

The Divorce Code of Thailand

(The Civil and Commercial Code of Thailand, Book 5)

Chapter V: Void of Marriage and Chapter VI: Termination of Marriage

Section 1494. The marriage will be void only as outlined in this Chapter.

Section 1495. The marriage which is made against Section 1449, Section 1450, Section 1452 and Section 1458 shall be void.

Section 1496. It is only a judgment of the Court that effects the void of the marriage which is made against Section 1449, Section 1450 and Section 1458.

The spouses, parents or descendents of the spouses may apply for a judgment of the Court effecting the void of the marriage. If there is none of the said persons, any interested person may ask the Public Prosecutor to apply to the Court for such judgment.

Section 1497. Any interested person may allege or apply for a judgment of the Court effecting that the marriage made against Section 1452 is void.

Section 1497/1. In case there is a final judgment of the Court effecting the void of any marriage, the Court shall alert the Marriage Register of the matter in order to have it entered in the Marriage Register.

Section 1498. The void of marriage will not create property relation between husband and wife.

In case the marriage has been adjudged void, the property owned or acquired by either party before or after the marriage as well as the fruits thereof remain as that party's property. As for the property jointly earned, they shall be divided equally unless the Court deems it proper and orders otherwise by taking into consideration the obligation in the family and salaries of both parties as well as their n life, including all other circumstances.

Section 1499. The marriage adjudged void as being against Section 1449, Section 1450 or Section 1458 shall not prejudice the right obtained through such marriage before stating the final judgment effecting the void of the marriage by the party who had married in good faith.

The marriage adjudged void as being against Section 1452 shall not prejudice the right acquire through such marriage before the cause the makes the marriage void is known to the man or woman. But the said marriage shall not make one spouse become a statutory heir of the other and have the right of inheritance to the other spouse.

In case of the marriage adjudged void as being against Section 1449, Section 1450, Section 1458 or Section 1452, if one party only acted in good faith, such party may claim compensation. However, if such marriage makes the party in good faith become destitute deriving insufficient income out of his or her property or business which used to be carried on before pronouncing the final judgment to effect the void of the marriage, or before the void of his or her marriage becoming known, as the case may be, that party can also claim living allowances, and the provisions of Section 1526 paragraph one and Section 1528 shall apply to the claim for living allowances in this case, *mutatis mutandis*.

The prescription for claiming compensation or living allowances under paragraph three shall be two years from the date of stating the final judgment to effect the void of the marriage in case of the marriage made against Section 1449, Section 1450 or Section 1458, or from the day when the void of his or her marriage becoming known in case of the marriage made against Section 1452.

Section 1499/1. In case of the marriage adjudged void, the accordancy between spouses as to which party to hold the parental authority over any child, or either party or both of them to be responsible for any amount of contribution of the maintenance of the child shall be made in writing. If the accordancy cannot be reached, the Court shall make decision on the matter. In making such decision, if there are grounds for depriving that spouse of the parental power under Section 1582, the Court may grant an order depriving that spouse of the same and appoint a third person as a guardian by taking into consideration the happiness and interest of the child, and the provisions of Section 1521 shall apply, *mutatis mutandis*.

Section 1500. The marriage adjudged void shall not prejudice the rights gotten by third person acting in good faith before entering the void of the marriage into the Marriage Register under Section 1497/1.

Chapter VI: Termination of Marriage

Section 1501. Marriage is terminated by death, divorce or being annulled by the Court.

Section 1502. A voidable marriage terminates upon annulment decided by judgment of the Court.

Section 1503. An application to the Court for annulment of marriage on the grounds that it's voidable shall be made only in the case where the spouses have not complied with Section 1448, Section 1505, Section 1506, Section 1507 and Section 1509.

Section 1504. 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 grounds of its voidability.

If the Court has not annulled the marriage until both man and woman have completed the age required under Section 1448 or if the woman has become pregnant before such completion, the marriage shall be deemed to be valid from the time it was made.

Section 1505. A marriage which is made on account of mistake as to the identity of the other spouse shall be deemed voidable.

