

Legal Problems Under The Civil And Commercial Code Regarding The Divorce Of Monk After Ordination

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Abstract

This research, legal issues related to divorce of a Buddhist monk after ordination under the Civil and Commercial Code, was qualitative research employing documentation method. Data were collected to conduct content analysis having objectives were 1) to study legal principles and reasons as well as collecting ideas and principles of legal issues related to the divorce of Buddhist monks; 2) to study the legal issues and challenges under the Civil and Commercial Code; 3) to seek solutions for such issues related to the divorce; and 4) to analyze and compare those issues related to the divorce. Results of the study showed that cohabitation under the registration of marriage is significant according to the legal consequences. With the divorce, it is as well important, in particular, to economic, political, religious, cultural, and customs beliefs. In case of Buddhist monks, the Civil and Commercial Code has specific provision regarding divorce that applies to the monks and the laity despite the slight change. Still, provisions of the Civil and Commercial Code must be complied and not in contradiction to Vinaya, the code of monastic discipline, which is a law of the Buddhist monk. Some activities or affairs that may be done under the Civil and Commercial Code are prohibited by regulations of the Sangha, especially in regard to the divorce of the Buddhist monk under Section 1516 of the Civil and Commercial Code. The marriage is voidable or void and result of divorce shall be enforced. In case of a child born of voidable marriage, the result of divorce by judgement of the Court and divorce with mutual consent of a Buddhist monk must be

complied with Section 1516 of the Civil and Commercial Code, and some issues remain. The study led to guidelines for the divorce of the monk and the laity. It was found that the law ought to be amended to be more apparent and appropriate for the current circumstances.

Keywords: Legal Problems, Civil and Commercial Code, Divorce of Monks, Ordination.

1. INTRODUCTION

In Thailand, from ancient times to the present, the family institution is an important element at the beginning of Thai society, considering that living as a family is extremely important. Thai culture and traditions live in a very large family and considered the head of the family to be the mainstay of the family. The laws of each country reflect social, cultural, customs and traditions, which are different in each society. Family law is a type of law that reflects the relationship of people in that society in economic, social, political and cultural aspects. This can be seen from the development of the law from the past to the present. Thai family law shows the fundamentals of Thai society and culture in which men are given precedence over women. As in the past, the law made men dominant having multiple wives has the right to sell children and wives have the right to determine the marriage. There is inequality in relations between husband and wife in various aspects, but such characteristics are the same as other societies in general with the same or similar social structure. It is just that each society will have social developments that will affect the law to be changed in a manner only. That inevitably depends on the characteristics of each society with different concepts according to beliefs, economy, politics, religion, culture, customs, which are not the same.

Thai society is constantly developing and changing in terms of economy, society and culture from the past to the present family law is one area that has evolved and changed dramatically from the inequality of men and women from patriarchy to greater equality of men and women, including in terms of women's rights, and children's rights have also been developed, supported, promoted and protected more respectively to see family law in Thailand. Thai family law from the past to the present in order to understand enough about what laws exist and will talk about the marriage relationship under the old law and the new law that will have an effect when the new law is promulgated and the old one

is repealed. [1] In the past, Thailand could have many wives. Subsequently, it was changed to have only one wife, which can be seen from the original according to the Civil and Commercial Code, BE 2466. Subsequently, it has been modified several times to suit the changing times with amendments according to the Civil and Commercial Code (No. 22) B.E. 2558 and by the order of the Head of the National Council for Peace and Order no. 21/2560 dated 4 April 2560 to date, especially concerning the age. However, in case there is a reasonable cause, the court may allow the marriage to be made before then. "When matter of a man and a woman who are to be married to be legally binding must register the marriage under the Civil and Commercial Code under Section 1448, which means that "The marriage can be made only have completed their seventeenth year of ages. But in case of having appropriate reason, the Court may give the leave to them being married before reaching such age." There is usually no divorce based on the principle of monogamy until now. The legal and moral guidelines or intentions are the same, which in Buddhism is the same ordained in Buddhism if the age is not 20 years old, ordained as a novice. If at the age of majority, then ordained a monk, but being ordained a monk does not prohibit marriage. Therefore, when married, one can go ordained as a monk without having to divorce first according to the Civil and Commercial Code regarding divorce. The legal status of the clergy is also considered There is still a spouse under the Civil and Commercial Code on family matters, but in the realities of society and the law if the marriage is lawful, if it is impossible to live together or there is an obstacle to living together as husband and wife, then a divorce can be obtained. If there is a divorce under the Civil and Commercial Code, Section 1514 stipulates:

