
 Expat Counsel

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FAMILY LAW IN THAILAND

Part XXII: Voidable marriages — grounds to cancel a marriage

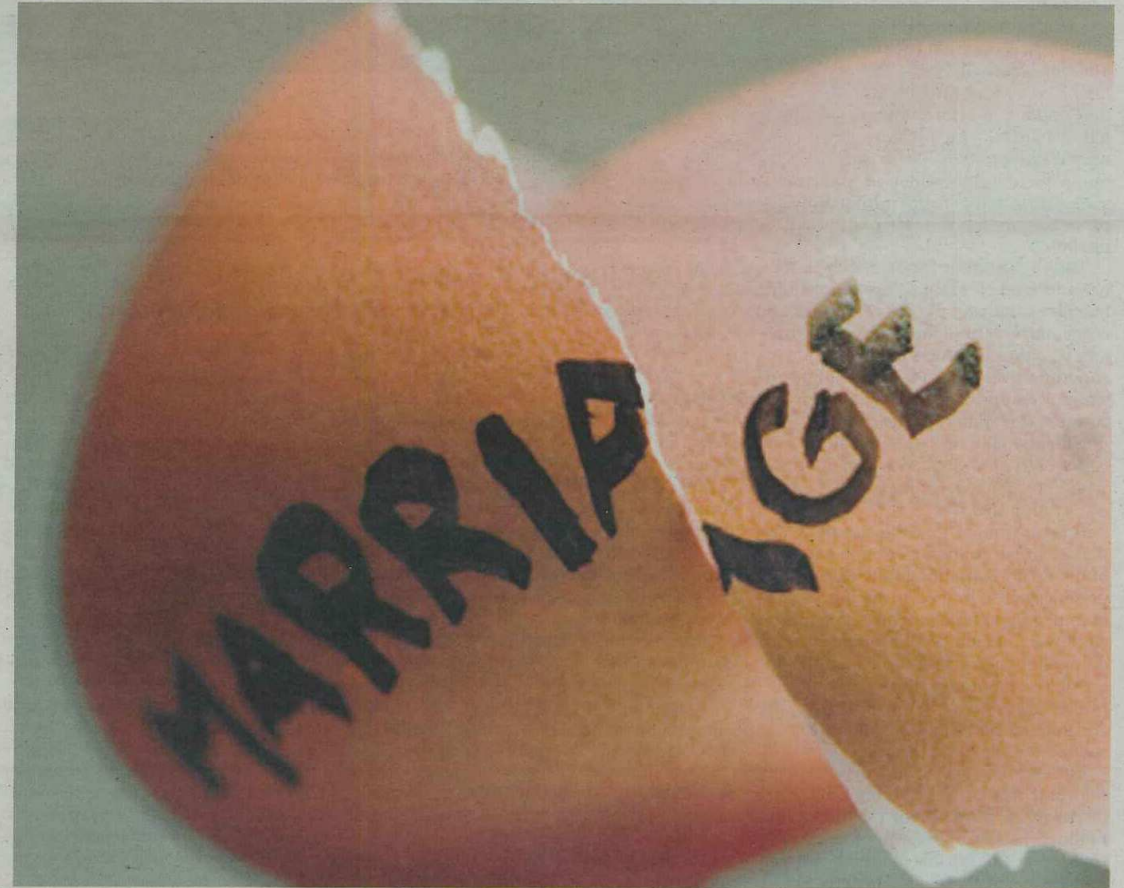
Last week we began the discussion of the grounds for cancellation of an existing marriage that fall in the category of voidable marriages. This week, we will explain other grounds on which a marriage may be cancelled due to voidability. A marriage may be cancelled for voidability on the ground that one spouse was mistaken as to the identity of the other at the time of the marriage. This can happen in several ways. In an updated version of a "mail order bride", for example, a potential wife meets someone outside Thailand on the internet. The foreigner then comes to Thailand to get married. When he arrives, another woman, of similar appearance to that in pictured on the internet, is substituted for the person with whom he been corresponding and a marriage takes place. This marriage is voidable.

Let's look at a couple of examples that illustrate the rule. Husband falls in love with and proposes to Sister One. She accepts. At the marriage ceremony Sister Two, who looks like Sister One, is substituted for and marries Husband. Husband can apply to cancel this marriage.

Conversely, Husband II falls in love with Wife II, who is living under an assumed name. She has assumed the name not to defraud anyone, but to avoid her father, who has been abusive. Husband II and Wife II are married. Husband II cannot apply to have the marriage cancelled on the ground of mistaken identity, even though Wife II did not tell him about the assumed name. Thus, for this ground to apply, it is the person, not the name, who must be mistaken. In the case of mistaken identity, the application to cancel the marriage to the court must take place within 90 days of the registration of the marriage at the amphur or district office.

Another ground for cancellation is major fraud. Thus if a party marries claiming falsely that he or she is rich or lying about a significant criminal history, the other party may apply to the court to have the marriage cancelled. The right to terminate the marriage on this ground ceases 90 days from the date on which the spouse knows or should have known about the fraud, or one year from the date of the marriage, whichever occurs sooner.

Let's look at an example. Say you are a foreign man and fall in love with a Thai woman. To get her to marry you, you tell her you are the heir to a major fortune in



your home country. In fact you are not, and she finds out a month after you are married. The standard the court will use to decide whether this fraud is sufficient to cancel the marriage is whether the marriage would not have been entered into by the innocent spouse if that spouse had known the truth. If the court determines that she would not have married you if she had known you were not an heir, the marriage can be cancelled. But she must apply for the cancellation within three months of the time she became aware of the fraud, in this case within four months after the marriage ceremony.

To be able to cancel a marriage based on fraud, by the way, the fraud has to

come from the spouse, not a third party. Thus, in the above example, if it had been a friend of yours, and not you, who had told your wife that you were a rich man, your wife could not apply to have the marriage cancelled on the ground of fraud.

If one of the parties was forced into the marriage by duress, this is also a ground for cancellation of the marriage. The court would apply a similar test to that discussed above for fraud — would the marriage have been entered into without the duress? The right to terminate a marriage on this ground ceases one year after the spouse who was forced into the marriage is free from duress.

The grounds for cancellation of a mar-

riage mentioned above can normally be claimed only by the spouse who is innocent. If that spouse is adjudged incompetent or is insane, however, other rules may apply. In this case, other parties, for example parents, guardians, descendants or even the public prosecutor, may apply to cancel the marriage. ■

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