

THE MARRIAGE OF PERSONS OF UNSOUND MIND AS PER THAI LAW COMPARING WITH CAMBODIAN LAW

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Abstract: Family Law of the Kingdom of Thailand and Cambodia are based from the tradition and cultural proximity with the ultimate purpose to protect the society, spouse, and family for the equality on both man and woman who entered into the marriage. Therefore, principles of law of marriage between two countries have some similarities as the registration is taken as a marriage condition; whereas, marriage cannot take place for a person of unsound mind. Thus, it is to protect those who have unsound mind with mental defect, family, and society. According to Thai law, the man or the woman who is a person of unsound mind or a person adjudged incompetent cannot enter into marriage. In the case that the person adjudged as unsound mind and incompetent is recovered from such disorder, that is, such person has no mental defect currently, but he or she has not been repealed from being incompetent by the court, such person is a prohibited person by law, and a marriage contrary to this provision shall be void and it has never existed since the date of the marriage. Unlike the law of Cambodia, the marriage cannot take place for a person of unsound mind or a person with mental defect, but it is voidable. If such person is recovered from such disorder and being normal, the voidable marriage is considered as it exists without re-marriage.

Keywords: Law, marriage, unsound mind.

I. INTRODUCTION

Kingdom of Thailand and the Kingdom of Cambodia are neighboring countries that are members of the Association of South East Asian Nations (ASEAN) or ASEAN Community. As both countries have connected border, there are similarities on cultural background, way of life, and religion which is Buddhism. Hence, Family Law which is the law based on the tradition and culture of both countries are similar with the ultimate purpose to protect the society, spouse, and family for the equality on both man and woman who entered into the marriage. In this case, principle of law of marriage has taken registration as a marriage condition. However, upon the marriage registration, there are several marriage conditions specified by Thai Law and Cambodian Law [1].

According to the Civil and Commercial Code of Thailand, the prohibition on marriage is specified in Book 5 mentioned that it is prohibited to enter into marriage with a person with unsound mind or a person who is incompetent in Section 1449, prohibited to marry with a person who is his/her blood relations in Section 1450, prohibited to marry with a person who is the spouse of another person, prohibited to marry without a consent in Section 1558. In this case, Thai law has taken a voluntary basis of morality into account; whereas, Cambodian Law defined marriage as the covenant between man and woman, expressing the spirit of love as per the provision of law and understanding of each other. Hence, both man and woman cannot terminate the marriage arbitrarily, and its marriage condition is similar to Thai law, including the prohibition to marry with blood relations in the direct ascendant or descendant line, the prohibition to marry with person who is the spouse of another person, the prohibition

to marry with a person with unsound mind and a person with mental defect, etc [2-5]. The violation of the specified law on marriage may lead to void or voidable, depending on each case. The void of marriage means that such marriage has never existed since the date of the marriage, so it brings impact significantly upon spouse, children, as well as outsiders. Therefore, the void has broken all previous principles of marriage. Thus, the interpretation of the grounds for void of the marriage should be strictly interpreted, including the terms and conditions thereof [6-10].

Problem Statement

After considering the conditions of marriage for a person with unsound mind or mental defect from both countries, it can be seen that some rules and results of marriage are differences in some parts. For the law of Thailand, the marriage cannot take place if a man or a woman is a person who has unsound mind or a person adjudged incompetent. The unsound mind is not specified only on those who has mental disorders as it is understood generally as insane, but it also includes those with abnormal behavior because of mental disorder such as lack of sense, lack of conscious, and lack of responsibility because such person cannot work or conduct business, and it also means a patient with brain tumor who has to be in bed all the time, speechless, deaf, and both eyes are blind, as well as those who have no conscious and unable to perform any activities is considered as a person with unsound mind as per the Civil and Commercial Code, Section 29 and being incompetent means an unsound mind person who is adjudged as incompetent. For the marriage under Cambodian Law, it is prohibited for an insane person and a person with mental defect to enter into marriage. This is an interesting factor whether such condition is applied to which group of

mental defects, as well as its similarities and differences, including the result of violation of such marriage.

With the above reasons, the researcher has seen that the marriage of unsound mind person is vital, so it is necessary to study on the marriage of unsound mind person under Thai Law comparing with Cambodian Law as community integration will lead to free flow of goods, services, investments, labors, and manpower, and it may increase the rate of marriage between Thai and Cambodia. Therefore, the analysis on the study related to the marriage of unsound person between both countries in comparison should be conducted. Thus, it is for the accurate understanding of law enforcement which will be helpful to protect the right and promote the quality of life of publics [11-13].

Research Question

Can a person with unsound mind enter into marriage?
What is the result by law?