"The divorce is able to be done by the mutual consent or by the judgement of the Court. The divorce with the consent must be done in writing and certified by the signature of at least two witnesses."

In Thai society, most people practice Buddhism, which has a tradition that has been continuously practiced for a long time. That is to say, if a family has a son, when the time is right, a Thai man will have a Buddhist monk ordination ceremony. Therefore, if a man has been married before the man has been ordained as a monk or after he has been ordained as a monk and there is still no divorce. The legal effect of divorce must be in accordance with the Civil and Commercial Code under Section 1514, which gives rise to the concept of marriage registration under the Civil and Commercial Code, Family under Section 1448, as well as the

conditions of marriage under the Civil and Commercial Code. Civil and commercial law before ordination and after ordination. The legal status of a monk in marriage, if they are married and divorced during their ordination as a monk in Buddhism, has legal implications for divorce under the Civil and Commercial Code. There are concepts to be taken into account in the law regarding the status of monks in divorce, concepts about the status of monks after divorce. The problem that arises is a real legal problem, that is, the divorce of monks, which is the cause of divorce under Section 1516 (4). Problems in the law that Section 1516 (4) in one year of desertion, the concept of a monk's property in marriage, the concept of a monk's property in divorce. The concept of a monk's property after divorce but still a monk according to the Civil and Commercial Code on Family under Section 1623 and Section 1624 of the Sangha Act B. B.E. 2505 by introducing the Civil and Commercial Code, Book 5 and the Sangha Act, B.E. 2505, amended (No. 2), B.E. regulations Other documents and judgments of the Supreme Court taken into account in the diagnosis and the researcher will bring the provisions of the law and such documents to be used in further research.

2. RESEARCH OBJECTIVES

The purposes of this research study were as follows:

1. To study legal principles and reasons as well as collecting ideas and principles of legal issues related to the divorce of Buddhist monks.
2. To study the legal issues and challenges under the Civil and Commercial Code regarding the divorce of monk after ordination
3. To seek solutions for such issues under the Civil and Commercial Code regarding the divorce of monk after ordination.
4. To analyze and compare those issues under the Civil and Commercial Code regarding the divorce of monk after ordination

3. LITERATURE REVIEW

The concept of marriage registration under the Civil and Commercial Code on family under section 1448 Marriage (Marriage)

Marriage; a man and a woman agree to live together as husband and wife (live and cohabit together as husband and wife) in order to create a new family in society. Family is the cornerstone of social institutions.

Marriage is the path leading to family relations, which are the smallest and most important social unit. Marriage creates family relations in terms of rights and duties, status of persons as husband and wife, and status of parents. Therefore, it is a part of society that is involved in order and security of the state until the good morals of the people. [2]

Marriage is the creation of a juristic relation between individuals, which is an important starting point of family law, effect of marriage as well as the termination of the marriage as well, because the family law is an important foundation for the stability and order of society, therefore, there must be a law to guarantee protection for public order, build a foundation for a stable family that will contribute to the peace of society as a whole. The marriage according to the legal way (Due process of law), the Civil and Commercial Code, Chapter 5, Title 1, Chapter 2, has stipulated the conditions of marriage from Section 1448 to Section 1460, which will be discussed as follows:

1. The meaning of marriage

Marriage means that a man and a woman voluntarily come and live together as husband and wife for the rest of their lives. It will not be sexually involved with any other person. [3] Marriage is a lawful coexistence as husband and wife.

