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THE DIVORCE REFORM ACT, 1969

BREAKDOWN OF MARRIAGE TO BE SOLE GROUND FOR DIVORCE

1. After the commencement of this Act the sole ground on which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably.

PROOF OF BREAKDOWN

2.--(1) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say-

(a) that the respondent has **committed** adultery and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that ~~the respondent~~ has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

(2) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(3) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (1) of this section, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to section 4 of this Act and section 5(5) of the Matrimonial Causes Act, 1965, grant a decree nisi of divorce.

(4) For the purpose of subsection (1)(c) of this section the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(5) For the purpose of this Act a husband and wife shall be treated as living apart unless they are living with each other in the same household.

(6) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of subsection



(I)(d) of this section the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

PROVISIONS DESIGNED TO ENCOURAGE RECONCILIATION

3.-(1) Provision shall be made by rules of court for requiring the solicitor acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

(2) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

(3) Where the parties to the marriage have lived with each other for any period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery, then,-

(a) if the length of that period or of those periods

together was six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of section 2(I)(a) of this Act whether the petitioner finds it intolerable to live with the respondent; but

(b) if the length of that period or of those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of the said section 2(I)(a).

(4) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 2(I)(b) of this Act whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(5) In considering for the purposes of section 2(I) of this Act whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months)

or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(6) References in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

DECREE TO BE REFUSED IN CERTAIN CIRCUMSTANCES

4.--(1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in paragraph (e) of section 2(1) of this Act may oppose the grant of a decree nisi on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree nisi is opposed by virtue of this section, then,-

(a) if the court is satisfied that the only fact mentioned in the said section 2(1) on which the petitioner is entitled to rely in support of his petition is that mentioned in the said paragraph (e), and

(b) if apart from this section it would grant a decree

nisi the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

POWER TO RESCIND DECREE NISI IN CERTAIN CASES

5.- Where the court on granting a decree of divorce held that the only fact mentioned in section 2(I) of this Act on which the petitioner was entitled to rely in support of this petition was that mentioned in paragraph (d), it may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to consent to the grant of a decree.

FINANCIAL PROTECTION FOR RESPONDENT IN CERTAIN CASES

6.-(I) The following provisions of this section shall have effect where-

(a) the respondent to a petition for divorce in which the petitioner alleged any such fact as is mentioned in paragraph (d) or (e) of section 2(I) of this Act has applied to the court under this section for it to consider for the purposes of subsection (2) hereof the financial position of the respondent after the divorce; and

(b) a decree nisi of divorce has been granted on the petition and the court has held that the only fact mentioned in the said section 2(I) on which the petitioner was entitled to rely in support of his petition was that mentioned in the said paragraph (d) or (e).

(2) The court hearing an application by the respondent under this section shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and notwithstanding anything in the foregoing provisions of this Act but subject to subsection (3) of this section, the court shall not make absolute the decree of divorce unless it is satisfied-

(a) that the petitioner should not be required to make any financial provision for the respondent, or

(b) that the financial provision made by the petitioner

for the respondent is reasonable and fair or the best that can be made in the circumstances.

(3) The court may if it thinks fit proceed without observing the requirements of subsection (2) of this section if-

(a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay, and

(b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

RULES MAY ENABLE CERTAIN AGREEMENTS OR ARRANGEMENTS TO BE REFERRED TO THE COURT

7.-(1) Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or propose to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

(2) In section 3 of the Matrimonial Causes Act, 1967

(consideration of agreements or arrangements by divorce county courts), after the word "1965" there shall be inserted the words "or of section 7 of the Divorce Reform Act, 1969."



JUDICIAL SEPARATION

8.-(1) After the commencement of this Act the existence of any such fact as is mentioned in sectioned 2(1) of this Act shall be a ground on which either party to a marriage may present a petition for judicial separation; and the ground of failure to comply with a decree for restitution of conjugal rights and any ground on which a decree of divorce a mensa et thoro might have been pronounced immediately before the commencement of the Matrimonial Causes Act, 1957, shall cease to be a ground on which such a petition may be presented.

(2) Accordingly for subsection (1) of section 12 of the Matrimonial Causes Act, 1965, there shall be substituted the following subsection:

"(1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in section 2(1) of the Divorce Reform Act, 1969, exists, and sections 2(2), (4), (5) and (6), 3 and 7 of that Act and paragraph 2 of Schedule I to this Act shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce."

(3) The court hearing a petition for judicial separation shall be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 2(I) of this Act, it shall, subject to Section 17 of the Matrimonial Proceedings and Property Act, 1970 (restrictions on decrees for dissolution or separation affecting children), grant a decree of judicial separation.

[The word "section 17 of the Matrimonial Proceedings and Property Act, 1970," replaced " Section 33 of the Matrimonial Causes Act, 1965", Schedule 2 of the Matrimonial Proceedings and Property Act, 1970.]

