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MARRIAGE #2: TILL DEATH DO US PART

Last month we began looking at how a civil union between man and wife happens under Thai law. We discussed the various intricacies involved in the betrothal and the marriage itself; this week we endeavor to continue our journey into the marital laws of Thailand by examining how a divorce occurs in Thailand.

The phrase “till death do us part” is a worthy sentiment and if often used to signify the long-lasting journey a couple is about to commence; but in practice there are almost always other off-ramps. Thai law provides explicitly that a marriage can end in one of three ways: death, divorce or by being cancelled by the court (via an annulment). The first is self-explanatory; this

month we’ll look at the second. According to the statistics provided by the Thai Ministry of Social Development and Human Security and the National Statistical Office, 2012 saw 314,338 couples marry in Thailand and 111,377 divorces, giving a divorce rate of 2.03/1,000 people of marriageable age. Though the national divorce rate has been increasing, it remains much lower than in Latvia (3.6/1,000), Lithuania (3.5/1,000) and Denmark (2.8/1,000), the nations with the highest rates in Europe in 2012.

So how exactly is a divorce defined under Thai law? Under the Civil and Commercial Code, a divorce is defined as the dissolution of a marriage by (a) mutual

consent of the couple; or (b) the judgment of the court based on one of the grounds for divorce enumerated in the Civil and Commercial Code. The simplest of the two methods described above is the dissolution of a marriage by mutual consent of the spouses. This, in theory is the quickest and least expensive route for couples to take. Dissolution by mutual consent does not require the couple to seek legal representation, though it is recommended so that each of them fully understands their legal rights and so that a good divorce settlement agreement can be drawn up. The process involves paying a visit to the Amphur (district office) and submitted a joint request for dissolution of the marriage to the officer in charge.

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Unlike contested divorces, a dissolution of a marriage by mutual consent does not require the couple to prove any of the grounds of divorce, but they must file an agreement in regards to (a) the division of any personal or marital property; (b) custody of the children of the marriage; and (c) alimony. To finalize the process, both parties are required to be present at the Amphur when registering the divorce so as to publically demonstrate their mutual consent.

Of course, in many cases divorce is unlikely to be achieved by mutual consent. A contested divorce requires the couple to appear in court, sometimes on multiple occasions, each with the

representation of a Thai lawyer. The cost, time and emotional toil can be considerable; it has been said that there are no winners in a divorce except the lawyers.

For a contested divorce the couple must file a petition to court based on one of the grounds of divorce set out in the Civil and Commercial Code. These grounds includes situations where (a) one spouse is guilty of adultery, or of misconduct which results in the other being ashamed, insulted, hated or injured; (b) one spouse has deserted the other for over a year; (c) one spouse is suffering from a communicable and dangerous disease which may cause injury to the other; (d) one spouse is permanently physically disadvantaged making the couple unable to cohabit; (e) one spouse has seriously insulted the other or his or her ascendants (be careful what you say about your mother-in-law) and (f) the

spouses having lived separately because of being unable to cohabit peacefully for more than three years.

The Thai grounds for divorce are predominantly based on "faults" committed by one of the spouses or impairments affecting a spouse. Thus if a marriage breaks down naturally, such as due to a divergence in the expectations or priorities of the spouses, under Thai law the only option, unless a divorce by mutual consent is pursued, is to file for a divorce after 3 years of living separately. These grounds for divorce in Thailand are similar to those seen in other jurisdictions. For example, Canada has a no-fault con-



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cept of “permanent breakdown” of the marriage as a ground for divorce. To establish a “permanent breakdown” of a marriage the spouses must live separately for at least one year before considering a formal divorce. Unlike in many common law jurisdictions, Thai law does not require as a precondition to divorce that the couple go to marital counseling to try and salvage the marriage. Where a contested divorce occurs between the spouses, the Court will in detail examine the relationship of the spouses as a divorce can have multiple consequences for the couple in terms of their children and their assets. Expatriates beware, if you wish to get a divorce in Thailand, make sure your legal representative can

advise on whether the divorce in Thailand will be recognized in the country where the marriage was first registered. If you get this wrong it could lead to subsequent inadvertent bigamy, among other unpleasant consequences. Divorces do not always need to be fodder for dramatic Hollywood movies; they can be a relatively simple process where the couple’s relationship has broken down and they wish to end things amicably by mutual consent. Unfortunately, that may be the exception rather than the rule.

Now that we have discussed how divorces work under Thai law, we will look to conclude our three-month series on marriage by focusing on how annulments work

and briefly discuss what other issues arise when a marriage comes to an end. Stay tuned!

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