

A COMPARATIVE STUDY ON THE ENGAGEMENT IN THAI LAW AND LAW OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC

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Abstract - An engagement is the legal relationship that men and women will marry in the future, and the man will hand over or deliver property as the dowry to the woman as the evidence of engagement. However, the law does not force the man and woman to make an engagement before; hence, the man and the woman can enter into the marriage without having the engagement. According to Thai Law, the engagement shall be made when the man and the woman who are expressing their intentions to enter into the engagement contract is seventeen years of age or above. If the engagement condition is violated, it is void. In the case of minors entering in the engagement, they shall be first consented by the father and mother, guardian, or parents, as the case may be. The engagement will be voidable if it is performed without consent, and this is different from the law of Lao People's Democratic Republic as it does not determine the age of a man and a woman who are entering into the engagement, and the engagement can arise from the agreement between fathers and mothers, matchmaker of a man, and a matchmaker of a woman according to the intention of both man and woman to live together as husband and wife in the future, but they cannot marry because the marriage conditions are not fulfilled. The law determined that memorandum according to the tradition must be made. With this reason, according to the law of the Lao People's Democratic Republic, the engagement can take place even men and women are under the age of seventeen.

Keywords - Engagement, Engagement Gift, Law

I. INTRODUCTION

In most societies, formal marriage begins at the time of marriage which created the legal relation in legal field. The Family Law in Thailand stated that the marriage begins when there is a marriage registration by law, and it creates the status and relationship between husband and wife as spouses. Upon the marriage, the relationships between man and woman before the marriage may arise in the form of engagement. In the past, Thai society was more focused on traditional engagement with the consent of parents and relatives. The principle has been developed to become a rule as a legal condition appeared in Lanna Law and legal nature of spouses until it is presented nowadays in the Civil and Commercial Code, Book 5: Family Law [1].

The engagement or the making of engagement contract is a legal relationship between a man and a woman who promises to marry and live together as husband and wife [1]. The man reserves the woman for marriage by law. Therefore, the engagement contract is the contract occurred before the marriage. However, even though engagement is inherited from the past until the family law supported it in the form of a contract in Book 5, the foreign law such as French law and English law do not support the engagement to have binding effect as a contract, but it is only an agreement condition made by a man and a woman before marriage [2].

The property is provided as a guarantee for the fulfillment of the contract to the fiancée called "arra", which developed from the custom of the East. If

either party fails to comply with the contract, the other party shall be entitled to claim for the compensation from breaching the contract. In the legal nature of spouses in the past, parents had independent power over their children; therefore, the engagement is operated by parents without having to ask for the children's consent. An engagement occurred when a man brought a tray of gifts to engage the woman, starting from Khan Mak Klao Tham (tray of asking) to ask for the will of engagement. If a woman accepted the tray of gifts as an engagement, the engagement contract was made with the promise to marry with the man. If the woman denied, the asking is cancelled, and the tray of gifts will not be brought to the woman. It is different from the current law that the validity of an engagement occurs when a man delivers or transfers as property of engagement to a woman to prove that he will marry with the woman. Hence, the engagement must come from the consent of both man and women, but not the compulsory that the man and woman must enter into the engagement before marriage. Thus, men and women may marry without the need for engagement. On the other hand, if there is a will to be bound as a fiancée, the engagement must be subjected to the legal enforcement [3].

According to Thai law, there are several conditions of engagement, such as the minimum age for a man and a woman to make an engagement at the age of seventeen pursuant to Section 1432, and in the case of minors entering in the engagement shall be first consented by the father and mother, guardian, or parents pursuant to Section 1436; whereas, the validity of the engagement is occurred when the man