CONSEQUENTIAL AMENDMENTS, REPEALS AND SAVING

9.-(1) The provision of the Matrimonial Causes Act, 1965, specified in Schedule I to this Act shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the foregoing provisions of this Act.

(2) Each of the provisions of the Matrimonial Causes Act, 1965, specified in column I of Schedule 2 to this Act is, to the extent specified in relation to it in column 2 of that Schedule, hereby repealed.

(3) Without prejudice to any provision of this Act or of the Matrimonial Causes Act, 1965, as amended by this Act, which empowers or requires the court to dismiss a petition

for divorce or judicial separation or to dismiss an application for a decree nisi of divorce to be made absolute, nothing in section 32 of the Supreme Court of Judicature (Consolidation) Act, 1925 (rules as to exercise of jurisdiction), or in any rule or law shall be taken as empowering or requiring the court to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree nisi or on the ground of any conduct on the part of the petitioner.

SAVING FOR PETITIONS PRESENTED BEFORE COMMENCEMENT OF ACT

10. This Act (including the repeals and amendments made by it) shall not have effect in relation to any petition for divorce or judicial separation presented before the commencement of this Act.

SHORT TITLE, CONSTRUCTION, COMMENCEMENT AND EXTENT

11.-(1) This Act may be cited as the Divorce Reform Act, 1969.

(2) This Act shall be construed as one with the Matrimonial Causes Act, 1965.

(3) This Act shall come into operation on 1st January 1971.

(4) This Act does not extend to Scotland or Northern Ireland.

THE MATRIMONIAL CAUSES ACT, 1965

...

2. ...

(2) A judge of the court may, on an application made to him, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the judge shall have regard to the interest of any relevant child [the words "child within the meaning of Part I of the Matrimonial Proceedings and Property Act, 1970" were substituted for the expression "relevant child" by s. 35 of the Matrimonial Proceedings and Property Act, 1970]. and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

...

5. ...

(5) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under section 2(2) Of this Act, that the leave was obtain by the petitioner by any misrepresentation or concealment of the nature of the case, the court may-

(a) dismiss the petition, without prejudice to any

petition which may be brought after the expiration of the period of tree years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in supportof the dismissed petition; or

(b) if it grants a decree, direct that no application to make the decree absolute shall be made during that period.

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The French Civil Code

Title VI

Divorce

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Chapter I

Cases for Divorce

Art.229 - Divorce may be decreed in cases:

- either of mutual consent;
- or of rupture of community life;
- or of fault.

Section I

Divorce by Mutual Consent

1 - Divorce on Joint Petition of the Spouses

Art.230 - When the spouses petition together for divorce, they do not have to make the cause known; they must only submit for the approval of the judge a plan of agreement which regulates the the consequences of it.

The petition may be presented either by the respective lawyers (avocats) of the parties, or by a lawyer chosen by common accord.

Divorce by mutual consent may not be petitioned in the course of the first six months of marriage.

Art 231 - The judge investigates the petition with each one of the spouses, ~~then~~ calls them together. He next calls the lawyer (avocat) or lawyers.

If the spouses persist in their intention to divorce, the judge indicates to them that their petition may be renewed after a period of reflection of three months.

In default of renewal within the six months which follow expiration of such period of reflection, the joint petition lapses.

Art. 232 - The judge pronounces the divorce if he has acquired the conviction that the wish of each one of the spouses is real and that each one of them gave consent freely. He confirms through the same decision, the agreement regulating the consequences of the divorce.

He may refuse confirmation and pronounce only the divorce if he ascertains that the agreement insufficiently protects the interests of the children or of one of the spouses.

2 - Divorce Petitioned by One Spouse and Accepted by the Other

Art. 233 - One of the spouses may petition for divorce by making an account of the whole of the facts, originating with either of them, which render intolerable the maintenance of community life.

Art. 234 - If the other spouse acknowledges the facts before the judge, he pronounces the divorce without having to rule on the attribution of wrongs . A divorce thus pronounced produces the effects of a divorce for divided wrongs.

Art. 235 - If the other spouse does not acknowledge the facts, the judge does not pronounce the divorce.

Art. 236 - The declarations made by the spouses may not be uti-

lized as a means of proof in any other action at law.

Section II

Divorce for Rupture of Community Life

Art.237 - A spouse may petition for divorce for reason of a prolonged rupture of community life, when the spouses have in fact lived separateed for six years.

Art.238 - It is the same when the mental faculties of a spouse are found to have so gravely altered for six years that no community life any longer subsists between the spouses, and cannot, according to the most reasonable forecast, be reconstituted in the future.

The judge may reject on his own motion such petition, under reservation of the provisions of Article 240, if the divorce risks too grave consequences for the illness of the spouse.

Art.239 - The spouse who petitions for divorce for rupture of community life is charged with all the expenses thereof. In his or her demand there must be specified the means by which will be executed the obligations toward the other spouse and the children.

