

The Study of Ground of Divorce Under The Civil And Commercial Code That Affects Quality of Life.

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Abstract—Marriage is legal and acceptable way to create family and lead to the legal status of man and woman referring to husband and wife. Some regards family as vital fundamental background which partly influences human behavior in either good or bad toward society. Consequently, when problems arise in family, it affects society as well. Divorce, therefore, is the final method to end problems (relationship) if there is no other way to compromise. In some countries, divorce is not an available choice due to religion restriction. In Thailand, however, divorces can be categorized in 2 cases which are divorce by mutual consent and divorce by judgment of the Court. The latter case refers to the case that either husband or wife do not agree to the divorce or cannot live together as a couple. Based on Thai law, husband or wife can exercise his/her right to divorce according to section 1516 (ground of divorce).

This research aimed to indicated conditions and objectives relating to ground of divorces due to willfully separation either by husband or wife over 1 year according to section 1516 Thai Civil and Commercial Code. If the fact appears that husband and wife agree not to cohabit as husband and wife by ending their sexual relationship but still live together in the same area though in different household, by law, this show no intention of separation. Such action does not consider as a separation divorce ground. Moreover, the fact that period of separation hold only one year is unreasonable and does not suit present situation. Researcher, thus, intend to conduct this research in order to study cause of action regarding separation divorce ground and period of separation leading to justified law enforcement.

Keywords— Law, Ground of Divorce, Husband and Wife

I. INTRODUCTION

MARRIAGE is legal and acceptable way to create family and lead to the legal status of man and woman referring to husband and wife. According to section 1457 Civil and Commercial Code, marriage shall be effected only on registration. This condition is to fulfill monogamy principle and denied the right to man and woman who live together without registration. Marriage is considered the essential fundamental ground of producing high qualified civilians and peaceful society [1]. Each year, there are many marriage registrations according to the records from 2002-2011 by National Statistical Office.

As show in the 2011 record, man and woman registered as a husband and wife for 306,048 in total increasing form 2010 for 22,104 in total. The highest rate of marriage registration belong to Northeastern area for 92,609 in numbers while in Bangkok, there are 42,316 marriage

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registrations. In conclusion , registrations rate spontaneously increase in most area of Thailand compare to records in 2010 and is still rising.

Table I The statistic of divorce cased.

Part and Province	Marriage statistics. B.E. 2002-2011									
	Digit:Spouse									
Kingdom	301,737	328,356	365,721	345,234	358,505	307,910	318,496	300,878	285,944	308,048
Bangkok	37,411	39,336	43,183	45,420	48,099	45,132	47,288	43,727	39,648	42,316
Central	70,922	79,910	92,094	92,715	96,607	87,111	92,801	87,252	79,593	86,787
Northern	52,626	58,809	62,636	58,641	58,513	49,470	50,599	48,943	48,224	49,319
Northeast	104,539	109,309	122,833	105,324	111,256	88,170	89,729	81,513	84,597	92,609
Southern	36,239	40,992	44,975	43,134	44,030	38,027	38,079	39,443	33,882	37,017

Source: Department of Provincial Administration, Ministry of Interior

Mostly, both husband and wife were born and raised in different background so that they possess unique idea and value. Subsequently, this can cause problem when they cohabit as a couple. Not only has it affected themselves as husband and wife, but also as father and mother. Therefore, when the marriage has come to an end, the child is victimize in such situation.

According to civil and commercial code, marriage had ended due to death, divorce, or court verdict. Divorce is one of the method that couple employ to terminate their relationship. In some countries, divorce is prohibited basing on religion restriction. In case of Thailand, anyhow, there are 2 cases of termination of marriage by divorce referring to divorce by mutual consent and divorce by judgment of the Court. The latter shall affect when either husband or wife do not agree to divorce or there are other causes which against the relationship of husband and wife such as being missing person or being left his or her domicile or residence for more than 3 years. Husband or wife, in this case, can exercise his/her right to divorce according to the law [2-5]. However, court can use the discretion on such cause of action. Normally, court judgment does base on well-being of couple and children. The statistic of divorce cased are as followings :

Table II The statistic of divorce cased.

