

CLAIMS FOR COMPENSATION ON THE ENGAGEMENT: A CASE STUDY WHERE A FIANCÉ HAS AN INTERCOURSE WITH ANOTHER PERSON

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Abstract - Engagement is a tradition that has been inherited from the past until it was introduced as a legal norm. The juridical relationship under the contract of engagement creates the right, duty, and status of the fiancé. In the case that either party does not fulfilling the purpose of engaging in marriage with his or her spouse, or the action that makes the one party become unsuitable to marry with another party, or conduct an evil action, the law provides the contracting party the right to terminate the engagement by law, and if the offense is committed by an engaged fiancé, the law provides the fiancé whose right is abducted as the fiancé to be able to claim for a compensation from the one who has sexual intercourse with his or her fiancé if that person knows or should know about the engagement according to the Civil and Commercial Code, Section 1445, which is the current applicable law. However, the right to claim for such compensation is only in the case of having a sexual intercourse in copulated way between a man and a woman in a natural way as having adulterous relationship or as being an adultery.

Index Terms - Engagement, Compensation, Law

I. INTRODUCTION

Engagement is a tradition that Thai people have inherited from the past for men and women who want to marry in the future, according to the sexual instinct which is the desire of a woman and a man who want to live together as a family, and become parents who support their children [1]. This is the source of recognition and protection of family institutions legally according to the perception and consent of parents and adult relatives that both man and woman are paying respect. It is appeared in the Spouse Section or the Spouse Law, which is one of the laws in the Three seals law, identifying about convincing the parents of the female as the male will marry this woman legally in the future [2]. Moreover, there was a tray of questions to convince the parents or relatives of the woman, and if the woman agrees to marry the man as it was convinced, then the tray of engagement and the tray of marriage will be given, respectively [3]. Even though the law did not explicitly mention the terms and conditions of engagement, from the words specifying about the giving of tray of engagement and agreement on the bride-price, it was adequate to acknowledge the importance of engagement before the marriage, and even if the parents were acting without having any consent from the child first. In case the male gave a tray of gifts to ask the woman, and the female accepted the tray, it was considered as an engagement promise, which was a promise to marry the man. However, if the agreement was breached by the man as he did not give the big tray of gifts to the woman to ask for marriage within a specific time, the woman could confiscate the bride-price. In addition, if a woman had sex with other men, it could not be considered as a guilty of adultery because the woman

was not a wife of the man [4]. In 1935, the law was amended, and the Civil and Commercial Code was announced to replace the spouses law and would continue to establish rules of engagement inherited from tradition in law.

The action of entering the engagement contract or engagement under the current law is to agree that both parties will enter into marriage, which means, it creates bind and the fiancé status. This is a tradition that has been practiced since ancient times and the law has been certified. Thus, this is for people to acknowledge, and it creates confidence to men and women only [5]. But engagement is not a true civil contract, which means it is not intended for moving the right on the assets, but it is just to create the status (as a fiancé). The intention of a fiancé is to be independent before having such a status. When having a fiancé, a private relationships and property relationships will be controlled next [6]. In the event that either party breaches an engagement agreement, the other party will be entitled to claim for a compensation for the breach of contract. The right to claim for a compensation may be due to an important situation that happened to a female fiancé, and a man is not suitable to marry the woman under Section 1442, or some important things happened to a male fiancé, and the woman is not suitable to marry the man under Section 1443, and in the event of termination of the engagement due to the evil act of the fiancé after the engagement, the fiancé who committed such evil act must also liable for a compensation to the fiancé who has the right to terminate the engagement contract as a breach of the engagement contract under Section 1444. In addition to the compensation from the fiancé, the law also provides the protection of the fiancé's right to prevent another person from violating a female

or male fiancé [7]. by providing a right to claim for a compensation from another person who has committed or attempted to rape his or her fiancé by knowing or must know about such engagement under Section 1445 and Section 1446, as the case may be.