Art.240 - If the other spouse establishes that the divorce would have, either for him or her, account being taken notably of his or her age and of the duration of the marriage, or for the children, material or moral consequences of exceptional harshness, the judge rejects the petition.

He may even reject it on his own motion in the case provided

in Article 238.

Art.241 -- Rupture of community life may be invoked as cause of divorce only by the spouse who presents the initial petition, called the principal petition.

The other spouse may then present a petition, called counter-petition, by invoking the wrongs of the one who took the initiative. Such counter-petition may seek only divorce and not judicial separation. If the judge allows it, he rejects the principal petition, and pronounces divorce on the wrongs of the spouse who took the initiative therein.

Section III

Divorce for Fault

Art.242 -- Divorce may be petitioned by a spouse for facts imputable to the other when such facts constitute a grave or renewed violation of the duties and obligations of marriage and render intolerable the maintenance of community life

Art.243 -- It may be petitioned by a spouse when the other has been sentenced to one of the penalties provided by Article 7 of the Penal Code in criminal matters.

Art.244 -- Reconciliation of the spouses intervening after the facts alleged prevents their being invoked as cause for divorce.

The judge then declares the petition not receivable. A new petition may however be brought by reason of facts occurring or discovered since the reconciliation, the former facts being then able to be recalled in support of such new petition

Temporary maintenance or resumption of community life are not considered as a reconciliation if they result only from necessity or from an effort at reconciliation or from the needs of the raising of the children.

Art.245 - Faults of the spouse who took the initiative in the divorce do not prevent investigation of his or her petition; they may however take away from the facts for which the other spouse is reproached the character of gravity which would make them a cause for divorce.

Such faults may also be invoked by the other spouse in support of a counter-petition in divorce if the two petitions are granted, the divorce is pronounced for divided wrongs.

Even in the absence of a counter-petition, divorce may be pronounced for divided wrongs of the two spouses if the evidence makes wrongs appear on the part of both.

Art.246 - When divorce is sought in application of Articles 233 to 245, the spouses may, so long as no decision on the grounds has been rendered, request the court to verify their accord and to ratify the plan of agreement regulating the consequences of the divorce.

The provisions of Articles and 232 will then be applicable.

Chapter II

Procedure in Divorce

Section I

General Provisions

Art.247 The court of grand first instance ruling in civil matters. is alone competent to pronounce on divorce and its consequences.

One judge of this court is delegated for matrimonial matters. He is more specially charged with watching over the safeguarding of the interests of minor children.

The judge for matrimonial matters has exclusive competence to pronounce divorce when it is petitioned by mutual consent.

He is also alone competent to rule, after the pronouncing of divorce, whatever be its cause, on the custody of the children and alternation of the subsistence allowance. He rules then informally and can be empowered through the interested parties by simple request.

Art.248 - Arguments on the cause, consequences of the divorce and temporary measures are not public.

Art.248-1 .. In case of divorce for fault, and on the request of the spouses, the court may limit itself to stating in the reasons for the judgment that there exists facts constituting a cause for divorce, without having to announce the wrongs and complaints of the parties.

Art. 249 - If a petition in divorce must be brought in the name of an adult in guardianship, it is presented by the guardian.

with the authorization of the family council, after advice of the attending doctor.

An adult in partial guardianship (curatelle) brings the action himself with the assistance of the partial guardian.

Art.249-1 - If the spouse against whom a complaint is brought is in guardianship, the action is brought against the guardian; if in partial guardianship, he or she defends personally, with the assistance of the partial guardian.

Art.249-2 - A guardian or a special guardian is appoint when the guardianship or partial guardianship had been entrusted to the spouse of the incompetent.

Art.249-3 - If one of the spouses is found placed under the protection of law, the petition in divorce may be investigated only after the organization of the guardianship or of the partial guardianship.

Art.249-4 - When one of the spouses is found placed under one of the regimes of protection provided in Article 490 below, no petition for divorce by mutual consent may be presented.

Art.250 - In case of legal incapacity resulting from a judgment, an action in divorce may be brought by a guardian only with authorization of the incapacitated spouse.

Section II

Reconciliation

Art.251 - When divorce is sought for rupture of community life

or for fault, an attempt at reconciliation is obligatory before the judicial suit. It may be renewed during the suit.

When divorce is sought by mutual consent of the spouses, a reconciliation may be tried in the course of the suit following the rules of procedure proper in such case of divorce.

Art.252 - When the judge seeks to reconcile the spouses, he must interview personally with each one of them separately before bringing them together in his presence.

The lawyers (avocats) must next, if the spouses so demand, be called to be present and participate in the interview.

In the case of Article 238 and in the case where the spouse against whom the complaint is brought does not present himself or herself before the judge, he must nevertheless interview the other spouse and invite him or her to reflect.

Art.252-1 - The attempt at reconciliation may be suspended and resumed without formality, in arranging for the spouses times for reflection within a limit of eight days.

If a longer period appears expedient, the judge may decide to suspend the procedure and to resort to a new attempt at reconciliation within six months at most. He orders, if occasion arises, necessary temporary measures.