The right to apply for termination of marriage on account of mistake as to the identity of the spouse shall be ended after the lapse of ninety days from the date of marriage.

Section 1506. A marriage is voidable if it is made by the spouses on account of fraud to such an extent that without it the marriage would not have been made.

The provisions of paragraph one shall not apply to the case where the other spouse has not known the fraud committed by a third person.

The right to apply for termination of the marriage on account of fraud shall be cancelled after the lapse of ninety days from the day on which the spouse has known or should have known of the fraud, or after the lapse of one year from the date of marriage.

Section 1507. A marriage is voidable if it is 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 termination of the marriage on account of duress shall be cancelled after the lapse of one year from the day on which the spouse is free from duress.

Section 1508. Where the marriage is voidable on account of 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 enter the marriage agreement may apply for the termination of such marriage.

In case where the person entitled to apply for the cancellation of the marriage has been deemed incompetent, the person who may apply to the Court for an order effecting an insane person to be an incapacitated person under Section 29, may also apply for the termination of such marriage. Where the person entitled to apply for the termination of the marriage is an insane person not yet adjudged incompetent, the stated person can apply for the termination of such marriage but must apply concurrently to the Court for an order effecting him to be an incapacitated person. If the Court issues an order revoking the application for an order effecting him to be an incapacitated person, the Court shall also order revoking the application made by the said person for the cancellation of such marriage.

The order of the Court revoking the application made by the person for termination of the marriage under paragraph two does not grant the right of the spouse to apply for the termination of the marriage; provided that the spouse exercises his or her right within the remaining period of time. If the remaining period of time is less than six months as from the day on which the order of the Court revoking the application made by the said person for termination of the marriage is given, or if there remains no such period, the period of time shall correspondingly be extended to the completion of six months or to another six months as from the day on which the order of the Court revoking the application made by the said person for the cancellation of the marriage is given.

Section 1509. The marriage made without approval from the persons mentioned in Section 1454 is voidable.

Section 1510. Where the marriage is voidable on account of having been made without approval of the persons mentioned in Section 1454, only the person who can give the approval under Section 1454 may apply for termination of the marriage.

The right to apply for termination of the marriage under this Section is extinguished when the spouse has finished the age of the twentieth year or when the woman has become pregnant.

The action for the termination of the marriage under this Section is barred by prescription after one year from the day where the marriage is known.

Section 1511. The marriage which is terminated by judgment of the court shall be considered to have terminated on the day when the judgment becomes final: provided, however, that it may not be set up to the prejudice of the rights of third persons acting in good faith unless the termination of the marriage has been registered.

Section 1512. The provisions concerning the result of divorce by judgment of the Court shall apply to the result of termination of the marriage *mutatis mutandis*.

Section 1513. If it appears that the spouse sued on termination of the marriage has known of the grounds of voidability, such spouse is required to make compensation for the damage to the body, reputation or property of the other arising from such marriage, and the provisions of Section 1525 shall apply *mutatis mutandis*.

If the other spouse becomes destitute in effect of the termination of the marriage under paragraph one and derives insufficient income out of his or 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 living allowances as provided in Section 1526.

Section 1514. Divorce can be effected only by mutual consent or by judgment of the Court. Divorce effected by mutual consent must be made in writing and certified by the signatures of at least two witnesses.

Section 1515. Where marriage has been registered as outlined by this Code, divorce by mutual consent is valid only if the registration thereof is effected by both the husband and wife.

Section 1516. Ground of action for divorce are as follows:

1. The husband has provided maintenance to or honored such other woman as his wife, or the wife has committed adultery, the other spouse may file a claim for divorce;
2. One spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offense or not, if it causes the other:
3. To be seriously ashamed;

4. To be insulted or hated on account of continuing to be the husband or wife of the spouse having committed the misconduct; or
5. To sustain extensive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration; the latter may enter a claim for divorce;
6. One spouse has effected serious harm or torture to the body or mind of the other, or has seriously insulted the other or his or her ascendants, the latter may file a claim for divorce;
7. One spouse has deserted the other for more than one year, the latter may file a claim for divorce;

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

(4/2) The husband and wife voluntarily live separately because of their inability to cohabit peacefully for more than three years, or live separately for more than three years by the order of the Court, either spouse may file a claim for divorce;

(5) one spouse has been adjudged to have disappeared, or has left his or her domicile or residence for longer than three years and being unsure whether he or she is living or dead;

(6) one spouse has failed to provide 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, the latter may file a claim for divorce;

(7) one spouse has been an insane person for more than three years continuously and such insanity is hardly curable so that the continuance of marriage cannot be expected, the other may file a divorce.

