

Divorce Case: Case Study of Desertion as Per Thai Law Compared With Lao Law

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Abstract: - Termination of marriage by divorce due to the husband or wife intentionally fled and deserted another party without notice, one spouse has failed to give proper maintenance and support to the other party, and it is the circumstance in which the spouse commits the offense of being a husband, based on an offense theory. It is a measure that the state uses to punish the spouse of the offending party by giving the power to the deserted spouse to have the right to divorce. However, even Thai and Lao law specified that the desertion of another party is the ground for divorce, the circumstances that caused the divorce under Thai law for the desertion must be more than one year; whereas, in Lao law, if the spouses have no intention to live with another party by escaping without notice and do not send property to support family for three years consecutively, it is the ground for divorce. But, there is no right to receive compensation, even if the divorce case occurs because the responsible party has caused the other party with the intention to cause intolerance of another party.

Key-Words: - Deserted, Husband and wife, Ground for divorce, Marriage, Thai law, Lao law

1 Introduction

Family relationship is a relationship that begins with the need to stay together to help each other on the basis of faith based on tradition and culture of each nation. Marriage refers to the fact that a man and a woman agree to live together voluntarily until their lives are over as well as sharing good times and bad times together [1]. The lawful marriage creates a relationship between husband and wife, and it creates mutual rights and duties as spouses until the marriage ends [2].

According to the Thai Civil and Commercial Code, marriage is terminated by death, divorce, or by the court's order; whereas, the termination of marriage or the termination of being spouses of Lao People's Democratic Republic, one of the Association of South East Asian Nations (ASEAN) or the ASEAN Community will be occurred only when there is a court's judgment recognizing that the marriage is void, and the court will judge the void of marriage. It is different from Thai law as the void of marriage is not a ground of marriage termination, and I does not create the bond on assets between a man and a woman. The court will be only a representative to emphasize the waste of marriage. In addition, the marriage may also be terminated by the death of a husband or a wife, or it is called the death of spouse, including divorce [3]. When there is a judgment of the the Court of First Instance or a judgment of the

Court of Appeal allows the spouses to divorce without appeals or there is an elimination of divorce. It is considered divorce when a divorce is registered at the family registration office [4-5].

When considering the termination of a marriage by divorce, it can be seen that the laws of the two countries specified the termination of marriage between a husband and a wife in two factors which are the voluntarily divorce of the spouses with the reasons that both parties cannot live together as a husband and wife, and the divorce by the judgment of the court based on the ground of divorce. Thus, it is to fix a broken marriage even though the divorce is not due to the offense of one spouse or the act of offensive conducted by the spouse such as adultery, physical assault, guilty of misconduct, and desertion, etc [6].

However, the misconduct of spouses due to the reason of not supporting may also lead to divorce. If it is appeared that one spouse has deserted the other for more than one year, the latter may enter a claim for divorce according to the Civil and Commercial Code Section 1516 (4) of Thai law, and there is also the right to claim for compensation if the cause of the divorce occurred because the responsible party has an objective to make another party feel unendurable to stay together. It is unlike the Lao's law where the right to divorce occurs when a party

escapes without notice or does not send property to support the family for three years according to the Family Law Section 20(3) [7-9].

For the above reasons, the researcher considers that the termination of a marriage by divorce because the spouse commits an offense by deliberately deserting is an interesting matter. Therefore, an analysis of the criteria for the right to file for divorce, including the right to claim for compensation for the offense conducted by another spouse according to Thai law compared with the law of the Lao People's Democratic Republic for correct understanding of law enforcement.

Research objective

To study on the termination of marriage by virtue of divorce because the spouse commits a wrongful act with an intention of desertion according to Thai law compared with the law of the Lao People's Democratic Republic.

2 Methodology

Scope of the Research

The research on desertion under Thai law compared with Lao's law is the research to find the appropriate legal measures to use by using Qualitative Research, which conducts research through documentary research, emphasizing on taking research and collecting relevant documents.

Expected Benefits

For the benefit of education in law, and as the guideline to improve and develop family law related to the ground for divorce which will lead to the development of the quality of life of population in ASEAN Region.