Art.252-2 - When he does not succeed in having them renounce divorce, the judge tries to induce the spouse to regulate its consequences amicably, notably in what concerns the children, by accords which the court may take into account in its judgment.

Art. 252-3 - What was said or written on the occasion of an attempt at reconciliation, under whatever forms it took place, may not be invoked for or against a spouse or a third party subsequent to the procedure.

Section III

Temporary Measures

Art. 253 - In case of divorce on joint petition, the spouses themselves regulate temporary measures in the temporary agreement which must be annexed to their original request.

However, the judge may have suppressed or modified the clauses of such agreement which appear to him contrary to the interests of the children.

Art. 254 - At the time of the appearance of the spouses in the case contemplated in Article 233, or of the order of non-reconciliation in other cases, the judge prescribes the measures which are necessary to assure the existence of the spouses and of the children until the date on which the judgment becomes res judicata.

Art. 255 - The judge may particularly:

1. Authorize the spouses to reside separately;
2. Allocate to one of them the enjoyment of the lodging and furniture of the household, or partition between them such enjoyment;
3. Order the delivery of clothing and personal objects;
4. Fix the subsistence allowance and the provisions for costs of litigation which one of the spouses must pay in to the other spouse;

4. Grant to one of the spouses provisions on his or her share of the community if the situation renders it necessary.

Art. 256 - If there are minor children, the judge rules on their custody, as well as on the right of visit and of entertaining. He fixes the contribution due, for their maintenance and their education, by the spouse who does not have custody.

Art. 257 - The judge may take, beginning with the initial request, emergency measures.

He may, under such heading, authorize the plaintiff spouse to reside separately, with the minor children if there is occasion.

He may also, for the guaranty of the rights of a spouse, order any measures of conservation, such as the fixing of seals on community property. The provisions of Article 220-1 and the other safeguards instituted by the matrimonial regime remain nevertheless applicable.

Art. 258 - When he rejects definitively a petition in a divorce, the judge may rule on the contributions to the charges of the marriage, the residence of the family and the custody of minor children.

Section IV

Evidence

Art. 259- Facts invoked as causes for divorce or as defenses to a petition may be established by any mode of proof, including oath.

Art. 259-1 - A spouse may not submit it trial letters exchanged between the other spouse and a third person which he or she obtained by violence or fraud.

Art.259-2 - The averments drawn up in the complain of a spouse are set aside from the trial if there was violation of domicile or illicit infringement on the intimacy of private life.

Art.259-3 - The spouses must communicate to each other and communicate to the judge as well as to experts designated by him all information and documents useful for fixing payments and allowances and liquidating the matrimonial regime.

The judge may cause to be made all suitable searches into debtors and those who hold assets for the account of the spouse without professional secret being able to be interposed.

Chapter III

Consequences of Divorce

Section I

The Date at Which Divorce Takes Effect

Art.260 - The decision which pronounces divorce dissolves the marriage, the wife must observe the delay of three hundred days provided in Article 228.

Art.261 - To contract a new marriage, the wife must observe the delay of three hundred days provided in Article 228.

Art.261-1 - If the spouses were authorized to reside separately during the course of the litigation, such period starts to run beginning with the day of the decision authorizing the separate residence or ratifying, in case of joint petition, the temporary agreement made on this subject.

The wife may remarry without delay when the divorce was pronounced



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in the case provided in Articles 237 and 238.

Art.261-2 - The period comes to an end if a birth takes place after the decision authorizing or ratifying the separate residence, or in default, after the date on which the judgment of divorce acquires the force of res judicata

If the husband dies before the judgment of divorce has acquired the force of res judicata, the period runs counting from the decision authorizing or ratifying the separate residence.

Art.262 - The judgment of divorce may be opposed against third parties, starting with the day when the formalities of mention in the margin prescribed by the rules of the civil status have been accomplished.

Art.262-1 - The judgment of divorce takes effect in the relations between spouses, as to what concerns their assets, from the date of summons.

One of the spouses may request that the effect of the judgment be advanced to the date when, through the fault of the other, their cohabitation and their collaboration ceased.

Art. 262-2 - Any obligation contracted by one of the spouses on the responsibility of the community, any alienation of common assets made by one of them within the limit of his or her powers, subsequent to the initial petition, will be declared void, if it is proved that there was fraud of the rights of the other spouse.

Section II

Consequence of Divorce for the Spouses

1 - General Provisions

Art.263 - If the divorced spouses wish to contract between themselves another union, a new celebration of marriage is necessary.

Art.264 - Following divorce, each of the spouses resumes the uses of his or her family name.

However, in the case provided in Articles 237 and 238, the wife has the right to keep the use of the husband's name when the divorce was sought by him.

In another cases, the wife may keep the use of the name of the husband either with his accord or with authorization of the judge if she proves that a particular interest attaches thereto for herself or for the children.