(8) one spouse has broken a bond of decent behavior executed by him or her, the other may file a claim for divorce.

(9) one spouse is afflicted with a communicable and dangerous disease which is incurable and may cause injury to the other, the latter may file a claim for divorce.

(10) one spouse has a physical disadvantage so as to be permanently unable to live and share space as husband and wife, the other may file a claim for divorce.

Section 1517. No action for divorce may be initiated by the husband or wife, as the case may be, if such spouse has provided consent to or connived at the acts under Section 1516(1) and (2) upon which the action for divorce is grounded.

If the ground of action for divorce under Section 1516 (10) is a result of actions by the other spouse, the action for divorce based upon such ground may not be initiated by such other spouse.

Where the action for divorce is based on the grounds under Section 1516(8) has been initiated, the Court may not issue judgment to enforce the divorce if the behaviors of the husband or wife 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.

Section 1518. The right to initiate an action for divorce would be ended if the spouse entitled thereto has committed any act showing his or her forgiveness to the act done by the other that has caused the right to initiate the action for divorce.

Section 1519. In case where one spouse is an insane person, and if there gives rise to the ground of action for divorce irrespective of whether it occurs before or after the insanity, the person entitled to apply to the Court for an order effecting the insane person to be an incapacitated person under Section 28 shall have the power to submit an action against the other spouse for divorce and liquidation of the property. In such a case if no order of the Court effecting the insane spouse to be an incapacitated person has yet been issued, the said person shall apply to the Court in the same case for an order effecting the insane spouse to be an incapacitated person.

The said person may, if approved suitable, also apply to the Court for giving the order under Section 1526 and Section 1530.

In case where the spouse purported to be an insane person has not yet been determined incompetent, and if the Court deems that such spouse should not be adjudged incompetent, the case shall then be dismissed. If the spouse is thought to be suitable to be adjudged incompetent but an order to effect the divorce should not be issues as yet, the Court shall adjudge the spouse to be an incapacitated person and may not issue order regarding the guardian or appointing another person to be guardian under Section 1463 while the

application for divorce will be dismissed, and the Court may in this connection issue an order determining living allowances. In case where the spouse is judged to be insane and should be adjudged incompetent by the Court and the application for divorce should also be granted, the Court shall issue an order in the judgment effecting such spouse to be an incapacitated person, appointing a guardian and allowing the divorce.

In case where the Court judges that the ground upon which the claim for divorce is based is not suited to the condition of the incapacitated spouse who is going to divorce the other spouse, or it is not proper under such circumstances that divorce should be granted, the Court may not pronounce the judgment to officiate the divorce.

Section 1520. In case of divorce by mutual agreement, the spouses shall create an agreement in writing for the exercise of parental power over each of the children. In the absence of such agreement or an agreement thereon cannot be reached, the matter shall be left up to the Court to decide.

In case of divorce by judgment of the Court, the Court trying the divorce case shall also order that the parental power over each child belongs to any party. If, in such trial, it is thought to be proper to take away parental power under Section 1582 from that spouse, the Court may issue an order taking away that same power from that spouse and appointing a third person as a guardian, by taking into consideration the happiness and interest of the child.

Section 1521. If it appears that the person using parental power of the guardian under Section 1520 behaves himself or herself improperly or there is an altering of circumstances after the appointment, the Court retains the power to issue an order appointing a new guardian by taking into consideration the happiness and interest of the child.

Section 1522. In instance of divorce by mutual agreement, an arrangement shall be created and contained in the agreement of divorce regarding whether both spouses or either spouse shall make contribution to the maintenance of the children and how much both spouses or either spouse will contribute.