delivered or transferred the engagement property to the woman pursuant to Section 1437. One the other hand, if the engagement contract is breached, another party entitles to claim for the compensation. However, the engagement contract has a special quality that it cannot force the man and the woman to comply with the contract by marriage pursuant to Section 1438. Thus, it is contrary to the consent of the marriage [4-5]. Whereas the law of the Lao People's Democratic Republic, the neighboring country that has similar cultures and traditions to Thailand and are one of the members of the Association of Southeast Asian Nations (ASEAN) or the ASEAN Community. There is a provision related to the relationship between a man and a woman subjected to the engagement in Chapter 1: the engagement and the asking for marriage proposal stated that if the couple want to get married as a husband and a wife, but the conditions for the marriage is incomplete at that time, both parties who wish to marry shall make the memorandum about the engagement according to the tradition [6-7]. The man can, whether or not, deliver property or precious object to the woman, and the contract parties are called as "the couple." It is different from Thai law. In addition, it has the distinctively different on the engagement provision. The study on the conditions related to the engagement under the laws of both countries is interesting. Thus, it is for the accurate understanding for the law enforcement which will be beneficial for protecting the rights and promoting the quality of life of people in society [8].

II. DETAILS EXPERIMENTAL

2.1. METHODOLOGY

A. Objective of the research

To study and compare the conditions of engagement under Thai law and the law of Lao People's Democratic Republic.

B. Research Methodology

The Comparative Study on the Engagement in Thai Law and Law of the Lao People's Democratic Republic is conducted to find the appropriate legal measures to apply by using Qualitative Research, and the Documentary Research is conducted by studying and compiling relevant documents as well as in-depth interviews.

C. Expected benefits

For the benefits towards the law education industry and to guide the improvement and development of family law in relation to engagement in order to lead to the development of quality of life in the ASEAN region in the future.

D. Literature Review

The nature and conditions of engagement. The engagement is performed to allow a man and a

woman to learn each other and get to know each other. In society, it is good that a man and a woman can get to know each other and go somewhere else without being seen as inappropriate action.

1. The engagement under Thai Law

Thai law specifies the conditions of engagement into 3 factors, which are

1.1 Condition of age for a man and a woman who are entering into the engagement

For the engagement condition, it can be fulfilled only when a man and a woman are seventeen years of age, according to Section 1435, which has been used since 1976. When there was an amendment on the family law, the engagement, the engagement conducted while a person is not yet seventeen years of age is void. It means, there is no effect since in the beginning. Therefore, the man and the woman are not the betrothed. The condition of age is no the ability to perform the juristic act, but it is the qualification of performing the juristic act, and it is the essence of the validity of the juristic act.

1.1 Conditions related to the consent in the case that the minor is entering into the engagement

The engagement is one of the juristic acts; hence, the man and the woman must express their intentions to enter into the engagement by themselves. However, in the case that the man and the woman reached seventeen years of age, but not yet reaching the legal age would like to enter into the engagement under Section 1436, it is stated that it must be consented by the following persons:

- (1) Father and mother as persons using parental power together;
- (2) Father or mother in the case that mother or father is dead or has been deprived from the parental power or is not in a condition or position that may give consent, or in such circumstances, the minors cannot ask for the consent from the mother or the father, so it is only possible for one person to give consent;
- (3) The adopter, in this case, is foster parents. Thus, due to the registration of adoption, the father and mother will naturally be terminated from having parental power to the minors; therefore, the parental power belongs to the foster parents since then;
- (4) Parents, in the case of no father and mother, no foster parents, or have but such person is deprived from the parental power. In this case, the parents from the order of the court act as a person giving consent for the engagement of a minor.

1.2 Conditions related to the validity of the engagement. Dowry is the property that the man has handed or transferred to the woman at the time of engagement as evidence that he will marry her under Section 1437. If the man only agreed to deliver the property, but it is not delivered at that time, such agreement is not the agreement of the engagement. Thus, the engagement requires the delivery of dowry to the woman in every case. After performing the engagement, the woman will have the right on the dowry, and it can be a property includes things as

well as incorporeal objects, susceptible of having a value and of being appropriated.

2. The engagement under the law of Lao People's Democratic Republic.

The law of the Lao People's Democratic Republic gives the meaning of the word "engagement" as the agreement between the parents, a matchmaker of a woman, and a matchmaker of a man who wish to live together as husband and wife in the future by making memorandum between the man or the woman, or giving money or precious objects to the woman. When a man and a woman who wish to live together as spouses, but they are not able to comply with the marriage contract at that time, both man and woman shall make a memorandum about the engagement according to the tradition. In this case, the man will, whether or not, provide property or precious objects to the woman. However, such engagement will be arranged for the marriage in the future. Therefore, if a man and woman meet the conditions of marriage in the future, the man will accompany his parents to propose the woman for the marriage according to the tradition again in order to negotiate about the bride-price or dowry under Thai law as well as a preparation for the marriage ceremony.