2 - Consequences Peculiar to Different Cases of Divorce

Art.265 - Divorce is considered pronounced against one spouse if it took place exclusively on his or her wrongs. It is also considered pronounced against the spouse who took the initiative in divorce when it was obtained by reason of the rupture of community life.

The spouse against whom the divorce is pronounced loses the rights which the law or the agreements made with third parties attribute to a divorced spouse.

Such rights are not lost in case of sharing of wrongs or of divorce by mutual consent.

Art.266 - When divorce is pronounced on the exclusive wrongs of one of the spouses, the latter may be judged liable for damages in

reparation for the material and moral harm which the dissolution of the marriage made the other spouse suffer.

The latter may seek damages only on the occasion of an action in divorce.

Art.267 - When divorce is pronounced on the exclusive wrongs of one of the spouses, such one loses as a matter of law all the gifts and all the matrimonial advantages which the other spouse had granted to him or her, whether at the time of the marriage or after.

The other spouse keeps the gifts and advantages which had been granted to him or her, even though they had been stipulated to be reciprocal and the reciprocity did not take place.

Art.267-1 - When divorce is pronounced for divided wrongs, each one of the spouses may revoke all or part of the gifts and advantages which he or she had granted to the other.

Art.268 - When divorce is pronounced on joint petition, the spouses themselves decide on the disposition of the gifts and advantages which they had granted each other; if they make no decision in such regard, they are considered to have maintained them.

Art.268-1 - When divorce is pronounced on petition accepted by the other spouse, each one of the spouses may revoke all or part of the gifts and advantages which the other spouse had granted him or her.

The other spouse keeps his or hers.

3 - Compensatory Payments

Art.270 - Except when it is pronounced for reason of rupture of community life, divorce puts an end to the duty of aid provided

by Article 212 of the Civil Code; but one of the spouses may be required to make to the other a payment designed to compensate, as far as it is possible, for the disparity which the rupture of the marriage creates in the respective conditions of life.

Art.271 - The compensatory payment is **fixed** according to the needs of the spouse to whom it is made and to the resources of the other while taking into account the situation at the time of divorce and its evolution for a foreseeable future.

Art.272 - In the determination of needs and of resources, the judge takes into consideration notably:

- the age and the state of health of the spouses;
 - the time already devoted or which it will be necessary for them to devote to the education of the children;
 - their professional qualifications;
 - their availability for new employment;
 - their existing and foreseeable rights;
 - the possible loss of their rights as to reversionary incomes;
- their patrimony, both in capital and in revenue, after the liquidation of the matrimonial regime.

Art.273 - Compensatory payment is in the nature of lump sum. It may not be revised even in case of unforeseen change in the resources or need of the parties, except if the absence of revision were to have for one of the spouses consequences of an exceptional gravity.

Art.274 - When the consistence of the assets of the debtor spouse of compensatory payment so permits, it takes the form of capital.

Art.275 - The judge decides the modalities according to which the appropriation or application of assets in capital will be made:

1. Deposit of a sum of money;
2. Relinquishment of property in kind, personal or real, but for usufruct only, the judgment working a forced transfer in favor of the creditor;
3. Placing revenue-producing securities in the hands of a third party responsible for depositing the revenues with the creditor spouse of the payment until a time fixed.

The judgment of divorce may be subordinated to the depositing in fact of the capital or to the creating of the guarantees provided in Article 277.

Art.275-1 - If the debtor spouse for compensatory payment does not dispose of immediately liquid assets, he or she may be authorized, under the guarantees provided in Article 277, to make up the capital in three annual payments.

Art.276- In default of capital or if it is not sufficient, compensatory payment may take the form of an annuity.

Art. 276-1 - The annuity is given for a duration equal to or less than the life of the creditor spouse.

It is price-indexed; the indicia are determined as in the matter of subsistence allowance.

The amount of the annuity before indexing is fixed in a uniform fashion for its entire duration or may vary by successive periods following the probable evolution of resources and needs.

Art.276-2 - At the death of the debtor spouse, liability for the

annuity passes to his or her heirs.

Art.277 - Independantly of legal or judical mortgage, the judge may require the debtor spouse to institute a gage or to give security to guarantee the annuity.

Art.278 - In case of joint petition, the spouses fix the amount and the modalities of compensatory payment in the agreement which they submit for the judge's approval.

The judge, however, refuses to approve the agreement if it fixes inequitably the rights and obligations of the spouses.

Art.279 - An approved agreement has the same executory force as a decision at law.

It may be modified only by a new agreement between the spouses also submitted for approval.

The spouses nevertheless have the option of providing in their agreement that each one of them may, in case of unforeseen change in resources and needs, request the judge to revise the compensatory payment.

Art.280 - The transfers and relinquishments provided in the present paragraph are considered as participating in the matrimonial regime. They are not assimilated gifts.

Art.280-1 - The spouse by whose exclusive wrongs the divorce was pronounced has no right to any compensatory payment.