For the right to claim for compensation, anyone who engages a sexual intercourse with his or her fiancé by knowing or must know the engagement under Section 1445 is questionable on how much it is to be considered as an adultery, which is the violation on the fiancé. The legal measures in force are in line with the intent of protecting the rights of persons whether more or less, and how the trend and direction should be. Thus, it is to provide accurate understanding on the enforced law.

Research purpose

To study about the right to claim in the case that a fiancé has sexual intercourse with another person.

II. RESEARCH METHODOLOGY

It is a study on the right to claim in the case that the fiancé has an intercourse with another person, and it is a study on the right to claim for a compensation from a person who violates the fiancé's right by having an intercourse with a male or female fiancé by using Qualitative Research, which conducts research through documentary research, studies, and relevant information collection.

Expected benefits

For the benefit of law enforcement and as a guideline for the development of family law in relation to claim for a compensation from those who violate the right of the fiancé, and it may lead to the improvement of the quality of life for the population in the future.

III. RESULTS OF THE RESEARCH

The engagement contract is a contract with an important purpose that a man agreed to marry a female fiancé in the future. When they entered into the engagement, a man and a woman have rights and duties as a fiancé. However, if it turns out that one of the parties does not wish to marry their fiancé, the fiancé cannot entitle to apply the right on the lawsuit to force the other party to comply with the engagement contract by entering into a marriage because the Civil and Commercial Code, Section 1438 clearly stated that the engagement is not a reason to ask the court to force a marriage because the marriage must be occurred with the consent of a man and a woman under Section 1458. If it is a marriage without the consent to marry, it is void under Section 1495.

In the event of having an engagement, but there is a breach on the engagement contract later, the other party has the right to call the party for a liability on the compensation, which means, money or anything else required by law to be paid or compensated for

damages from the breach of contract, the violation, or the infringement of a one's rights or otherwise [8]. And if the breach of contract is caused by the act of the woman, the woman shall return the engagement gift to the man. Thus, it is to replace the damage to the body or reputation of a man or a woman and compensate the damage when a fiancé, a parent, or a person acting as a parent has spent or become a debtor in preparation for marriage in good faith and as suitable, and it can compensate the damages that the fiancé has managed the property or other related to their profession or way to find it because it is supposed to be married. If no engagement, the claim for a compensation is not existed according to the Judgement of the Supreme Court no. 1092/2539. When there is no engagement, the plaintiff has no right to sue for the compensation on damages for preparing the marriage.

In addition to the right to claim compensation, if it is appeared that there is any situation happened during the engagement; for instance, a woman or a man has a serious communicable disease, a woman or a man has no reproductive capacity, including the fact that a woman or a man has sex with another person who is not his or her fiancé, Thai law provides the other party the right to terminate the engagement legally in accordance with Section 1442 and Section 1443, but the termination of the contract of engagement in accordance with these two provisions will not be raised to call for an indemnity [9]. Unless, the fiancé committed an evil action after the engagement and there is the termination of the engagement like it is committed as a breach of contract under Section 1444, and it shall be the case of having serious misconduct by engaging in sexual intercourse with another person other than his or her fiancé.

Moreover, the provision in Section 1445 also grants fiancées or fiancé the right to claim for a compensation from those who have engaged in sexual intercourse with their fiancé by acknowledging or must know about such engagement. When the engagement contract is terminated under Section 1442 or Section 1443, which is the case according to the Royal Institute Dictionary, 2011. It has given the word of having sexual intercourse as to have sexual as a spousal relationship, so adultery is to be dealt with the feeling of voluntarily. Professor Prasobsuk Boondej has considered that the intercourse refers to the action of having sex between a man and a woman in a natural way [10]. Whereas, Prof. Somchai Thikhauttamakon has considered that whether a fiancée or a fiancée would commit adultery with a man or woman of the same sex, the one who has sexual intercourse with him or her must do it when he or she knows or must know about the engagement [11]. And, such act must be the action of having an intercourse, not just improper sexual misconduct which it is not in the stage of having an intercourse [12].