Review Literature

1. Concept and theory about divorce.

Divorce is a way to end a relationship as a husband and wife, either due to voluntary divorce or divorce due to unwillingness to live together or divorce on a guilty basis of either party. It can be separated into 3 factors which are:

1.1 Divorce where spouse has committed any wrongdoing as spouses want to end their relationship with each other by themselves. This is a civil marriage termination.

1.2 Divorce in order to punish the spouse who commits an offense as a spouse on the basis of theory of offenses such as physical abuse, adultery, guilty of misconduct, and desertion, etc.

1.3 Divorce to provide remedy for broken marriage in order to open an opportunity for another spouse to start a new life with another person such as if a

spouse has physical condition that cannot cohabit with another spouse forever, etc.

2. Ground for divorce according to Thai law.

Termination of Thai legal marriage by divorce may be due by voluntary divorce or divorce by the order of the court according to the grounds of divorce. The grounds of divorce are specified as follows:

Termination of Thai legal marriage by divorce may be due by voluntary divorce or divorce on the grounds of divorce, and the grounds of divorce are specified as follows:

1. One spouse has given a maintenance to or honored such other person as wife or husband, committed adultery or had regular sexual intercourse with such other person, such other spouse may enter an action for divorce;

2. One spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offence or not, if it causes the other:

(a) To be seriously ashamed;

(b) To be insulted or hated or account of continuance of being husband or wife of the spouse having committed the misconduct;

(c) Or to sustain excessive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration;

3. One spouse has caused 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 enter a claim for divorce;

4. One spouse has deserted the other for more than one year, the latter may enter a claim for divorce;

4.1 One spouse had been sentenced by a final judgment of the Court and has been imprisoned 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 sustain excessive injury or trouble, the latter may enter a claim for divorce;

4.2 The husband and wife voluntarily live separately because of being unable 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 enter a claim for divorce;

5. One spouse has been adjudged to have disappeared, or as left his or her domicile or residence for more than three years and being uncertain whether he or she is living or dead;

6. One spouse has failed to give 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 taking into

consideration, the latter may enter 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 enter a claim for divorce;

8. One spouse has broken a bond of good behavior executed by him or her, the other spouse may enter a claim for divorce;

9. One spouse is suffering from 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 cohabit as husband and wife, the other may enter a claim for divorce.

However, the grounds for divorce as a husband or a wife has a guilty of misconduct, or a husband or a wife support or praise other person as a wife or a husband, has adultery or has an affair with others, or has sexual intercourse with others regularly. If a husband or a wife agrees or has given consent to the act which is a ground of divorce, the party who has given consent cannot raise it as the ground for divorce. On the other hand, if the court has an order to divorce, a wife or a husband has a right to receive compensation from a husband or a wife and from a person who is supported or praised who caused the divorce. A husband is able to claim for compensation from a wife, who has an affair, and a wife and claim for compensation from another woman who presented herself openly that she has an adulterous relationship with a husband of petitioner. For the ground for divorce as a husband or a wife cannot cohabit forever, if it is occurred by the action of another party, it cannot be raised as the ground for divorce.

For the case of desertion, it must be the case that the husband and wife are living separately without love. They have no intention to live together and want to live apart. The action must continue for more than one year without interruption. It must be the case that one party is living separately and another party is living alone. However, if spouses are still living together in the same house, even though they do not talk and have no relationship, it is not in the case of desertion. Moreover, if the spouses have quarreled and stay within the same house, but do not have any relationship together, it is not the case that they cannot live together as general spouses, but it is because the plaintiff feels angry because he understood that the defendant had cooperated with her mother to make a fraud to the plaintiff to take his house and his rice field. When the facts appeared

that before the incident, the plaintiff and the defendant were living in the same house, but just stayed and worked separately, so this is the case that both spouses voluntarily stay in such condition. Hence, the case that the defendant took her eldest child to Bangkok to sell clothes is only a separation to work for a living, but it is not a condition that the defendant intentionally deserting another party or committed acts seriously adverse to the relationship of husband and wife which will cause the plaintiff to file for a divorce according to the Civil and Commercial Code Section 1516 (4)(6). If the ground for divorce occurred because the deserting party has created it with the intention to make another party feels unendurable until filing the divorce, the deserted party has a right to claim for compensation for another party.