Marriage is the intention of a man and a woman to live together as husband and wife, agree to be husband and wife according to the law by showing them to be disclosed according to tradition and according to the law, which is to register the marriage with the registrar make a written record signed by both parties in which the registrar will issue a certificate stating that the man and woman have been legally married, and that both men and women must eat, sleep and have incest naturally. When a man and a woman are legally husband and wife, they have rights and obligations against each other causing a relationship with property between them or when having children, there is a relationship. The birth of rights and duties between parents and children and may also be related to legal relations with third parties.

2. Conditions of Marriage

Conditions are requirements or rules that the law has to follow; conditions of marriage are requirements or rules that the law has placed for women and men to comply with them.

Family is the most important institution. Although the family is the smallest unit of society, but the family is an

international institution that performs important functions for society and the nation, such as producing personnel for society, serves to provide upbringing and education to their children, which will be an important force of the nation.

Marriage is the beginning of a family. Marriage allows humans to multiply their own species, has created a family and unite as a society and a nation. It is therefore the legal relationship that is the heart of the family. Marriage is the center of everything being a civil contract in which a man and a woman must show the same intention to marry and the marriage takes place after the marriage has been registered in order to create a legally binding relationship. However, marriage is different from a normal contract because apart from the contract, it also creates a social institution. Any agreement or requirement, unless it is against the law, contrary to public order and good morals but in marriage, most of the conditions and results of the marriage are as stipulated by the law. The spouses may not agree to differ from what is stipulated by the law. Except for the prenuptial agreement relating to property under the Civil and Commercial Code, Section 1465 only, the law also prescribes the conditions of marriage as well. [4]

3. Spouse's age

Regarding the age of spouses, the Civil and Commercial Code Section 1448 contains a provision stating: "Section 1448; the marriage can be made only have completed their seventeenth year of ages. But in case of having appropriate reason, the Court may give the leave to them being married before reaching such age." [5] Family reproduction is the natural or instinctive process of human reproduction in order to create new babies in society. Therefore, there will be conception. Same-sex reproduction is impractical and fertilization is not possible, therefore marriage must be a marriage of persons of the opposite sex by birth, i.e., one spouse must be male and the other must be a woman (one party must be male and the other female) for this reason marriage. Therefore, it is between men and women, women, not between men and men or female to female although advances in medicine allow sex reassignment surgery by cutting off the penis inserting artificial female genitalia instead does not make it possible to become a woman. Because according to Section 15 of the Civil and Commercial Code; it was stipulated that "Personality begins at birth and survives as an infant and ends at death", so marriage can only be between a man and a woman. [6]

If there is to be a marriage registration of a person of the same sex, it is not considered a marriage, the provisions of Section 1458 in conjunction with Section 1496 cannot be claimed as grounds for invalidity take the gender at birth. A “woman” according to the dictionary is someone who can give birth to a child, even men who have undergone genital reassignment surgery are unable to have children. Therefore, regardless of nature and legal recognition, it is still male. The petitioner has no right to request a change of gender by court’s rights. [7]

In case the plaintiff and the defendant are women together, but the plaintiff has a habit and acts like a man, people generally understand that the plaintiff is a man, the plaintiff has a love affair with the defendant, therefore, brought the defendant to live with the plaintiff as the plaintiff’s housewife for nearly 20 years, where the plaintiff and the defendant have jointly made a living and sought property which whether by force or money of any party. As such, it can be considered that the property acquired is property that both the plaintiff and the defendant have the intention to be joint owners, the plaintiff and the defendant have a share in the disputed property, all of which are one-half. [8]

The law specifies the qualifications of a man and a woman to marry that must be 17 years of age. (In this regard it is not a provision about the abilities of a person) because there should be a minimum criterion by which a man and a woman may marry. The minimum criterion for marrying should be the age of the person who must have a sense of responsibility in which both men and women must live together as husband and wife. The reason why the law has set the age limit for a man and a woman to marry when they have reached the age of 17 is because it has been considered that a person at that age is physically and mentally ready enough to have a family. Now, Prasopsuk Boondej also commented that physiologically, men and women under the age of 17 often do not have full physical, mental and brain development (Immature). Foster care and property management. The law thus stipulates the minimum age of the spouse as having reached the age of 17, mature and sensible to take on the responsibilities of marriage. [9]