Nonetheless, in the case that the engaged couple had intercourse before the marriage, and then the man refuses to marry the woman as his wife, the man shall pay for the compensation to the woman and her family according to the tradition. If such intercourse leads to the pregnancy, the man must be responsible to raise the child until he or she reaches the legal age of eighteen, including any other necessary expenses.

III. RESULTS

The engagement by law in Thai family requires gender and minimum age for persons entering into the engagement clearly that it can be made when a man and a woman are seventeen years of age as specified in Section 1435 as same as in the case of marriage, but if there is a reasonable case, the court may permit to enter into marriage before having seventeen years of age, but if it is the marriage that breaches the condition of age, the marriage will be voidable. Section 1504 is different from the engagement that breaches the condition subjected having the age under seventeen years old which the result is void and has no effect since in the beginning. While in the law of the Lao People's Democratic Republic, if it is considered from the intent of the words in the law, it can be seen that the reason for the engagement occurred because both man and woman want to live together as husband and wife, but the marriage conditions cannot be followed as, for instances, the age is not eighteen years old; therefore, Section 9 of the law allows for the engagement, and the minimum age of the engaged couple is not specified for the persons entering to the engagement,

unlike the marriage. In this case, the father and mother are persons who consider for the appropriate in terms of age according to the traditional practices.

Next, according to Thai law, the engagement occurred by the agreement between a man and a woman, so a man and woman are willing to make an engagement contract by themselves without the consent from their parents, except in the case of the engagement between minors with the age of seventeen, but not yet twenty years of age as they have to be screened by fathers and mothers, adoptive parents or guardians as the controller of the minor's legal capability to act; whereas, in the law of the Lao People's Democratic Republic Engagement, the engagement starts with an agreement between parents and a matchmaker from the woman's side and the parents and a matchmaker from the man's side who will come for negotiation as an initial agreement, and the man, whether or not, will give property or precious objects to the woman, but according to the traditional practices, the man is likely to give money and property to the woman.

Nonetheless, the validity of the engagement under Thai law will occur when the man delivers or transfers the property of the engagement to the woman at the time of engagement in order to prove that he will marry the woman. Section 1437 has no provision to enforce that the engagement shall be in writing which is different to the Section 1/3 of the law of the Lao People's Democratic Republic that a man and a woman shall record the engagement in the presence of the villager as evidence of engagement according to the traditions.

DISCUSSION AND CONCLUSIONS

The result of the comparative study on the engagement in Thai Law and Law of the Lao People's Democratic Republic can be seen that laws of both countries are from the basic of cultural and social norms within each country. With this reason, the engagement conditions are based on the beliefs inherited from the tradition of the family. It is appropriate to fit the lifestyle. Even the age of the person who can make engagement of the two countries is different, both countries have legal and social measures to protect men and women who intent to live together as husband and wife in the future. For the law of the Lao People's Democratic Republic, it provides parents the right to participate in making an agreement for the engagement according to the traditions, which is similar to the legal nature of spouses of Thailand in the past that the parents had independent power over their children; whereas, the current Thai law provides the independent right to men and women who meet legal ages to perform the engagement with their intentions and wills under the scope of morality according to the natural rules, and parents will only be those who screen for the appropriateness by providing consent to the

engagement between the minors. The government and society can protect and certify the engagement as the beginning of family formation, which is a natural and fundamental social element in every case whether the conditions of the validity of engagement will specify to deliver or transfer property as an engagement gift to the woman while making an engagement or specify to record the engagement as evidence. Thus, it is in accordance with the context of change in each society.

SUGGESTIONS

There should be a study about the engagement, and the claims for compensation due to the engagement under the law of other countries. Thus, it is for the comparison on the similarities and differences with Thai law, particularly for the Association of South East Asian Nations (ASEAN) Member States for the further law development.

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