However, he or she may obtain an indemnity by way of exception if, account being taken of the duration of the community life and of the collaboration brought to the profession of the other spouse,

it appears manifestly contrary to equity to refuse him or her any pecuniary compensation following the divorce.

4 - Duty of Aid after Divorce

Art.281 - When divorce is pronounced for rupture of community life, the spouse who took the initiative in divorce remains entirely obligated for the duty of aid.

In the case of Article 238, the duty of aid covers all that is necessary for the medical treatment of the sick spouse.

Art.282 - The fulfilling of the duty of aid takes the form of a subsistence allowance. It may always be revised in consideration of the resources and of the needs of each one of the spouses.

Art.283 - The subsistence allowance ceases as a matter of law to be due if the spouse who is the creditor for it contracts a new marriage.

An end is put to it if the creditor lives in a state of notorious concubinage.

Art.284 - At the death of the debtor spouse, liability for the allowance passes to his or her heirs.

Art.285 - When the consistence of the assets of the debtor spouse so lend themselves, the subsistence allowance is replaced, in whole or part, by the institution of capital, according to the rules of Articles 274 to 275-1 and 280.

If such capital becomes insufficient to cover the needs of the creditor spouse, the latter may demand a supplement under the form of subsistence allowance.



5 - Lodging

Art.285-1 - If the premises serving as lodging for the family belong as severalty or personally to one of the spouses, the judge may award it on lease to the other spouse:

1. When the custody of one or more children has been awarded to the latter;

2. When the divorce was pronounced on the petition of the owner spouse, for rupture of the community life.

In the case provided in 1 above, the judge fixes the duration of the lease and may renew it until the majority of the youngest of the children.

In the case provided in 2, the lease may not be awarded for a duration exceeding nine years, but may be prolonged by a new decision. It comes to an end, as a matter of law, in case of remarriage of the one to whom it was awarded. An end is put to it if the latter lives in a state of notorious concubinage.

In all cases, the judge may rescind the lease if new circumstances so justify.

Section III

Consequences of Divorce for the Children

Art.286 - Divorce leaves subsist the rights and the duties of the father and mother with regard to their children, under reservation of the rules which follow.

Art.287 - According to the interests of the minor children, their custody is awarded to one or the other of the spouses. By way of exception and if the interests of the children so require, such

custody may be awarded, either to another person chosen preferably within their relationship, or, if that proves impossible, to an educational institution.

Art.287-1 - Before ruling on the custody of children, temporary or final, and on the right of visit, the judge may give a mission to any qualified person to effect a social investigation. It has for its purpose the collecting of information on the material and moral situation of the family, on the conditions in which the children live and are raised, and on the measures which there is occasion to take in their interest.

If one of the spouses contests the conclusions of the social investigation, he or she may demand a counter-investigation.

The social investigation may not be utilized at the trial on the cause of divorce.

Art.288 - The spouse to whom the custody of the children was not awarded keeps the right to superintend their maintenance and education. He or she contributes thereto in proportion to his or her resources.

A right of visit and of entertaining may be refused him or her only for grave reasons.

He or she may be charged to administer under judicial control all or part of the patrimony of the children, in derogation of Articles 372-2 and 389, if the interest of a good administration of such patrimony so requires.

Art.289 - The judge rules on the awarding of custody and on the modalities of the exercise of parental authority on the request of one

of the spouses, of a member of the family or of the prosecuting attorney (ministere public)

Art.290 - the judge takes into account:

1. Agreement made between the spouses;
2. Information which was collected in the social investigation and counterinvestigation provided in Article 287-1;
3. Sentiments expressed by the minor children when hearing them appeared necessary and when it does not bring ill consequences to them.

Art.291 - Decisions relative to the exercise of parental authority may be modified or completed at any time by the judge, on the request of a spouse, of a member of the family or of the prosecuting attorney (ministere public)

Art.292 - In case of divorce on joint petition, the dispositions of the agreement approved by the judge relative to the exercise of parental authority may be revised, for grave reasons, at the request of one of the spouses or of the prosecuting attorney (ministere public)

Art. 293 - the contribution to the maintenance and to the education of the children, provided in Article 288, take the form of a subsistence allowance paid to the person who has custody to them.

the modalities and the guarantees of such subsistence allowance are fixed by the judgment or, in case of divorce on joint petition, by the agreement of the spouses approved by the ludge.

Art.294 - When the consistence of the assets of the dedtor so lend themselves, the subsistence allowance may be replaced, in whole or part, according to the rules of Article 274 to 275-1 and 280, by the depositing of a sum of money in the hands of an accredited

organization charge with granting in counterpart to the child a priceindexd annuity, the relinquishment of property in usufruct or the application of asset productive of revenue.

Art.294-1 - If the capital thus constitute becomes insufficient to cover the needs of the children, the person who has custody may request the allotment of a supplement in the form of subsistence allowance.