In instance of divorce by judgment of the Court or in case the agreement of divorce does not provide provisions regarding the maintenance of the children, the Court shall determine it.

Section 1523. In instance of divorce by judgment of the Court on the ground as outlined in Section 1516(1), the husband or wife is entitled to compensation from the husband or wife and other woman or adulterer as the case may be.

The husband is entitled to claim compensation from any person who has wrongfully engaged in liberties with his wife in an adulterous manner, and the wife is entitled to claim compensation from other woman who has openly shown her adulterous relations with the wife's husband.

However, the husband or wife is not entitled to claim compensation if he or she has provided consent to or connived to the act committed by the other party under Section 1516(1) or consented to the other person acting as provided in paragraph two.

Section 1524. If the ground of action for divorce under Section 1516 (3), (4) or (6) has occurred through an act of the party at fault with the purpose to cause the other party to become so intolerable that action for divorce has to entered, the other party is entitled to compensation from the party at fault.

Section 1525. the compensation under Section 1523 and Section 1524 shall be decided by the Court depending on the circumstances, and the Court may issue an order for a single payment thereof or payment in installments as may be thought to be suitable by the Court.

In instance where the person who has to submit the compensation is a spouse of the other party, the share of the property received by the former from the liquidation of the Sin Somros on account of divorce shall also be taken into consideration.

Section 1526. In instance of divorce, if the ground for divorce has occurred from the guilt of only one party, and the divorce will cause the other to become destitute receiving insufficient income out of his or her property or business which used to be carried on during the marriage, the latter is entitled to apply for the living allowances to be paid by the party at fault. The Court may make the decision as to whether the living allowances be provided or not by taking the ability of the grantor and the condition in life of the receiver into consideration, and the provisions of Section 1598/39, Section 1598/40 and Section 1598/41 shall apply mutatis mutandis.

The right to claim the living allowances is cancelled if it is not raised in the plaint or counter-claim in the action for divorce.

Section 1527. If a divorce is effected on the ground of insanity under Section 1516 (7) or on the ground of coping with a communicable and dangerous disease under Section 1516 (9), the other spouse shall provide living allowances to the spouse who is insane or is coping with the disease, according to Section 1526 mutatis mutandis.

Section 1528. If the party receiving living allowances remarries, the right to receive living allowances is cancelled.

Section 1529. Rights of action grounded upon any of the grounds outlined in Section 1516 (1), (2), (3) or (6), or Section 1523 are cancelled after one year when the fact which can be alleged by the claimant has been known or should have been known to him or her.

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.

Section 1530. Where an action for divorce is pending, the Court may, on application of either party, make any provisional order which it thinks proper such as those regarding the Sin Somros, the lodging, the maintenance of the spouses and the custody and maintenance of children.

Section 1531. In instance where a marriage has been registered according to law, divorce by mutual agreement takes effect from the time of registration.

Divorce by judgment of the Court takes effect on and from the time when the judgment becomes final; however, such judgment may not be organized to prejudice the rights of third persons acting in good faith unless the divorce has been registered.

Section 1532. After divorce, the property of the husband and wife shall be open to liquidation.

But as between the spouses,

1. In case of divorce by mutual agreement, the liquidation shall apply to the property of the husband and wife as it was on the date of registration of divorce;

2. In case of divorce by judgment, the liquidation shall apply to the property of the husband and wife as it was on the day when the action for divorce was entered in Court.

Section 1533. Upon divorce, the Sin Somros will be divided equally between man and woman.

Section 1534. Where either spouse has used Sin Somros for his or her exclusive benefit, or has used this thereof with the intention to cause injury to the other, or has made use thereof without the consent of the other in case where such disposal is required by law to have consent of the other, or has willfully destroyed it, it shall, for the purpose of division of the Sin Somros under Section 1533, be thought of as if such property had still remained. IF the share of Sin Somros that the other will receive is not complete to what he or she should have received, the party at fault is required to make up for the arrears from his or her share of the Sin Somros or his or her Sin Suan Tua.

Section 1535. Upon termination of the marriage, the man and woman shall be liable for common debts equally.

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