

EUROPEAN FAMILY LAW IN ACTION

Volume IV: Property Relations between Spouses

Edited by

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intersentia

Antwerp - Oxford - Portland

Distribution for the UK:

Hart Publishing Ltd.
16C Worcester Place
Oxford OX1 2JW
UK
Tel.: +44 1865 51 75 30
Fax: +44 1865 51 07 10

Distribution for Switzerland and

Germany:
Stämpfli Verlag AG
Wölflistrasse 1
CH-3001 Bern
Switzerland
Tel.: +41 0 31 300 63 18
Fax: +41 0 31 300 66 88

Distribution for the USA and Canada:

International Specialized Book Services
920 NE 58th Ave Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free)
Tel.: +1 503 287 3093
Fax: +1 503 280 8832
Email: info@isbs.com

Distribution for other countries:

Intersentia Publishers
Groenstraat 31
BE-2640 Mortsel
Belgium
Tel.: +32 3 680 15 50
Fax: +32 3 658 71 21

European Family Law in Action. Volume IV: Property Relations between Spouses
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© 2009 Intersentia
Antwerp – Oxford – Portland
www.intersentia.com

ISBN 978-90-5095-893-6
D/2009/7849/22
NUR 822 and 828

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PREFACE

This fourth volume of the European Family Law in Action publications contains detailed information concerning the law on property relations between spouses in twenty-six European jurisdictions. The first three volumes, which were published in 2003 and 2005 under the same editorship, include national reports on the grounds for divorce, maintenance between former spouses and parental responsibilities (Nos. 2, 3 and 9 of this series). Upon the basis of this comparative material the Commission on European Family Law has formulated the *Principles of European Family Law regarding Divorce, Maintenance between Former Spouses and Parental Responsibilities*, which were published in December 2004 as No. 7 and in March 2007 as No. 16 in this series.

In order to prepare the third set of Principles of European Family Law the expert members of the CEFL have once again drafted comprehensive national reports on the basis of a detailed questionnaire in the field of property relations between spouses. These national reports, together with the relevant legal provisions, are available on CEFL's web site (www.ceflonline.net). Stefan Derksen, student-assistant at the Utrecht Centre for European Research into Family Law (UCERF), to which all three editors belong, also assisted in the editing of the national reports.

This book integrates all the given answers in order to provide an overview and a straightforward simultaneous comparison of the different solutions chosen within the national systems. On the basis of this comparative material the CEFL will be able to draft *Principles of European Family Law regarding Property Relations between Spouses*. The comparative perspective reveals that within Europe several completely different regimes are applied, such as the community of property, the community of accrued gains, the participation in acquisitions, the deferred community of property, the separation of property and the separation of property together with the distribution by the competent authority. Given this great variety of solutions the question arises whether one single European matrimonial property scheme can and will be established or whether the devising of two systems is more feasible, one based on community and the other based on separation.

In respect of cross-border relationships legislative initiatives regarding property relations between spouses have also been taken. At the level of European law a Regulation on matrimonial property regimes is being prepared. It will address the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition intending to examine all property aspects of both married couples and other forms of unions. The preparatory Green Paper was published in July 2006 (COM (2006) 400 final). In drafting the CEFL Principles on Property Relations between Spouses the

proposed EU Matrimonial Property Law Regulation will also be taken into account. Explicit comparisons of the substantive matrimonial property law between the European jurisdictions will be undertaken and an exposition of the variations in the underlying rules themselves will systematically reveal and explain why a particular Principle was selected and drafted. Only reliable and comprehensive comparative material should be used in carrying out such an endeavour. The book at hand fulfils this fundamental requirement.

Katharina Boele-Woelki
Utrecht, February 2009

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184.	What happens if one spouse's assets are used for investments in the other spouse's assets? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?	1115
185.	What happens if one spouse's assets have been used for payment of a debt of the other spouse? Is there a rule of compensation? And if so, how is compensation calculated?	1117

186. Do the spouses have preferential rights over the matrimonial/ family home and/or the household's assets?	1119
187. Do the spouses have preferential rights over other assets?	1121
188. To what extent, if at all, does the distribution of the assets affect the attribution of maintenance?	1123
189. To what extent, if at all, can the competent authority transfer or modify the pension rights and claims of one or both spouses?	1125
190. Are there, besides the rules of succession, specific rules governing the competent authority's power to redistribute the assets upon the death of one spouse?	1129
D. MARITAL AGREEMENTS.	1131
191. Are future spouses permitted to make a pre-nuptial agreement regulating their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?	1131
192. Are spouses permitted to make a post-nuptial agreement regulating or changing their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?	1141
193. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid as between the spouses?	1151
194. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid in relation to a third party? Is there a system of registration of pre- and/or post-nuptial agreements? If so describe briefly the system and its effect.	1161
195. Is full disclosure of the spouses' assets and debts necessary for the making of a pre- and/or post-nuptial agreement?	1171
196. If the agreement has to be made before an official (e.g. a notary), is that official obliged to inform the spouses about the content and the consequences of the pre- and/or post-marital agreement? If so, what happens if the official does not fulfil his or her obligation?	1175
197. Provide statistical data, if available, regarding the making of pre- and/or post-nuptial agreements.	1183
198. May spouses through pre- and/or post-nuptial agreements only choose, where applicable, a statutory matrimonial property regime and/or do they have the freedom to modify such a regime or even create their own regime?	1189

199.	If spouses can modify through pre- and/or post-nuptial agreements a statutory regime or create their own regime, can those modifications be made to:	
	a. categories of assets;	
	b. administration of assets;	
	c. distribution of assets;	
	d. depend upon the ground of dissolution of the marriage?	1199
200.	Are there typical contractual clauses used in practice to modify essential elements of the matrimonial property regime, where applicable, or to achieve a certain result, e.g. that certain rights are excluded only upon divorce but not on death of a spouse?	1219
201.	Can the competent authority override, modify or set aside pre- and/or post-nuptial agreements on account of unfairness or any other ground?	1227