

# Family Law

Voidance and dissolution of marriage

# Voidance of marriage

means annulment of marriage and of all its legal consequences from the moment of its registration.

# Grounds for annulment

- Lack of consent
- Age
- Another registered marriage (art.11)
- Close relatives (art.11)
  - Parents
  - Children
  - Grandparents
  - Grandchildren
  - Brothers and sisters
  - Adopters
  - Adopted
- Active incapacity due to mental disease
- Fictitious marriage
- If one of the spouses hid a dangerous disease

# Procedures of annulment:

- Only by the court's decision
- Three days after the court's decision court is obliged to communicate it to the registration body
- Marriage is recognized as void from the moment of its registration.

# Persons who can claim the voidance of marriage

- In a case of a spouse under 18: this spouse, his/her parents, organ of guardianship and tutorship or prosecutor
- Spouse, whose rights are violated
- Prosecutor if there is a defect of will
- Spouse who did not know about obstacles to the marriage
- Tutor of an active incapable spouse
- Spouse of the previous non dissolved marriage
- Prosecutor and a spouse who did not know about fictitious marriage

# Circumstances which cancel the voidance of marriage

- If the circumstances of voidance do not exist anymore
- The court can reject the action about voidance of marriage with minor in the interests of the minor or when the minor spouse does not agree with the voidance of the marriage
- The court cannot make a decision of voidance of fictitious marriage if such spouses had created a family
- After the dissolution of marriage it cannot be recognized as void unless art. 11 is violated.

# Consequences of the recognition of marriage as void

- All legal consequences are annulled
- All property acquired during such marriage is to be regulated by the articles of the Civil Code of RK on common shared property
- Marriage contract is recognized as void. The spouse who did not know about the grounds of voidance of the marriage can receive a compensation maintenance or the marriage contract can be recognized as partially valid
- Good-faith spouse has a right for the restoration of property and moral damage
- Good-faith spouse has the right to keep the surname chosen during the registration of marriage

# Ceasing of marriage

- By the death of a spouse
- By the recognition of a spouse as dead (to be restored if discovered the opposite)

# Dissolution of marriage

- The marriage can be dissolved by the request of one spouse or both spouses or by a tutor of an incapable spouse
- Dissolution of marriage without the consent of a pregnant wife or during the first year of life of a child is impossible

# Dissolution of marriage: procedure

- Dissolution of marriage in the registration state body is made when there is a mutual consent of the spouses, there are no minor children and there are no property claims
- Dissolution of marriage in the registration state body is made by the request of one spouse if another spouse
  - is recognized as missing;
  - Is recognized as active incapable
  - is convicted for at least 3 years of imprisonment

# Dissolution of marriage: court procedure

- If there are minor children (within 1 month)
- If there is no consent of the second spouse (after a 3 month period)
- If the second spouse even without expressing it clearly by his/her actions demonstrates the lack of consent
- If there are property claims
- In a case there are no correspondent agreement between spouses the court must decide on:
  - with whom the minor children are going to live after the dissolution of marriage
  - Maintenance money – who and how much – for children and the other spouse
  - Division of common property

# Terms of dissolution of marriage

- Marriage dissolved in state registration body is considered as such from the day the correspondent registration was made
- Marriage dissolved by the court procedure is considered as such from the moment the court's decision comes into force
- In a case of court procedure, the court is obliged in 3 days communicate its decision to the registration state body
- Spouses cannot enter in a new marriage until received the certificate on divorce.