II. DETAILS EXPERIMENTAL

2.1. METHODOLOGY

A. Objective of the research

To study on the marriage of a person with unsound mind under Thai Law comparing with Cambodian Law

B. Research Methodology

A study on marriage of unsound mind person under Thai law comparing with Cambodian law in both rules and results of marriage affecting quality of life is the research for accurate understanding of the law enforcement, and an appropriate legal measure will be applied through Qualitative Research and Documentary Research by studying and collecting related documents.

C. Expected benefits

For the benefits towards legal education and as the guidelines to improve and develop family law to support and protect rights of publics that will be contributed to the improvement of the quality of life

D. Literature Review

Types of Mental defects

World Health Organization (WHO) has announced types of mental defects by divided into 3 big categories, which are:

- 1) psychoses
- 2) neurotic disorders, personality disorders, other nonpsychotic mental defects.
- 3) mental retardation.

In this case, psychoses is a mental defect, and it can be seen clearly that a function of mind works abnormally until such person cannot live normally,

and a patient's behavior has changed, not being in the real world, and not be able to know his condition.

Meaning of a person with unsound mind

A person with unsound mind is a person with impaired mental condition that has been presented soullessly without any conscious. It is not just wandering around. Being an unsound mind person is regardless of a person's age by law. Therefore, the unsound mind person can be a minor or a sui juris, but as long as he or she has not been adjudged by law to be an incompetent, an unsound person can perform juristic act by himself/herself, and such juristic act is valid by law, unless when the act was done at a time he was actually of unsound mind, and the other party had knowledge of such unsoundness (the Civil and Commercial Code, Section 30).

However, any unsound person, if a spouse, parents, grandparents, great-grandparents, descendant who is offspring, nephew/niece, great-grandchild, parents, or guardian, or parents who are taking care of such person, or the prosecutor requested the court to order a person as unsound mind and incompetent, the court can adjudge such unsound person as an incompetent. Therefore, the incompetent is an unsound person adjudged as incompetent by court to be under the care of curator. Any action done by incompetent is voidable without considering on "intention."

Marriage conditions under Thai law

1) Marriage can take place only between two persons with opposite sex. Thus, Section 1448 of this Code stated that "A marriage can take place only when the man and woman ..." Even though there is no clear prohibition or provision on the marriage between persons with same sex, because of tradition and culture as well as spirit of law, a marriage has purpose to create a family and give birth to an heir, so the marriage focuses on the marriage between a man and a woman as opposite sex only. Currently, despite the claims of homosexuals, trying to claim the right to form a family in companion, but such claim has no concrete result because it is under a consideration; whereas, sex of general person is supported by law, and it is counted from his/her original sex.

2) A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age under Section 1448, and if the marriage is violated on the ground of its avoidable shall be made only in the case where the spouses are under seventeenth year of age, it is voidable under Section 1503. It means that a man and a woman can live together as spouses by law, but the marriage can be terminated. The voidable marriage terminates upon cancellation on the date of final judgment. However, right to apply for the cancellation of the marriage is extinguished when the

spouse has completed the age of twentieth year or when the woman has become pregnant.

3) A man who married with a woman shall not be an unsound person or adjudged as incompetent, mental defects, or a person who has no conscience as general people. An unsound mind person cannot take care of himself/herself, so how can he/she take care of his/her own family? The marriage which violated conditions is void as a man or a woman is an unsound person or adjudged as incompetent, and only a judgment of the Court affects the void of the marriage. Therefore, any person, even an interested person cannot claim for such void immediately, but it shall be prosecuted to the court to judge that such marriage is void. In the eyes or law, the marriage of unsound person is void in all cases.

4) A marriage cannot take place if the man and woman are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. If it is violated, the marriage is void under Section 1495 such as the marriage with descendant, grandchild, great-grandchild of himself/herself.

5) A marriage cannot take place between the adopter and the adopted. Even though it is prohibited to have marriage between the adopter and adopted, such prohibition is not strictly performed and does not have its result in breaking marriage. If such marriage is violated, it leads to the Revocation of Adoption

6) A man or a woman should not be a person who is the spouse of another person. A man or a woman cannot enter into marriage while he or she is the spouse of another person. If it is violated, the marriage is void under Section 1495. Any interested person may allege or apply for a judgment of the Court effecting that the marriage is void as it is a principle to protect spouses under the principle of Monogamy

7) In case of the woman whose husband died or whose marriage has become terminated, the marriage can only take place if not less than three hundred and ten days have elapsed since the termination of her previous marriage

8) A marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar. If it is violated under the agreement conditions of spouses, the marriage is void under Section 1495.

9) The consent of his or her parents, adopter, or guardian in this case is the consent of parents or guardian that allows the minor to enter into marriage. Therefore, in the case that the minors have completed their seventeenth year of age but haven't achieved intention to enter into marriage, the minor should be consented; otherwise, the marriage is voidable. If the minors who have intention to enter into marriage are under seventeenth year of age, the Court may, in case of having appropriate reason whether to allow them to marry before attaining such age or not.