Criteria for the age of the person who can marry is different in each country, such as Switzerland, 20 women and 18 women, German; 21 men, 16 women, France and Belgium; 18 women, 15 women, Italy and the Philippines, 16 men and 14 women, etc. Each country considers the ability to be responsible for the family or not differently, taking into account the minds of the people in each country, similar to the ability to do legal acts for Thailand attaining

the age of 17, considering that a person of this age is sufficiently able to know the state of family relations and assume responsibility. [10]

However, the principle that a man and a woman can marry when both parties have reached the age of 17 have completed this. There is an exception that the court allows the marriage to take place first if there are reasonable grounds. This gives the court discretion to make an order taking into account the interests of the applicant and the stability of the marriage. This is because the marriage of a person who is young tends to break easily [11] in accordance with Section 1448 stipulated as an exception that "In case of reasonable grounds, the Court may permit the marriage to be made before that." In the case where a woman has become pregnant with a man while she is not yet 17 years old, she becomes pregnant, taking into account the benefits of the man and woman with the sons who will be born later as such, it was considered that there were reasonable grounds for the court to allow the marriage to be made.

If a woman is less than seventeen years of age but has reached the age of majority because originally married another man and then broke out of the marriage which the Civil and Commercial Code, Section 20 originally certified that the woman was of legal age, as follows: when using the new Civil and Commercial Code, Book 5, that woman can marry or not when considering section 1448. It is forbidden to marry because of contrary to the conditions, unless the court allows the marriage in case of reasonable grounds, for example, a 15-year-old woman has a relationship with a 21-year-old man and is pregnant; 6 months, the court may allow because there is a cause that will affect the child born in the future. Whether it is considered a reasonable cause or not depends on the discretion of the court to consider on a case-by-case basis. [12]

The case at the time of the incident, a girl from high school was under 17 years of age, full year therefore unable to marry unless allowed by the court under Section 1448 of the Civil and Commercial Code. In the event that the defendant wanted to live as husband and wife with young girl M. and Ms. J, mother of Ms.J filed a petition with the Central Juvenile and Family Court for permission to allow young girl M. (teen) to register her marriage with the defendant, it was after the incident. Even later, the Central Juvenile and Family Court would allow the said petition to overturn the offense committed by the defendant. Therefore, both lower courts considered that the accused committed the offense of taking minors for indecency and therefore liked it.

However, when the Central Juvenile and Family Court allowed the defendant and the girl to marry, the defendant's actions on the charge of sexually abusing a girl under 15 years old under the Criminal Code, Section 277, first paragraph, therefore the defendant was not subject to the penalty provided in the last paragraph. Although the defendant did not petition, but such a problem is a law concerning public order, the Supreme Court has the power to decide on its own. [13]

In the case of a girl under the age of 15 years, even though he had traditionally married to a province, he had not yet escaped from being a child or a minor According to the Civil and Commercial Code, Section 20, because the marriage or marriage of the victim is not in accordance with the provisions of the Civil and Commercial Code, Section 1448. Because the victim is under seventeen years of age and does not appear to have been authorized by the court to marry or have a marriage registration under the Civil and Commercial Code, Section 1457. The victim's parents allow the victim to marry as husband and wife with the Mon, therefore it is only providing care. The victim, who is still a child or minor, has to take care of the Mr.J. instead. Therefore, the defendant takes the victim from the central cinema area to the defendant's room for the purpose of hugging, kissing, stroking, intending to engage in sexual intercourse with the victim in a sexual manner, it is considered to take the victim away. Lost from the custody of the province for indecency is an offense under section 317 of the Criminal Code;[14] marriage that violates the age condition under section 1448 is voidable.

