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THE FIGURE OF DIVORCE IN THE PANAMANIAN LAW

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Background

Divorce as such acquired importance in almost all the ancient territories, due to the need of allowing an option to repudiate the woman on the part of the husband, all this in spite of her discrepancy with the canons of the epoch, specifically with the Christianity, which defends the undissolubility of the marriage.

Historical Evolution of the Divorce in Panama

During the period that we were joined to Spain we supported, the existing dogma regarding marriage, until we achieve our independence on November 28, 1821 and join to the Great Colombia. The Law 20 of 1853 admits the divorce in Colombia but three years later it was abolished by the conservatives, that same character of undissolubility was supported in the Colombian Code of 1873.

For November 3, 1903, Panama achieves its independence of Colombia and three months later by means of the Law of February 15, 1904, it was decreed as one of the first measurements in force in the country as Colombians Codes and Laws, that do not violate the dispositions of the new government, situation that was maintained ten years later to the separation. Then by means of the Law of January 17, 1911, it was established the figure of the divorce in Panama, action that could be requested only by the spouses with full freedom.

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For the year 1916 were approved a series of codes among which outlines the Civil Code that stipulates the bases of divorce in the following form; the adultery of the woman and the scandalous concubinage of the husband, the offence of one of the spouses on the life of the other, the affronts, the cruel dealing and the bad treatments of work if with them the life of the spouses is in danger, or one makes the peace and the domestic calm impossible, the proposal of the husband for



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prostitute the woman, the attempt of the husband or of the woman to corrupt their children or to prostitute their daughters to the expediency, the absolute abandonment by the husband of his duties of husband or of the father and by the wife of her duties of wife or mother.

With the passing of time modifications were realized to the Articles that regulate the divorce, and the most important one is the Law 3 of May 17, 1994 by means of which the Family code is approved, modified by the Law 12 of June 25, 1994, which stills in force.

Concept of Divorce

It is the full and absolute dissolution of the matrimonial tie, by the competent authority, by means of a judgment by virtue of certain base happened with posteriority to the celebration of the marriage.

Characteristics of Divorce

- First of all it is a way of dissolving the marriage tie
- A judicial judgment is necessary to dissolve it, which needs to come from the relevant authority.
- It is decreed by virtue of certain grounds, therefore, it must be decided regarding to the above mentioned base that the legislator has contemplated, as causes valid to dissolve the marriage.
- Our legislation establishes 10 bases for divorce in the article 212, of the Family Code.
- They happened after the celebration of the marriage; they produce the real essence of the divorce, since the same has the purpose of dissolving the marriage for causes later to it.

Effects of the Divorce

First of all the dissolution of the matrimonial tie by means of the divorce does not have retroactive effects, which means that may not longer be in existince in the future; the effects produced in the past survive to the effect that the divorced were spouses until the judgment of divorce and the common children were and still having such quality.

Man and woman divorced can marry again with different persons, inclusive between them, as long as the base of the divorce have not been the offence of one of the spouses on the life of the other, or of their children, daughters, stepdaughters or stepsons. The new marriage of the woman, can be executed any time as long as there exists previous scientific evidence (pregnancy test), of not being pregnant.



The judgment of divorce implies dissolution not only of the marriage tie and of the family bosom, it also represents the dissolution of the marriage society, since in no case, this can exist to the margin of the marriage.

With regard to the voluntary divorce, the article 218 of the Family Code establishes that in the assumptions established in the numerals 9 and 10 of the article 212, the judge will only be able to decree the dissolution of the marriage tie, once the safekeeping, visits and child support of sons or daughters had in the marriage is credited as resolved.

In a not voluntary divorce, the guilty spouse loses his/her rights to the profit that come from the goods deprived of the spouse. On his/her part the innocent spouse will be able to revoke the donations that it will have done in favor of the offender, without detriment to the right to third parties.

In the judgment of divorce the judge will be able to grant an alimony to the innocent spouse in charge of the culprit (article 223 of the Family Code), of equal way it is established that the divorce does not deprive the sons or daughters of the advantages assigned by the law or by the marriage contracts product of the declaration of the divorce (article 220 of the Family code).

Judicial Procedure of the Figure of Divorce

The process of divorce is responsibility of the Sectional Courts of Family, which are entrusted to decide in first instance the above mentioned processes in accordance with the dispositions of the article 752 of the Family Code, numeral 1).

It is important to mention that the figure of divorce Is subject to the formalities of the common procedure (article 788 of the Family Code), for such effects the request of divorce must be in writing and it must contain the designation of the judge or office to which it is addressed, generals of the parties, what is requested, base or bases of the request in accordance with the article 778 of the Family Code.

Once the claim is accepted, transfer of the claim to the defendant by the term of three (3) days and such party must be summoned for the the celebration of the hearing for a term not longer than fifteen (15) days counted from the transfer (article 780 of the Family Code).

The hearing will be celebrated in the day and time established by the court and in the presence of any of the parties that appear to it; in this one the judge



will try to go so far as to conciliate the parties, in case that this is not possible, he will proceed to the reception of evidences and counterevidences as well as of the evidences that the court considered necessary to obtain a better view of the situation. From the hearing, a summary stating everything happened would be raised, as well as the fact that any of the parties refused to sign it. It is necessary to emphasize that both, the acceptance and the hearing as well as the final judgment are made with consent of the Public Minister, therefore, they must be notified in all these stages.

As soon as the judgment of divorce, whether it is dissolving or denying the pretension, the parties can use the Appeal Resource, which will be decided by the Superior Court of Family. In the above mentioned Resource it will not be possible to request the practice of new evidences, unless they are proofs that will be hanging of evacuating or of practising at the time of deciding in the first instance. Expressed the concept by part of the Superior Court with regard to the appealed judgment, it will be in force and will be mandatory for both parts, and if the dissolution of the marriage tie is confirmed, an order would be issued and send with authenticated copy of the judgment, to the entity entrusted to register the divorce, which is the Civil Registry, with which, the whole procedure of the divorce is considered concluded.

