


 Expat Counsel

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## FAMILY LAW IN THAILAND

### Part XXV: Some final marriage issues

A common and well known ground for cancellation of a marriage is that a party already married cannot marry another. But let's look at a complication. What if, for example, a party to a marriage, Mr X, thought a valid divorce or cancellation had taken place with respect to that marriage and that he and his wife, Ms Y, were no longer married. Mr X and then married another person, Ms Z. It then turned out that the first marriage had not properly been terminated and that Mr X was still married to Ms Y.

How could this have happened? Perhaps Mr X asked a lawyer to handle the divorce and the lawyer told Mr X it had been properly handled, but never got around to it.

The second marriage between Mr X and Ms Z can be cancelled by application to a court by either of them. Note that the marriage cannot be canceled by an application to a court by Mr X if he is not in good faith and knows the first marriage was not terminated in divorce.

Bigamy is not a crime in Thailand, by the way, but if a person who is married represents himself or herself to a public official as unmarried, which it is necessary to do at the amphur or district office to marry, this is a crime punishable with up to six months' imprisonment.

A marriage entered into where one of the parties is already married, such as that between Mr X and Ms Z above, is void. As you may know from earlier columns, this means there isn't a time limit on when the marriage can be canceled.

Here's another issue. A female whose husband has died or whose marriage has been terminated cannot remarry until 310 days have elapsed since the death or termination, unless a) she has given birth to a child during this period; b) the marriage terminated in divorce and she remarries the same husband during this period; c) a qualified doctor issues a certificate to the effect that she is not pregnant; or d) she gets a court order allowing her to remarry. If she does, though the marriage will be valid, the paternity of the child will always be considered that of the new husband.



Obviously, this rule is to prevent confusion over paternity. In case of doubt, if the marriage is scheduled to take place within 310 days of the bride having been widowed or divorced, and to ensure that any child born to the new marriage is really that of the new marriage and not the previous one, you should get a doctor's certificate to the effect that she isn't pregnant.

Failing to do so, the law will consider that the child born to such a marriage is the legitimate child of the second marriage, even if in actual fact it might be a child fathered by the earlier husband.

One final issue. A person who has adopted another cannot marry the person who has been adopted. The outcome in this case is different from that of other cases in which specific parties are prevented by Thai law from marrying, however. This situation doesn't affect the validity of the marriage, just that of the adoption. If, for example, Mr Q adopts Ms R and later marries her, the marriage is regarded as valid and the adoption dissolved.

This will conclude, for now, our coverage of family legal issues. We're aware we could do many more columns on this topic. Your emails have both provided us with many of the issues we've covered in the past and will cover in the future, when we revisit family law. We'd also like to express our gratitude for the patience so many of you have shown in waiting for responses to your questions. Sometimes we are overwhelmed.

For now, it's time to touch on other facets of the legal system of Thailand and other issues you've asked us to cover. Next time we'll start our discussion of criminal law and procedure in Thailand. ■

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