Part and Province	Divorce statistics. B.E. 2002-2011									
	Digit:Spouse									
Kingdom	77,735	80,886	86,982	90,688	98,388	100,420	109,084	109,277	108,482	109,312
Bangkok	13,779	13,884	14,976	15,158	15,625	15,796	16,884	16,608	15,919	15,175
Central	21,229	22,852	24,971	27,203	29,282	31,586	34,198	34,554	34,490	34,225
Northern	15,262	16,836	17,080	18,118	18,524	19,301	20,197	20,014	20,330	20,085
Northeast	20,384	19,977	22,281	21,654	26,070	24,515	27,201	27,527	27,515	29,007
Southern	7,081	7,337	7,674	8,555	8,887	9,222	10,604	10,594	10,228	10,820

Source: Department of Provincial Administration, Ministry of Interior

As seen in the Fig.1, divorces cases in 2011 were 109,312 in numbers which are increasing when compare to 108,428 cases in 2010. If looking closely to the statistic between marriage and divorce in 2002-2011, the latter is 35.48% or 1/3 of marriage registrations as shown in Graph bellows.

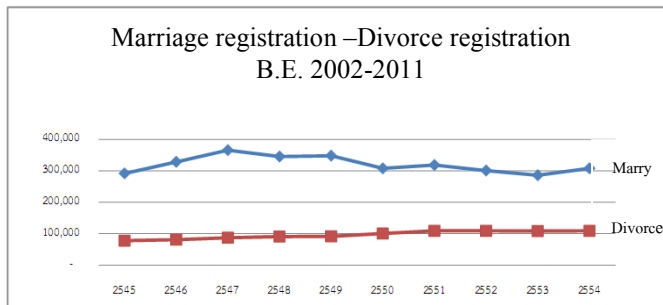


Fig.1 Marriage registration –Divorce registration B.E. 2002-2011.

Source: Department of Women's Affairs and Family Development

It is normal for marriage possessing different background to fight and separate and this might lead to the divorce under section 1516 (4) when one spouse has deserted the other for more than one year. Generally, a fight in family is a normal issue. Husband and wife can later compromise at some period of times. At this rate, researcher found that the conditions willfully separation by spouse as a ground of divorce is interesting [6-10]. According to court decision, the separation does not include the act when spouses end their sexual relationship and even one spouse part from one another to live in different accommodation if it located in the same area since they do not actually separate from each other. Noticeably, time condition in willfully separation as a ground of divorce is quite short. It required only over 1 year parting which is unreasonable and did not suit the current situation [11-14]. Thus, the study of conduct in separation and times condition should be studied in order to set justified law enforcement.

II.METHODOLOGY

Scope of the Research

Researcher intended to study cause and effect in legal aspect related to willfully separation as the ground of divorce under civil and Commercial Code, Books V: Family.

Expected Benefits

Results of research are as followed: to benefit legal study and to be a guideline in legislation amendment and development in protecting rights of husband and wife. This potentially led to development of quality of life in Thai society.

Review Literature

Concept and Theory about divorce

Divorce without party misbehaves spouse duty means that each spouse did not act against the rights of one another on basis of their duties. The divorce is possible under the Doctrine of Freedom of contract and Autonomy of will.

Divorce which lied punishment on parties who misbehave referred to the system that punish false party on basis of Fault principle such as hurting bodies, brutal, having adultery with other persons who are not their spouses, etc. so that another parties can file for divorce.

Divorce considered as a solution for marriage which severely damage referred to the system that create a chance for both parties to file divorce, though the other spouse did not do things wrong. Based on such ground, spouse can start new life with others. For example, one of spouses infected severely disease, or has abnormality physical status for sexual lives.

Revolution about divorce and reason of divorce.

In Babylonian law, to terminate of marriage by divorce, husband can divorce any time, and must have paid in order to support wife since the wife have to look after the child. If the divorce occur due to matter of the wife, she have no right of custody on a child. So, husband took responsibility.

In Jewish law, marriage cannot be terminated except for some reasons, such as husband knew his wife are not virgin, husband was able to abandon his wife by sending notice, after receiving letter the wife may leave home and free to remarry with other man.

In Greek law, besides granting the right to husband to not accept the wife, the law provide such right to a wife as well. Therefore, parties possess the right to divorce.

In Roman law, divorce did not allow with no reason. Thus, the ground of divorces must be mentioned in the case such as action of bigamy, or infertility.