According to Section 1503 [15], an interested person can revoke it, but parents or guardians who give after agreeing to request the cancellation of the marriage, Section 1504. [16]

For children born during the marriage which the court ordered to revoke. Shall be considered a legitimate child under Section 1560, [17] if such child was born within 310 days from the date of the court's final judgment to cancel the marriage on the grounds of voidness. The law presumes to be the legitimate son of the husband or used to be a husband under section 1536. [18]

4. RESEARCH METHOD

Research on this matter is documentary research by conducting a study, legal problems according to the Civil and Commercial Code about the divorce of monks. Marriage of persons according to the Civil and Commercial Code, the marriage of monks according to the Civil and Commercial Code, the Sangha Act 2505 and the Sangha Act (Amendment) 2535 Sangha Rules, Regulations, Sangha

orders and other laws concerning the divorce of monks, as well as articles, legal journals, Supreme Court judgments and other relevant documents in both Thai and foreign languages.

5. RESEARCH RESULTS

This research conducted on Legal Problems under the Civil and Commercial Code regarding the Divorce of Monk after Ordination. Results were shown as follows:

1. Legal principles and reasons and collect concepts, principles, legal problems related to divorce according to the Civil and Commercial Code regarding the divorce of monks after ordination.

The researcher concluded this research about the theoretical concepts concerning the problems under the Civil and Commercial Code regarding the monks' divorce after ordination, namely:

1. The concept of divorce of monks in the Kingdom of Thailand can apply the provisions on divorce under the Civil and Commercial Code to apply to the divorce of monks in the Kingdom of Thailand in all respects.

2. The issue of law enforcement regarding monk divorce is also the same as that of lay people under Section 1516(4) of the Civil and Commercial Code.

3. The researchers analyzed the legal reasons for the divorce after the ordination of monks in the Kingdom of Thailand.

4. The researcher analyzed the divorce of monks in the Kingdom of Thailand on the subject of human rights regarding the divorce after ordination of monks in the Kingdom of Thailand.

5. The researcher analyzed the grounds for divorce of monks in the Kingdom of Thailand according to the Civil and Commercial Code.

2. Analysis of legal problems according to the Civil and Commercial Code regarding the divorce of monks after ordination

Analyzing the reasons for the divorce of monks who have the right to divorce but a monk's divorce must be in accordance with the Civil and Commercial Code on Divorce from Marriage to analyze the meaning of divorce from marriage, the provisions of the Civil and Commercial Code, Section 1516, must be applied to ensure fairness. Divorce is one of the social problems which in Asian society or European society is generally accepted and the laws of many countries have prescribed the matter of divorce, which is

considered to be the end of the relationship as husband and wife together with Death and Dissolution of Marriage. A monk's divorce can also be considered a social problem.

A monk's divorce can be considered as a divorce under the Thai family law, as specified in the Civil and Commercial Code: "the divorce or revocation by the court."

In case of filing for divorce of husband and wife under Section 1516 of the Civil and Commercial Code, the grounds for filing for divorce are as follows:

(1) Husband or wife regularly having sex with others the other may enter a claim for divorce.

(2) Husband or wife regardless of whether such misconduct is a criminal offence or not if it causes the other.

(a) to suffer gross humiliation.

(b) to suffer contempt for continuing to be the husband or wife of the offending party.

(c) to suffer damaged or troubled beyond measure when taking pictures status and cohabitation.

(3) Husband or wife, the other may enter a claim for divorce; or torture physically or mentally, or insult or insult the other party or the parents of the other party.

(4) Husband or wife willfully deserted the other for more than one year;

(4/1) Husband or wife has been sentenced to imprisonment by a final judgment and has been imprisoned for more than one year for an offense where the other party has not contributed to the commission of the offense or consented or connived to commit such offense and continuing to be husband and wife will cause damage to the other party or unduly troubled the other party may file for divorce.

(4/2) Husband or wife voluntarily separate for more than three years because they are unable to live happily together as husband and wife or separated by court order for more than three years. Either party can file for divorce.

(5) Husband or wife has been ordered by the court to disappear or has left his domicile or residence for more than three years without anyone knowing for sure "How is it good?"

