frame.

A marriage is automatically declared void (non-existent) if:

(i) the spouses are the descendants of one another, or are siblings; (ii) one or both spouses are adjudged insane or mentally incompetent at the time the marriage ceremony took place; (iii) the spouses failed to register their marriage at the appropriate district office (thus those marriages celebrated via traditional ceremonies as described in the first article of this series are void until the spouses register their marriage appropriately); or (iv) one or both of the spouses was married to another at the time of the marriage ceremony. In order to have a marriage declared void, interested persons (which include parents, guardians, or one of the spouses) are permitted to apply for a court order declaring the marriage void.

Let us apply the above principles to some uniquely Thai example. If a man got married to a woman only to realize that the woman was at the time of birth a man and subsequently had an operation, then it is likely that the marriage would be declared void based on the premise that same-sex marriage are not permitted in Thailand. The reasoning behind this is that in



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the eyes of the law, a man who underwent a gender change operation is still considered to be a man as the law does not permit one to legally change their sex. This example of a marriage would also fall under the definition of a “voidable marriage” as we will discuss below.

A voidable marriage, in contrast, occurs where (i) the spouses had not attained marriageable age and entered marital relations without first obtaining the consent of their parents or guardians; (ii) there had been a case of mistaken identity of the spouse; (iii) the marriage took place on the basis of a fraud; or (iv) the marriage took place under duress.

The issue of age is fairly self-explanatory; the following situations are examples of other potentially voidable situations:

- (a) If a groom met a woman in an online chat-room/dating website, came to Thailand in order to marry her, and only after the marriage discovered that the woman with whom he had been corresponding with online was actually the bride’s sister.
- (b) If a bride marries a man while already pregnant with another man’s child, unbeknownst to the groom.
- (c) A man gets a woman pregnant, and the woman’s father threatens the man with violence unless he marries the woman (i.e. the proverbial “shotgun wedding”).

The first two examples might be voidable on the basis of mistaken identity or fraud, and the third on the basis of fraud, and an application for an annulment could be made within 90 days of the marriage. The last example could be voidable on the basis of duress, and an application for an annulment must be made within 1 year after the cessation of the duress. It is interesting to note that one of the most famous (and historic) grounds for annulment – a failure to consummate the marriage – is not a ground for annulment in Thailand.

So how does the legal effect of an annulment differ from the legal effect of a divorce in regard to marital property? An annulment results in a different distribution of property than a divorce. With an annulment, no property relations between the spouses existed as the marriage is declared to never have existed in the first place. Based on that reasoning, the property which was possessed or acquired by either spouse before or after the marriage, as well as the financial benefits flowing from that property, remain as that acquiring spouse’s property. Property which was considered to be marital property before the marriage was annulled is divided equally unless the court deems it proper to other otherwise after taking into consideration the obligation of the family and the earning capacity of both parties as well as their status in life.

We hope you enjoyed our series on marriage. Stay tuned next month!

Authors:  
Thunyaporn Chartisathian  
Legal Adviser  
Thunyaporn@dfdl.com

Kunal Sachdev  
Legal Adviser  
kunal@dfdl.com