10) For the marriage, the marriage under this Code is valid only through registration. Hence, the cohabitation as husband and wife does not mean being spouses by law.

Marriage conditions under Cambodian Law

A marriage is counted as covenant presented by a man and a woman, so a man and a woman who have legal age has a right to enter into marriage without asking for the consent from their parents, and one party cannot force another party to enter into marriage against his/her will or force not to marry as long as such action is performed under this law.

A marriage may be allowed for a man whose age is 20 years or more and a woman whose age is 18 years or more. However, in a special case where a man does not reach the age of 20 years and where a woman does not reach the age of 18 years, a marriage may be legitimized, upon the consent by the parents or guardians, if the woman becomes pregnant.

Prohibitions on marriage

1) It is prohibited to marry with a person whose sex is the same sex as the other, so the marriage can take place only between a man and a woman like the law of Thailand

2) a person whose penis is impotent;

3) a person who has leprosy, tuberculosis, cancer or venereal diseases which are not completely cured;

4) a person who is insane, and a person who has mental defect;

5) a person who was bound by prior marriage which is not yet dissolved

6) It is prohibited to marry with persons who are relatives by blood or who are relatives by marriage in direct line of all levels, whether or not legitimate or adoptive.

After dissolution of a marriage resulting from the death of a husband, annulment of marriage or divorce, a woman may remarry. However, she shall remain in a legal period of conception until at least 300 days after the death of her husband, or 300 days after the judgment annulling the marriage, or 300 days after the judgment granting a final divorce. But, if the woman remarry prior to termination of the 300 days period, the new married husband shall be considered as a natural father of the child who is born during the marriage, unless there is an objection, supported by sufficient evidence, from her former husband.

The law prohibits an insane person and have mental defect to enter into marriage. If a marriage is violated, whether a spouse is an insane person and have mental defect, such marriage is voidable. However, if such party recovers, the marriage may become valid, which is different from the Law of Thailand. If it is appeared that a man or a woman is adjudged as incompetent such as he or she hasn't reached the age allowed by law, the registrar has a right to object such marriage by writing a report of

objection filed to the People's Court within 2 days to ask for the consideration.

III. RESULTS AND DISCUSSION

It can be seen that Thai Law under Section 1449 regulated that "A marriage cannot take place if either the man or the woman is an insane person or adjudged as incompetent". Therefore, the marriage cannot take place if such person is an insane person or adjudged incompetent during the registration. But, for Cambodian Law, Section 6, it is regulated that "A marriage shall be prohibited if a person who is insane, and a person who has mental defect." So, it can be seen that both countries have same intention to protect those who have unsound mind with mental defects not to enter into marriage, and the Cambodia Law issued right to registrar to object the marriage. However, conditions and consideration under Cambodian Law shall appear that such person has a mental defect, but for the prohibition of marriage under Thai Law is enforced on a person with unsound mind that has been adjudged as incompetent, and even such person is recovered from such unsound mind, that is, such person has no mental defect currently, but he or she has not been repealed from being incompetent by the court, such person is a prohibited to enter into marriage under the conditions of marriage law.

Meanwhile, a violation of marriage in of the terms of a person with unsound mind under Thai Law Section 1495 is resulted as void, and only a judgment of the Court affects the void of the marriage under Section 1496. However, a man or a woman shall not prejudice the right acquired through such marriage before pronouncing the final judgment affecting the void of the marriage by the party who has married in good faith under Section 1499. If later a final judgment presented that such marriage is void, it is considered as the marriage has never existed since the date of the marriage. This is unlike the Cambodian Law Article 21 mentioned that a marriage shall be voidable if a party to the marriage is insane or has a mental disease. However, if such party recovers, the marriage may become valid. Therefore, a marriage of insane person under Cambodian Law will be valid after such party recovers from the insanity.

CONCLUSIONS

1. Laws of two countries have same intention to protect those who have unsound mind with mental defects not to enter into marriage. However, for Thai Law, the marriage cannot take place if a man or a woman is a person who has unsound mind or a person adjudged incompetent. In the case that the person adjudged as incompetent is recovered from such

unsound mind, that is, such person has no mental defect currently, but he or she has not been repealed from being incompetent by the court, such person is a prohibited person by law; however, for the Cambodian Law, the marriage cannot take place for a person of unsound mind and a person with mental defect, but if such person is recovered from such disorder, he or she is able to enter into marriage.

2. Results of the marriage of unsound mind as per Thai law is void, and only a judgment of the Court effects the void of the marriage, and it has never existed since the date of the marriage. Nevertheless, in Cambodian Law, such marriage is voidable. If such person is recovered from such disorder, the marriage is considered as legal. In this case, Cambodia Law has more intention to protect the institution of the family than the law of Thailand.

RECOMMENDATIONS

There should be a study on the marriage of persons of unsound mind under the law of other countries, including conditions and rules to compare the similarities and differences between Thailand and countries in ASEAN Community.

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