(6) Husband or wife fails to provide reasonable assistance to the other, or acts contrary to the relationship between husband and wife; However, if such act is to the extent that the other party is in undue trouble when taking pictures status and coexistence as husband and wife are taken into consideration

(7) Husband or wife has been insane for more than three years and such insanity is difficult to cure; with insanity to the

extent that he could no longer endure coexistence as husband and wife the other party may file for divorce

(8) Husband or wife breaks the parole that has been made in writing on the conduct, the other party may file for divorce

(9) Husband or wife has a serious communicable disease which may pose a threat to the other and the disease is chronic There is no way to recover the other party may enter a claim for divorce; make that husband or wife can't have sex forever the other party may file for divorce

In a divorce case, if the cause of divorce is the fault of only one spouse and the divorce will the other broke down because he did not have enough income from property or from work as he used to do during the marriage the other party will ask the liable party to pay their alimony This alimony the court may or may not give in any amount taking into account the competence of the giver and the status of the recipient, and the provisions of Section 1598/39, Section 1594/40 and Section 1547/41 shall apply mutatis mutandis. The right to claim alimony is terminated. If there is no lawsuit or counterclaim in the divorce case If divorced on the grounds of insanity under Section 1516 (7) or on the grounds of a serious contagious disease under Section 1516 (9), the other spouse must pay living allowances to the insane party or the party affected by the communicable disease by calculating living allowances shall be mutatis mutandis in accordance with section 1526. If the party receiving living allowances remarries, the right to receive a living allowance would disappear. The right to bring an action on the basis of section 1516 (1), (2), (3) or (6) or section 1523 shall be extinguished after one year from the day the claimer knows or should know the truth which he may have raised as grounds for which he could no longer raise a claim for divorce may assert in support of a divorce case that relies on other grounds while the divorce case is under consideration if any party requests. The court may make temporary arrangements to be dealt with as it deems appropriate, for example in matters of marital property, residence, spousal maintenance and child support analyzing the case of legally registered marriage, the researcher found that divorce by consent of both spouses effective from the time of registration of the divorce onwards, analysis of cases of divorce by judgment. The researcher found effective from the time when the judgment is final but it cannot be claimed as a cause for the deterioration of the rights of a third person who acts in good faith unless the divorce has been registered after the divorce, the property of the monk and his wife must be divided but between a monk and his wife.

(a) if the divorce is by mutual consent of both parties; The property of monks and their wives shall be divided accordingly at the time of registration of divorce.

(b) if the divorce is by judgment of the court The part of the judgment that enforces the property between a monk and his wife It has a retrospective effect to the date of the divorce filing.

When divorced, the property acquired during the marriage shall be equally distributed between the monks and their wives deliberately disposed to cause damage to the spouse of the other party distributed without the consent of the spouse of the other party in the event that the law requires that the distribution must also receive the consent of the other party, deliberately destroying and disappearing is good. It shall be deemed that such property still exists for the purpose of dividing the property acquired during the marriage under Section 1533 to the spouse of the disposed party or deliberately destroying that marital property to compensate from the property acquired during the marriage for one's own part or personal property when the marriage ends to divide the liability for the debt to be liable together in equal parts.

3. Results of analysis and comparison of legal problems under the Civil and Commercial Code concerning the monk's divorce after ordination

1. Make known the legal problems under the Civil and Commercial Code concerning the divorce of monks after ordination.

2. Make known legal problems and obstacles under the Civil and Commercial Code related to the divorce of monks after ordination.

3. Know the ways to solve the problem, obstacles and suggestions for legal problems according to the Civil and Commercial Code regarding the divorce of monks after ordination.

4. Appropriate legal measures can be used as guidelines for solving problems and developing laws under the Civil and Commercial Code regarding the divorce of monks after ordination.

5. The researcher compared the provisions of the Civil and Commercial Code, Section 1516(4) with the Family Law of the Lao People's Democratic Republic of 1990 (B.E. 2533) in key issues. In the case of a husband deserting his wife for a period of 1 year, in the case of her husband's ordination as a cause for divorce but in the Kingdom of Thailand, the law is still unclear.

6. Summary of the analysis of the Law on Family of the Lao People's Democratic Republic of 1990 (1990) stated the cause of

divorce in Article 4 clearly that the husband went to become a monk. Novices or wearing white clothes or their wives ordained as nuns the other party can file for divorce, which unlike the Civil and Commercial Code of Thailand, which is not clearly defined, such as the family law of the Lao People's Democratic Republic which causes an obstruction to be interpreted under section 1516 (4) as whether the husband or wife willfully deserted the other for more than one year the other party may file for divorce.