Prof. Seni Pramoj, M.R., has seen that it must be the action to have an intercourse according to the action of having an adultery with other's fiancé in the previous

law. If other man has touched a fiancé in the adulterous way and he needs to pay for damages, it might be too much, but if a woman is a wife of a man, the prohibition for both having intercourse and touch is suitable. For Prof. Chok Jaruchinda, he has the opinion that it shall be considered from the doer and the action in each subject [13]. If the body is moving to a point that is closer to the action of having sex until it is completely done, and the doer has an intention to commit adultery, it can be considered as an offense on having sexual intercourse [14].

For the claim for a compensation from those who have sexually abused on the female or male fiancé, the law also includes the case where a person rapes, acts, or attempts to rape the fiancé in accordance with Section 1446, based on the nature of the offense under section 276 of the Criminal Code, which may be committed between man and woman, man and man, woman and man, or woman and woman in the nature of having sex without consent, and it must be performed to meet the desire of the offender by using the penis of the offender against the penis, anal, or oral of another person, or using anything else to do with the genitals or the anus of another person as in the Judgment of the Supreme Court no. 6323/2557. In the case that the offender has used his penis to have an intercourse, it will be the complete action of offence. If a man did to a woman, it should be the case that the man's penis was getting or putting into the female's vagina, anal, or oral cavity of the female. If it is the action that a man did to a man, it should be the case that the man's penis was getting or putting into the anal or oral cavity of another man. If it is between woman and man, the penis of the man is put into the vagina of the woman who did it. For the case that the person uses something else to commit the intercourse, it can be the complete offence when a man uses such thing to get into the vagina or anal of a woman. If between men, it is when a man uses something getting into or put into the anal of another party, or using the penis of another party to get into or put into the oral cavity or the anal of the doer. And, if it is the case that a female does to a male, it is when a woman uses something getting into or put into the anal of a man, or using the penis of a man to get into or put into the oral cavity or the anal of a female. If it is between women, it is when a doer uses something getting into or put into the anal of another female party.

The male or female fiancé can claim for a compensation from the doer without terminating the engagement contract first. The action that the law provides for the right of a man or woman to claim compensation from someone who incites his or her fiancé under Section 1445 to prevent another person from having sexual intercourse with a fiancé is to protect the rights and status of individuals under the contract of engagement. This is a measure that the state and society use to protect the rights of individuals under an engagement agreement as the basic contract to build a family, which is a natural and basic unit of

society. If it is done in a way that violates the fiancé's rights, the offender shall be liable for compensation to the infringed person even the circumstances of the act will not affect the body of the person directly infringed. This is in the same way of providing the right to claim for a compensation from those who rape or attempt to rape their fiancé under Section 1446. The claim for compensation under section 1445 should not be limited to the case of homosexuality, but also needs to consider to the behavior of having sex between the fiancé and another person whether it is to have a sexual intercourse with the same or different sex, and it may have through anal, oral, or by any other means to meet the desire of the offender. Thus, this is to be able to enforce the law covering all intentions of protecting the person's status.

CONCLUSION

Claiming for a compensation from the one who has sexual intercourse male or female fiancé, the law is intended to protect fiancé status, so it prevents other people from having intercourse with his or her fiancé. The provision giving the right to a male or female fiancé to claim for a compensation from those who have adulterous relationship with the male or female fiancé, limited only by having sexual intercourse in copulated way like spouse under the natural way as an adultery. Therefore, the right to claim for a compensation in this case, under the current law, it is limited only for having sexually intercourse between men and women is prohibited, so it should be written in the same way for homosexuality whether it is through sex, anal, or oral, or by using something else in the same way for the satisfaction of the doer.

SUGGESTIONS

1. There should be an amendment of Section 1445 that "A male fiancé or a female fiancé may claim for a compensation from someone who has sexual activity or otherwise in the same act with his or her fiancé for one's desire by knowing or should know about the engagement when the engagement contract is terminated under Section 1442 or Section 1443, as the case may be."
2. There should be a study about engagement, and claim for compensation due to the engagement in other countries to compare the similarities and differences with Thai law, in particular, from the countries that are the members of the Association of South East Asian Nations (ASEAN), in order to contribute to the development of the law in the future.

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