In Justinian law, divorce might be cancelled by consent. Husband can file divorce by the fact such as committing adultery, or taking bath with other men, going to festival, theatres, circus, other places that are opposed to husband purposes.

In Church law, marriage is ceremony that is holy that cannot be destroyed or terminate. Thus, spouses must live together until die.

Revolution about divorce and reason to file a divorce by Thai law as stated in Mungraian law, there were 2 causes of divorces referred to divorce by consent and divorce with grounds such as hurting bodies and abandonment.

Spouse law indicated the grounds of divorces such as husband does injustice to support his wife, hurting body, misbehavior, break the contract.

Civil & Commercial Code Book V 5 1935 stated the grounds of divorces in section 1500 such as wife committed adultery, spouse misbehave or hurt each other, or parents to injury, or insult other party which one party can file for divorce, or wife abandoned more than one year, do not support or ignore to live together and other party cannot live, which can be filed to divorce.

Civil & Commercial Code Books [15] state the grounds of divorces in section 1516 such as husband supported other woman as wife, or woman committed adultery, spouse have guilty, by criminal case, to cause one party ashamed and being insulted, damaged or suffer more than before, when accompanying with the reason to divorce by each other.

Civil & Commercial Code chapter 5 year 1990 was amended. As a result, some grounds of divorce were added to section 1516 such as spouse are judged to be imprisoned more than 1 year for reason of not guilty, intend or allow to know such guilty, if spouse belong to each other cause harm or damage more, another party can divorce, spouse wanted to separate because they could not live with each other more than 3 years or separate by court for more than 3 years, and other party can file the divorce. Spouse are judged to be lost or move from domicile more than 3 years, without knowing where they are, other party can file a divorce.

Meaning and Conditions of Desertion (Separation) when husband or wife separated with no intention to reconcile, there were consisted of 2 conditions. First is the fact that both lived separately and intended to part from each other except court did agreed upon. Therefore, desertion referred to the action of one spouse who intended not to cohabit with other party as husband and wife. It can be said that spouse was willing to part from other party not from forceful action or some restrictions. For example, husband is a soldier who participates in the war. That's why he was parting from his wife.

Research Methodology

The study of effect of ground of divorce under civil and Commercial Code and quality of life focus on examining procedure to find appropriate legal standard to nationalize in Thai Law. Researcher chose to perform documentary research under qualitative manner. The primary resources are Code, Act, legislations, Court Case, books, articles, journals, and research etc. Therefore, no sample groups were designated in the research.

III. RESULT AND DISCUSSION

To terminate the marriage according to court decision under Thai law, one spouse should exercise his/her rights by filing the case under section 1516. There are various divorce grounds either as a sanction or as a remedy. The sanction criteria applied to spouse that acted against duty of husband and wife due to principle of Fault while, the remedy applied to spouse without considering whether what the ground of divorces which is the idea under principle of no Fault, will fully separation is a ground of divorce under principle of Fault. Thus, the cause of action must show that husband and wife did not agree to cohabit as a couple. The intention can be indicated by living separately in distance. If they still lived together in the house or in different accommodation but located in the same area, though they did not communicate with each other, this did not consider as willfully separation. In conclusion, willfully separation under Thai law referred to the intention that one spouse voluntarily parted from the other without forcing or any abuses. Researcher found that the 1 year duration which is the time condition for willfully separation as a ground of divorce is inappropriate.

IV. CONCLUSION

The way Thai law indicated that willfully separation required only 1 year of separation as time condition of divorce ground without considering the main concept of parting is unreasonable. As stated in court decision, even though the spouses ended adultery relationship, stopped their communication, and live in different house, this did not consider as willfully separation if such household located at the same surroundings. The perception should have changed. Researcher agreed that state shall provide legal measure to apply to spouse who were not willing to cohabit as husband and wife. Also, time condition of such divorce ground should be more than 1 year since there was a possibility for the couple to reconcile.

V. RECOMMENDATIONS

Separation which was considered as intentionally parting should include the matter that spouse cannot cohabit as husband and wife, though they still lived in the same surrounding or household. Such action can be considered as indirect willfully separation. Moreover, times condition of the willfully separation divorce ground should be extended in order to create the probability of reconciliation and to be sure that they cannot cohabit as husband and wife.

ACKNOWLEDGMENT

This research was supported by the Research and Development Institute, Suan Sunandha Rajabhat University, Thailand.

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