7. In summary, willful desertion of the other party for more than one year under Section 1516 (4) is a result of willful or unwilling desertion. Only one year would be about the consent of his wife as well. If the wife agrees, it is considered unintentional. If you don't agree, it's considered deliberate. Therefore, it is still uncertain and needs to be interpreted because the Civil and Commercial Code does not provide any provision in this regard. So, it can be seen that the fact that a monk has been ordained for one year without telling his wife is still uncertain whatsoever deliberately abandoning his wife. Therefore, it should be clearly stated in the Civil and Commercial Code, such as the family law of the Lao People's Democratic Republic that states that husband went to be ordained as a monk, novice, or dressed in white at all the other party may file for divorce. This includes his wife ordained as a nun, the other party may file for divorce but to achieve fairness. If the law stipulates that the husband's ordination for more than one year can be filed for divorce, it should also be stated that the wife's ordination as a nun for more than one year can file for divorce as well.

8. Summary of abandonment under the Civil and Commercial Code, Section 1516 (4) must appear that the husband or that wife deliberately abandoned the other for more than one consecutive year. Conclusion, the plaintiff voluntarily unilaterally did not wish to be with the defendant. The plaintiff left the house that had been with the defendant while the defendant was sick. Not the defendant's fault still cannot be regarded as a voluntary separation because the plaintiff and the defendant are unable to live together as husband and wife normally, which will cause a divorce action under Section 1516 (4/2) of the Civil and Commercial Code.

9. Summary of consent and forgiveness that cannot be raised as grounds for filing a divorce according to the Civil and Commercial Code, section 1517 paragraph one and section 1518.

10. Summarize the actions that forgive the actions of the two defendants and cause the right to file for divorce.

11. In conclusion, the wife destroys property and takes it away. Husband does not complain considered forgiven. The plaintiff's right to file for divorce would be exhausted under the Civil and Commercial Code, Section 1518.

12. Analyze the monks about the property after the divorce of the monks and their wives.

In the event that a monk has divorced that wife Regarding property under the Civil and Commercial Code, it has been clearly stated in Section 1533 that states that in the event of a divorce, the marital property shall be divided equally between men and women. Therefore, when a monk has divorced his wife while still a monk, property that is marital property must be divided equally. The monk Daeng divorced and his wife Green had 2 million baht in marital property, so they had to split each other in half, which is 1 million baht. The money of 1 million baht belonged to the monk Daeng as a result of the divorce from his wife Green. But, in the provisions of the Civil and Commercial Code, section 1623 states that The property of the monks acquired during the time in the monkhood When that monk dies, it becomes the property of the temple that is the domicile of that monk. Except for that monk Disposed during life or by will. Section 1624 states that any property belonging to a person prior to his ordination as a monk shall not be the property of the temple and shall be passed on to the statutory heirs of that person, or that person can distribute in any way according to the law.

13. When analyzing the issue of property in Section 1623, there is the idea that after the divorce, while being a monk, the amount of 1 million baht that was acquired should have gone to the temple. When that monk dies all acquired property of the monks must be completely vested in the monastery, but the researcher saw that it is unfair that, as a result of the provisions of the law. Property of 1 million baht acquired after divorce must belong to the monks, not to the temple. It is a problem that arises about the provisions of the law that are extremely unfair and should be resolved such by amending section 1623 that except that property was acquired without intent to become the property of the temple because in section 1624 of the Civil and Commercial Code, which states that any property belonging to a person before ordination as a monk. The property is not the property of the temple and shall devolve on the statutory heirs of that person or that person can distribute in any way according to the law.

4. Guidelines for solving problems according to the Civil and Commercial Code regarding the divorce of monks after ordination

The husband-and-wife divorce papers in filing for divorce, the statute of limitations is 10 years from the date of the memorandum of agreement in that divorce letter.

