

**NOTE ON MARRIAGE CONTRACT
BETWEEN DANISH AND SIAMESE SUBJECTS**

A marriage contract has been made by a Danish subject and a Siamese woman on the occasion of their marriage at the Danish Consulate-General in Bangkok. Such marriage contract provides for the exclusion of any community between the spouses as regards both their present and future property and the debts respectively incurred by each of them. Both the marriage and the marriage contract are valid according to the Danish Law. The Danish Consulate-General enquires whether: 1^o the aforesaid marriage contract is valid in Siam and 2^o the marriage based on such contract is valid in Siam?

QUESTION NO. 1.

IS THE MARRIAGE CONTRACT AS ABOVE DESCRIBED VALID IN SIAM?

This question cannot be answered easily, not only because there is not yet any law in Siam governing conflicts of laws, but also no general rule of private international law has yet been evolved in the matter.

It may, however, be considered as fairly generally and quite rightly admitted that the law governing the conclusion of marriage contracts between spouses of different nationalities (especially when the wife acquires by her marriage the nationality of her husband) is the national law of the husband. Now, on the one hand, according to the Danish law, a Siamese woman marrying a Danish subject acquires the Danish nationality (Law of April 17th. 1925, Section 3) and the Siamese law allows such a change of nationality (Law on nationality B. E. 2456, section 4). On the other hand, it is stated by the Danish Consulate-General that the marriage contract under consideration is valid. Under such circumstances, it must be admitted that that marriage contract is valid in Siam, but it does not follow from such admission that the said marriage contract may apply in Siam in every respect.

It is, the effect, admitted most generally that, in every country, a right, validly acquired under a foreign law, cannot be exercised when contrary to a rule of the local law in which public order is involved. In order, therefore, fully to answer question No. 1, it appears necessary to clear up the point whether the application in Siam of the clauses of the matrimonial regime provided by the marriage contract under consideration may clash with provisions of the Siamese law involving public order.

Now the notion of public order is one that greatly varies according to time and places, and it belongs essentially to the Courts to decide, in every specific case, whether a provision of the local law involves public order and may debar a party from exercising a right validly acquired under a foreign law but confliction with such provision. It would be, therefore, rather fruitless to try and attempt to lay down rules in this note, and it seems possible only to make as a more indication, the following remarks.

Amongst the many reasons for which a provision of law may be considered as involving public order may be cited the protection of their person in good faith. In the case where the enforcement in Siam of a foreign marriage contract would amount to a violation of the local law in so far as it secures the protection of

third persons in good faith, the Siamese Courts would be entitled to refuse such enforcement.

In that respect, it must be noted that the matrimonial regime provided by the marriage contract in question (absolute non-community of property and debts) does not exist in Siam. On the one hand, only such property as is owned at the time of marriage may be declared non-common (Sin Suan Tua) by marriage contract; any property subsequently acquired becomes common (Sin Somros). On the other hand, all debts contracted by the husband during the marriage may be recovered from the wife's property whilst the husband is not liable on his property for the payment of his wife's debts unless contracted with his consent.

Supposing now that a creditor of the Danish husband in question applies for the seizure of an immovable belonging to the wife in order to secure the settlement of his claim according to the Siamese law and the wife objects to such seizure on the ground that she is not responsible for her husband's debts according to her marriage contract, the Court in such case will have to decide the preliminary question whether the rule of the Siamese law providing for the payment of the husband's debts on the wife's personal property is a rule involving public order or not. This amounts to deciding whether such rule is imperative or not. It does not seem possible to admit that the spouses are not allowed to make any agreement to the contrary; the rule must therefore be considered as imperative. But there remains to find out the reason why the Siamese law makes such rule imperative. Is it in the interest of the husband or in that of his creditors? Now, it may quite well be alleged that the purpose of the rule is to prevent the spouses from defrauding the creditors of the husband (especially when he is a trader) by transferring the profits made by them during the marriage into personal property of the wife and by preventing in this way the creditors from seizing it, should the husband's business turn bad. In such case, the rule would involve public order and the Court might decline to take into consideration the marriage contract and allow the seizure of the wife's property. The Court might still go further and find that the rule is imperative only in so far as the creditors of the husband are in good faith and did not know of the marriage contract before the dealings out of which their claims arise. In the case, therefore, where the creditors would have been notified expressly and in due-time of the marriage contract, the Court might on the contrary agree to take the marriage contract into consideration and forbid the seizure of the wife's property.

If the purpose of the rule appeared different, the case might be otherwise settled.

Supposing now that the wife acquires by inheritance an immovable situated in Siam and in refused by the Land officer the registration of her name as sole owner of that immovable on the ground that it is Sin Somros or at least on the ground that the husband's permission is required for such registration, the court might certainly order the Land Officer to grant the registration applied for in accordance with the clauses of the marriage contract, because in such case the application of such clauses could not cause any injury to third persons in good faith.

In short, the marriage contract in question cannot be declared invalid for the sole reason that it provides for a matrimonial regime which does not exist in the Siamese law, but in any case where the clauses of that contract will conflict with provisions of the Siamese law which the Court considers as involving public order, the Court shall be entitled to disregard such clauses and give judgment accordingly.

QUESTION NO. 2.

IS A MARRIAGE BASED ON THE MARRIAGE CONTRACT
UNDER CONSIDERATION VALID IN SIAM?

Neither the Siamese law, nor (to the best of our knowledge) any foreign law makes the validity of a marriage dependent upon that of the marriage contract concluded on the occasion of such marriage. The only possible effect of the invalidity of a marriage contract is that the spouses will be considered as having made no marriage contract and their matrimonial regime will be that provided for in such case by the law applicable in the matter.

14th February 1935