

NATIONAL REPORT: BULGARIA

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August 2008

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1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses) a) upon marriage and/or b) during marriage and/or c) upon separation and/or d) upon death and/or e) upon divorce and/or f) upon annulment? If so, briefly indicate the current sources of these rules. If so, briefly indicate the current sources of these rules.

a. upon marriage

No.

b. during marriage

The Family Law Code lays down one single regime of community of property (for a certain category of assets only) during the marriage in combination with a regime of separation of property. The community covers only property (real property and movables), rights in property and bank deposits acquired during the marriage. The current rules are laid down in Art. 19-21 Bulgarian Family Code of 1985. The community of property relates only to persons that are married, that is within a civil marriage. Family legislation in Bulgaria still does not attach consequences to *de facto* families. Contracting a marriage is a prerequisite for the establishment of community of property *ex lege*. The community of property regime is compulsory. The spouses cannot avoid it for example by means of a (pre-marital) contract.

c. upon separation

No.

d. upon death

The death of a spouse terminates the marriage and the community of property (Art. 26 para. 1 Bulgarian Family Code). The community of property is converted into a joint ownership with equal shares for the former spouses (Art. 27 Bulgarian Family Code). The share of the deceased spouse goes to his or her heirs.

e. upon divorce

The termination of the marriage by divorce ends the community of property converting it into a civil joint ownership for the former spouses (Art. 26 para. 1 Bulgarian Family Code). As a rule, the shares of former spouses in the joint ownership are equal (Art. 27 Bulgarian Family Code). Following the divorce, however, the law provides for the opportunity of inequality of shares to be established by the court, based on a claim of either spouse, on the following two grounds: (1) one spouse has made a considerably larger contribution to the community property (Art. 28 para. 3 Bulgarian Family Code) and/or (2) the assignment of the spouse with the care for raising the children, which imposes a serious hardship on him or her (Art. 28 para. 1 Bulgarian Family Code). In addition, upon the divorce each of the spouses is entitled to receive a portion of the value of the property necessary for the professional needs of the other spouse and his or her income acquired during the marriage, if this is of considerable value and he or she has contributed to its acquisition by means of his or her labour, means or work in the household. The action may also be brought before the divorce proceedings where the behaviour of the spouse who has acquired the property puts the interests of the other spouse or the children in jeopardy (Art. 29 Bulgarian Family Code).

f. upon annulment

The termination of the marriage by annulment has the same effect on the property relationship between spouses as that of divorce (see Question 1e). Art. 98 Bulgarian Family Code "Consequences arising from the Annulment of Marriage" reads: "(1) The rules regarding the consequences of the dissolution of marriage through divorce in connection with the personal property and property relations between the spouses, and also about the relations between them and the children are also applicable to the annulment of marriage. The bad faith by annulment of marriage has the same meaning as the fault in divorce."

2. Give a brief history of the main developments and most recent reforms of the rules regarding the property relationship between spouses.

The statutory matrimonial property regime until 1968 in Bulgaria was a complete separation of property. Irrespective of the marriage, the spouses kept their separate rights with regard to their property and its administration. The separation of property was an established social norm in Bulgaria, which was legalized only in 1945 by the first Bulgarian Marriage Ordinance Law (Art. 16 Bulgarian Marriage Ordinance Law). That law also envisaged a joint liability for debts incurred by one of the spouses for the household needs (Art. 17 Bulgarian Marriage Ordinance Law). Upon the divorce each spouse was entitled to receive a share (in kind or in cash) from the acquisitions of the other during the marriage if he or she contributed to the particular acquisition (Art. 43 Bulgarian Marriage Ordinance Law).

The Persons and the Family Law of 1949, that repealed the Bulgarian Marriage Ordinance Law, preserves the: (1) regime of complete separation of property no matter when the property was acquired – either prior or during the marriage (Art. 33 Bulgarian Persons and the Family Law), (2) joint liability for household debts (Art. 34 Bulgarian Persons and the Family Law) and (3) the share from the other spouse's property (Art. 52 Bulgarian Persons and the Family Law). The claim for the share of the other spouse's property reflects one of the main private law principles for redress in unjust enrichment. Judicial practice suggests that this claim has been mainly used by wives that have contributed to their husbands' property by household work and care for the children.¹

During 1958-1960 drafting of a new family legislation took place in Bulgaria. The intense discussion on the draft was mainly focused on the proposed change in the matrimonial property regime, namely to replace the separation by community of property acquired during the marriage. The following grounds for that fundamental reform were presented by its supporters: (1) the need to harmonize the Bulgarian Family law with that in the other communist countries that have adopted the community of property much earlier; (2) the community of property was viewed as more appropriate to the collective values of the communist society rather than the separation of property regime that was attributed to the more individualistic ideals of the capitalist system; and (3) that separation of property generates injustice in the family.²

The majority of the leading Bulgarian scholars were against the reform based on the following reasons: (1) the lack of any legal and social tradition of community of property in Bulgaria; (2) the reform would have encouraged entry into marriage on 'account' (the marriage could turn to a ground for acquisition of property), (3) the proposed regime would have unfair implications since spouses contribute differently to the marital property, but eventually would exit the marriage with equal shares; (4) injustice in inheritance, since the surviving

¹ More in: N. Mevorah, *Family Law*, 1956, pp. 113-121 and pp. 250-252.