Divorce by judgment of the court:

The reason for the divorce according to the Civil and Commercial Code, section 1516 has been specifically provided. Therefore, the plaintiff filed for divorce with the defendant on the grounds that while the plaintiff registered the marriage with the defendant. The plaintiff already had a spouse. The marriage registration between the plaintiff and the defendant is void. Therefore, did not enter the grounds for filing for divorce as specified by law. The court would like to dismiss the plaintiff's lawsuit.

Abandonment according to Section 1516 (4) of the Civil and Commercial Code, it must appear that the party deliberately deserted in a manner that does not return to the other spouse. without wishing to live together as husband and wife anymore for more than 1 consecutive year, the defendant left the house since January 13, 2012, but came back to stay with the plaintiff between 11 to 15 September 2012, so it was not more than 1 year and would show that the defendant still wishes to live with the plaintiff anymore. But, the plaintiff is the party to change the house key, not allowing the defendant to stay in the house and refusing to talk to the defendant to adjust their understanding shows that the defendant still has a relationship with the plaintiff and wants to stay with the plaintiff anymore. Therefore, it can't be considered that the defendant deliberately abandoned the plaintiff. The abandonment of the husband does not support the wife age counting. In such case, counting shall begin when the abandonment and non-custody has ceased. If it is still not settled, that is, there is still abandonment and no maintenance has been continued, however many years, the prescription has not been counted. Therefore, one can always file for divorce on the basis of this cause, without prejudice to the prescription.

The reason for divorce is because the husband and wife voluntarily live separately for more than 3 years according to the Civil and Commercial Code, Section 1516 (4/2); both husband and wife must voluntarily agree to live separately from each other. Neither husband nor wife voluntarily live separately will give that party the right to file for divorce when the defendant is sentenced to imprisonment according to the final judgment of 3 years and

imprisoned at the central prison like this, it cannot be heard that the defendant voluntarily separates from the plaintiff. Wife destroys property and takes property; husband does not complain considered forgiven. The plaintiff's right to sue for divorce would have ended in accordance with Section 1518 of the Civil and Commercial Code can be analyzed if there is no agreement in the divorce agreement which party will exercise parental authority considered that both father and mother are jointly exercising parental power.

6. RECOMMENDATIONS

The researcher is of the opinion that the law should be amended, namely, the Civil and Commercial Code in section 1516 (4) that states:

“The husband or wife has deserted willfully the other spouse for more time than one year, on the other side is able to enter an action for divorce.”

In addition, the researcher opines that should be further amended Section 1623 of the Civil and Commercial Code stipulates, “The property of a monk acquired during his stay in the monkhood. When that monk dies, it becomes the property of the temple that is the domicile of that monk except that the monk will be disposed of during his lifetime or by will”, adding that “If it is acquired after divorce that property is purely personal property or the property acquired with the express intent is truly the property of that monk let that property belong to that monk as well”.

7. CONCLUSION

This research conducted on “Legal Problems under the Civil and Commercial Code regarding the Divorce of Monk after Ordination”. The finding of the study can be summarized that cohabitation under the registration of marriage is significant according to the legal consequences. With the divorce, it is as well important, in particular, to economic, political, religious, cultural, and customs beliefs. In case of Buddhist monks, the Civil and Commercial Code has specific provision regarding divorce that applies to the monks and the laity despite the slight change. Provisions of the Civil and Commercial Code must be complied and not in contradiction to Vinaya, the code of monastic discipline, which is a law of the Buddhist monk. Some activities or affairs that may be done under the Civil and Commercial Code are prohibited by regulations of the Sangha, especially in regard to the divorce of the Buddhist monk under Section 1516 of the Civil and Commercial Code. The marriage is voidable or void and result of

divorce shall be enforced. In case of a child born of voidable marriage, the result of divorce by judgement of the Court and divorce with mutual consent of a Buddhist monk must be complied with Section 1516 of the Civil and Commercial Code, and some issues remain. The study led to guidelines for the divorce of the monk and the laity. It was found that the law ought to be amended to be more apparent and appropriate for the current circumstances. Results from this research can be applied in daily life if the situation will occur similarly.

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