Art.295 - The parent who assumes the principal responsibility for adult children who cannot themselves provide for thier needs may demand of the other spouse to pay him or her a contribution to their maintenance and to their education.

The Italian Civil Code

Book I Person and Family

Chapter V

Dissolution of Marriage and Separation of Spouses

149. Dissolution of marriage. Marriage is dissolve only by the death of one of the spouses.

The wife retains the name of the husband during the period of widowhood.

150. Personal separation. Personal separation of the spouses is admissible. The right to request such separation belongs to the spouses only in the cases determined by law.

151. Grounds for personal separation. Separation can be requested on grounds of adultery, wilful desertion (146), excessive behavior, cruelty, threats, or grave injuries.

The action for separation on grounds of adultery of the husband is not admissible unless such circumstances exist as to cause the adultery to constitute grave injury to the wife.

152. Separation because of penal conviction. Separation can also be requested against a spouse who has been sentenced to life imprisonment, or to penal servitude for a period of over fives years, or on whom perpetual interdiction from public offices has been imposed, excepting the case in which the



sentence or interdiction preceded the marriage and the other spouse had knowledge of it.

153. Separation for failure to establish a residence. The wife can request separation when the husband, without just reason, fails to establish a residence (144) or, having the means to do so, refuses to establish it in a manner in keeping with his condition.

154. Reconciliation. Reconciliation extinguishes the right to request separation; it also imports the abandonment of a previously instituted action for separation (157).

155. Provisions regarding children. The tribunal which decrees separation declares which of the spouses shall have custody of the children and provide for their maintenance, education and instruction (147, 148).

In any case the tribunal can, for serious reasons, order that the children be placed in an education institution or with a third person.

Regardless of the person to whom the children are entrusted, the father and mother retain the right to supervise their education.

156. Effects of separation. The spouse who is not at fault in the separation retains such rights inherent in his marital status as are not incompatible with the separation.

The spouse through whose fault the separation has been pronounced has no right except that of support (433 ff.) He

loses all benefits which the other spouse has granted to him by the marriage contract, even if they were stipulated with reciprocity.

The tribunal can also deprive him, wholly or in part, of the legal usufruct (324 ff) to which he may be entitled over the property of minor children.

If the separation decree is granted because of the fault of both spouses, each of them incurs the loss indicated in the preceding paragraph and the tribunal, depending on the circumstances, makes appropriate provisions concerning the legal usufruct (585).

The tribunal, depending on the circumstances, can also forbid the wife to use the name of the husband.

157. Termination of effects of separation. By mutual agreement the spouses can cause the effects of the decree of separation to end by express declaration or by the act of cohabitation, without the necessity of intervention by the court.

158. Consensual separation. Separation by the mere consent of the spouses has no effect without confirmation by the tribunal.

Civil Code of The Republic of China

Book IV Family

Title V Divorce

Article 1049

Husband and wife may effect a divorce themselves where they mutually consent to it; but in the case of a minor, the consent of his or her statutory agent must be obtained.

Article 1050

Divorce by mutual consent is effected in writing and requires the signatures of at least two witness.

Article 1051

After divorce by mutual consent, the guardianship of the children rests with the husband; but where it has been otherwise agreed upon, such agreement shall be followed.

Article 1052

Either spouse may apply to the court for a divorce provided that one of the following conditions exist:

1. Where the other spouse has committed bigamy;
2. Where the other spouse has sexual intercourse with another person;
3. Where the spouse receives such ill-treatment from the other spouse as to render it intolerable to live together;
4. Where the wife has so ill-treated the lineal ascendants of

the husband, or has been so ill-treated by them that life in common becomes intolerable:

5. Where the other party has deserted the spouse in bad faith and such desertion still continues;
6. Where the other party has made an attempt on the life of the spouse;
7. Where the other party has a loathsome disease which is incurable;
8. Where the other party has a serious mental disease which is incurable;
9. Where it has been uncertain for over three years whether the other party is alive or dead;
10. Where the other party has been sentenced to not less than three years' imprisonment or has been sentenced to imprisonment for an infamous crime.

Article 1053

In the cases specified in Sections 1 and 2 of the preceding article, the party who has the right of action may not apply for a divorce, where he previously consented to the act or has since condoned it or has had cognizance of it for over six months, or where two years have elapsed after the occurrence of the act.

Article 1054

In the cases specified in Sections 6 and 10 of Article 1052, the party who has the right of action may not apply for a divorce where one year has elapsed after he had cognizance of the act or where five years have elapsed after the act occurred.

Article 1055

In the case of a divorce by judicial decree, the provisions of Article 1051 shall apply in regard to guardianship of the children. But the Court may, in the interest of the children, appoint a guardian.

Article 1056

Where one of the spouses has suffered damage from a judicial divorce, he may claim compensation from the party at fault.

In the case provided in the preceding paragraph the injured party, provided he is not at fault, may also claim an equitable compensation in money even where the damage is not a pecuniary loss.

