

Expat Counsel

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# FAMILY LAW IN THAILAND

## Part XX: Void marriages — annulment

We have received a number of emails from readers asking questions about ending a marriage on grounds other than those for divorce. In the West, of course, marriages can be annulled, or declared void as a result of conditions that existed or didn't exist before the marriage was entered into.

Although the term "annulment" is not used in Thai law, there are conditions under Thai law that make the marriage void or voidable, even after it has been entered into. The grounds for a void and voidable marriages are different, and will be explained this week and in a later column. In general, a court order is needed to declare either a void or a voidable marriage dissolved. Marriages declared void, however, may be declared so at any time during the relationship of the parties. To get a marriage that is voidable dissolved there are time limits that we will discuss later.

To start with, here are conditions that render a marriage void under Thai law:

- One or both of the parties is insane or adjudged incompetent;
- the parties are related, either so that one is a descendant of the other or they are full or half brother and sister;
- one or both of the parties is already married;
- the marriage was not registered at the district office in Bangkok or amphur in other provinces. This includes marriages celebrated only as religious ceremonies in Thailand.

There must be a court order declaring the marriage void in the above cases. If a court order is issued in a case like this, the marriage is treated, to the extent possible, as though it never existed.

If the grounds are that the parties were already married, anyone whose rights or duties are affected by the marriage can apply for a court order declaring the marriage void. For example, spouses, parents of spouses and descendants are considered eligible to do this. Spouses may apply only if they are in good faith. An example of this would be where Husband, married to Wife One, got married to Wife Two knowing he was already married and did not tell Wife Two. Either Wife One or Wife Two could apply to have the second marriage declared void. Husband could not, however, because he would not be considered to be in good faith.

In the other cases of void marriage mentioned above, parents, spouses or descendants of the parties have the right to apply to a court to declare the marriage

void. If none of these parties are still alive, other parties whose rights or duties are affected by the marriage may apply for a court order declaring the marriage void. A public prosecutor can do this as well, on behalf of one of these parties.

Unlike the situation with divorce, income from individually-owned property before the marriage was declared void stays with the individual who owned the property before the marriage. Likewise, income earned before the marriage was declared void goes to the person who earned it, and is not split up as it would be with a valid marriage and divorce.

Property jointly earned is split up equally, unless the court, in its discretion, determines otherwise.

Even though a marriage is dissolved as void, rights acquired in good faith before it was dissolved may be intact. For example, if a foreign woman acquires Thai nationality because of a marriage to a Thai man that is later declared void, the foreign woman may keep her Thai nationality.

If one of the parties acted in good faith and the other did not, the court may order the party not acting in good faith to pay compensation to the other. An example of this would be where Husband, married to Wife One, got married to Wife Two knowing he was already married and did not tell Wife Two. If the marriage with Wife Two is dissolved because Husband was already married, the court can order Husband to pay compensation to Wife Two.

Likewise, if the dissolution of the marriage between Husband and Wife Two leaves Wife Two destitute, the court may also order Husband to pay Wife Two a living allowance. Claims for such compensation and living allowance must be made within two years of the dissolution of the marriage.

The parties to a marriage declared void may agree in writing on child custody and support. If they can't agree the court may decide, and even appoint a third person as guardian.

Next time we'll discuss conditions that make a marriage voidable. ■

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