3. Ground for divorce according to the law of Lao People's Democratic Republic.

The termination of being spouses according to Family Law of Lao PDR by divorce will be resulted in the termination of marriage under the ground for divorce and the voluntary divorce. The divorce as per Section 20 specified the cause that the spouses can divorce under the reasons specified by law only such as

- (1) Adultery.
- (2) Use of violence or gross insults against each other or against parents or relatives, or behavior evidencing a seriously inappropriate attitude making co-habitation impossible such as regular drinking or gambling.
- (3) Abandoning the family without informing them or without sending news or goods for the family's needs for more than three years.
- (4) The husband is definitely a monk or novice or the wife is a white nun.
- (5) Being a disappearance by the order of the court in the case that one spouse is absent without knowing the location of new address for two years in the case that such person is in the life-threatening event, it is for six months.
- (6) The spouse received the penalty imposed which is imprisonment of more than five years.
- (7) Dangerous serious disease making co-habitation impossible.
- (8) Mental illness making co-habitation impossible
- (9) Incapacity of sexual act.
- (10) Incompatibility of spouses making co-habitation impossible.

The consideration on divorce by the court must appear that the husband does not want to live together anymore and has intention to divorce, but it has a conflict on the sponsorship of the spouse, marriage property, or debt of spouses, or it is

according to the ground for divorce in Section 20. However, when the court receives the petition, both parties will be called for negotiation to return and stay together. If both parties cannot live together anymore, they both have time to rethink within three months. If the term is due, and they will not be able to stay together, the court will have an order to divorce by taking benefits of mother and an immature child, including a husband or a wife who cannot support oneself after divorce.

For a voluntary divorce, it can be implemented when spouses agree to divorce without having any disagreement over the use of parenting and parental power as well as having no problem about marriage property and liabilities during marriage.

3 Result and Discussion

The case of intentionally deserted by Thai law must be the case that the husband or wife does not intend to live with the other party. Neither must the parties wish to separate themselves voluntarily; whereas, Lao's law on divorce occurred when one party fled another party without notice or does not sending property to support the family. The manner in which the consideration is to be made is similar to Thai law, in which case the husband deliberately separates into another place and does not intend to coexist with the other. However, under Thai law, only the actions between husband and wife are considered. There are no cases of desertion of family members, so it is different from the Lao's law that considering on the one who does not sending property to support other people in the family for three consecutive years. Unlike the action of intentionally deserting in Thai law specified that it should be one year consecutive.

However, when the court has an order to divorce due to the intention of desertion because the deserting party has an objection to make another party feel unendurable to live together, in Thai law, it provides a right for the deserted party to receive compensation from the deserting party; whereas, Lao's law has no provision referred to the right to claim for compensation for such reason.

According to Thai law, it specified the divorce narrowly as it was due to intentionally deserted, and the term is shorter than Lao's law. Due to the circumstance of divorce, it will only be considered particularly on the desertion between a husband and a wife for more than one year. For Lao's law, it is not only considering that the husband does not intend to coexist with another by escaping without notice, but it may take the condition of not sending any properties to support the family as a ground of divorce with the term of three years consecutive,

and it is longer than Thai law. However, the lawsuit filed under Thai law about divorce due to the desertion occur with the intention that the other party could not endure to stay together, it executes right to the deserted party to receive compensation from the deserting party unlike Lao's law that does not have such provision.

4 Conclusion

The termination of marriage by divorce due to the husband or wife intentionally fled and deserted another party without notice, one spouse has failed to give proper maintenance and support to the other party, and it is the circumstance in which the spouse commits the offense of being a husband, based on an offense theory. It is a measure that the state uses to punish the spouse of the offending party by giving the power to the deserted spouse to have the right to divorce. However, even Thai and Lao law specified that the desertion of another party is the ground for divorce, the circumstances that caused the divorce under Thai law for the desertion must be more than one year; whereas, in Lao law, if the spouses have no intention to live with another party by escaping without notice and do not send property to support family for three years consecutively, it is the ground for divorce. But, there is no right to receive compensation, even if the divorce case occurs because the responsible party has caused the other party with the intention to cause intolerance of another party.

Suggestions

The abandonment period should be extended from one year to two or three years to provide an opportunity to spouses in order to think until they are certain that they can no longer live together as husband and wife. Moreover, there should be a study on other grounds for divorce additionally to compare with foreign law, especially in ASEAN countries.

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