The claim mentioned in the preceding paragraph is not transferable and may not pass to heirs unless it has been acknowledged by contract or an action has been commenced.

Article 1057

Where an innocent spouse is reduce to difficulties in livelihood on account of a judicial divorce, the other spouse, even if he be also innocent, shall pay an equitable sum for maintenance.

Article 1058

On divorce each spouse recovers his or her own property whatever was their matrimonial property regime. If there is any deficit, it is borne by the husband, unless such deficit arises from circumstances for which he is not responsible.

The Civil Code of Japan

Section 4 Divorce

Sub-section 1 Divorce by Agreement

(Divorce by agreement)

Article 763. Husband and wife may effect divorce by agreement.

(Application mutatis mutandis of the provisions on marriage)

Article 764. The provisions of Articles 738, 739 and 747 shall apply mutatis mutandis to a divorce by agreement.

(Notification of divorce)

Article 765. The notification of divorce may not be accepted unless the divorce does not contravene the provisions of Article 739 paragraph 2 and Article 819 paragraph 1, and of other laws and ordinances.

2. The validity of divorce shall not be affected even in cases where the notification of divorce has been accepted in contravention of the provisions of the preceding paragraph.

(Custody of children after divorce)

Article 766. In cases father and mother effect a divorce by agreement, the person who is to take the custody of their children and other matters necessary for the custody shall be determined by their agreement, and if no agreement is reached or possible, such matters shall be determined by the Family Court.

2. The Family Court may, if it deems necessary for the benefit of the children, change the person to take the custody of them or order such other dispositions as may be appropriate for the custody.

3. The provisions of the preceding two paragraphs shall not cause any change in the rights and duties of father and mother outside the scope of custody.

(Resuming prior surname)

Article 767. Husband or wife, who has changed his or her surname by reason of marriage, resumes, by reason of divorce by agreement the surname assumed thereby before the marriage.

(Distribution of property)

Article 768. Husband or wife who has effected divorce by agreement may demand the distribution of property from the other spouse.

2. If no agreement is reached or possible between the parties with respect to the distribution of property in accordance with the provisions of the preceding paragraph, any of the parties may apply to the Family Court for measures to take the place of such agreement however, this shall not apply after lapse of two years from the time of the divorce.

3. In the case mentioned in the preceding paragraph, the Family Court shall determine whether any such distribution is to be made or not, and, if it is to be made, the sum as well as the mode of the the distribution, taking into account the sum of such property as is acquired by cooperation of the parties and all other circumstances.

(Genealogical records, etc.)

Article 769. If husband or wife, who had changed his or her surname by reason of the marriage, has effected divorce by agreement after his or her succession to the right stated in Article 897 paragraph I the person who is to succeed to the right shall be determined by an

agreement between the parties and other persons concerned.

2. If no agreement mentioned in the preceding paragraph is reached or possible, the person who is to succeed to the right mentioned in the preceding paragraph shall be determined by the Family Court.

Sub-Section 2 Judicial Divorce

(Judicial divorce - causes)



Article 770. Husband or wife can bring an action for divorce only in the following cases:

- (1) If the other spouse has committed an act of unchastity;
- (2) If he or she has been deserted maliciously by the other spouse;
- (3) If it is unknown for three years or more whether the other spouse is alive or dead;
- (4) If the other party is attached with severe mental disease and recovery therefrom is hopeless;
- (5) If there exists any other grave reason for which it is difficult for him or her to continue the marriage.

2. Even in cases where any or all of the grounds mentioned in items (1) to (4) inclusive of the preceding paragraph exist, the Court may dismiss the action for divorce, if it deems the continuance of the marriage proper in view of all the circumstances.

(Custody of children, resumption of surname, distribution of property, genealogical records, etc.)

Article 771. The provisions of Articles 766 to 769 inclusive shall apply mutatis mutandis to judicial divorce.



ประวัติผู้เขียน

นายพิชฎพันธ์ เกรษฐบุตร เกิดที่กรุงเทพมหานครเมื่อวันที่ ๕ ธันวาคม พ.ศ. ๒๔๙๘ จบการศึกษาได้รับปริญญาวิทยาศาสตรบัณฑิต จากมหาวิทยาลัยรามคำแหง เมื่อวันที่ ๑๐ พฤศจิกายน พ.ศ. ๒๕๑๙ และได้เข้าศึกษาต่อที่สำนักอบรมศึกษากฎหมาย แห่งเนติบัณฑิตยสภา จนสอบไล่ได้ตามหลักสูตรของสำนักอบรมศึกษากฎหมาย แห่งเนติบัณฑิตยสภาในสมัยที่ ๓๒ ปี พ.ศ. ๒๕๒๒ ปัจจุบันมีอาชีพทนายความประจำอยู่ สำนักงาน ฝั่ง เกรษฐบุตร ทนายความ เลขที่ ๕๐๕ - ๕๐๙ ถนนมหาไชย เขตพระนคร แขวงสำราญราษฎร์ กรุงเทพมหานคร