² See: L. Nenova, "Property Relations between Spouses", *Pravna Missal*, 1960, vol. 3, pp. 79-83; B. Barov, "Community of Property of the Spouses", *Socialistichsko pravo*, 1960, vol. 6, pp. 3-13.

spouse would receive a larger share when compared to the children; (5) the community of property regime is complicated and would create conflicts between spouses and between them and third parties; (6) the equality of the woman in the family was better protected by the regime of separation of property.^{3/4} The discussion lasted almost 10 years. That was, until 1968 when the first Family Code was passed. It introduced the matrimonial community of property regime. The reform was justified as follows: (1) the community of property is a means for encouraging the family solidarity and mutual support; (2) it supports the equality of spouses and protects the wife, and (3) the family life is actually based on the community of property.⁵

The community of property regime of the Family Code of 1968 only covers the property and rights in properties (Art. 13 para. 1 Bulgarian Family Code 1968). Although its scope was limited with respect to the subject matter, in practice the community of property covered the most valuable family assets that spouses were able to acquire at that time, namely the family home (just one), car and a holiday home (just one).⁶ It should be noted that in communist Bulgaria, private property was limited to a very restricted number of basic assets. As a result, in practice the matrimonial community of property covered all possible acquisitions and was called 'consumer property'.⁷

In parallel with the community of property, a separation as regards a certain category of assets was also put into place. The separation applied to the assets in which the common contribution is excluded. Additional criteria for the separation to be established are – the kind of the asset and the means of acquisition (Art. 13 para. 2 Bulgarian Family Code 1968), joint liability for household debts (Art. 13 para. 8 Bulgarian Family Code 1968) and the entitlement to a share from the other spouse's property (Art. 14 para. 5 Bulgarian Family Code 1968) remained as they were envisaged in the legislation of 1949.

This dual regime was preserved in the subsequent Bulgarian Family Code of 1985 and is still currently in force. The Bulgarian Family Code lays down for the first time the legal term 'matrimonial community of property' as a title of the main provision on the subject, Art. 19. The Bulgarian Family Code 1985 enlarges the scope of the community by including bank deposits (bank accounts) of spouses. Another innovation of the Bulgarian Family Code 1985 is the regulation of the substitution of personal assets. The other characteristics of the regime remain the same as in the Family Code of 1968.

3. Are there any recent proposals (e.g. parliament, reform bodies, academic community) for reform in this area?

³ L. Nenova, "Property Relations between Spouses", *Pravna Missal*, 1960, vol. 3, pp. 79-83; Al. Kozuharov, "On the Draft Family Code", *Pravna Missal*, 1960, vol. 3, pp. 59-63; V. Tadjer, "On the Issue of Matrimonial Property", *Pravna Missal*, 1960, vol. 3, p. 63 et seq.; Sv. Daskalova, "Notes on the Draft Family Code", *Pravna Missal*, 1960, vol. 4, p. 95 et seq.

⁴ This is the concept of gender equality of the major scholars of the time in Bulgaria: Professor L. Nenova ("Property Relations between Spouses", *Pravna Missal*, 1960, vol. 3). Professor V. Tadjer ("On the Issue of Matrimonial Property", *Pravna Missal*, 1960, vol. 3). Against this understanding and for the community of property regime as a means for acknowledging the contribution of the woman to the family property in terms of house labour and child bearing: B. Barov, "Community of Property of the Spouses", *Socialistichsko pravo*, 1960, vol. 6, pp. 3- 13.

⁵ B. Barov, "Community of Property of the Spouses", *Socialistichsko pravo*, 1960, vol. 6, pp. 3- 13.

⁶ The Property of Citizens Law of 1973 created limits regarding the objects of personal (matrimonial community) property. As per Art. 2 – each person/family could possess one house or apartment. That part of the law was abolished in 1990.

⁷ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 162.

A Draft Family Code is under parliamentary discussion since April 2008. It proposes a reform of the matrimonial property regime. The compulsory regulation of matrimonial property regime will be dismissed. The (future) spouses will have three options to choose from as regards their matrimonial property regime. The choice of spouses will need to be registered on the Marriage Certificate, as well as in a special Registry:

1. **Separation of property.** The separation of property is the same regime in force in Bulgaria until 1968; it constitutes the full separation of property during the marriage.
2. **Community of property.** The legal regime of community of property is the same regime as currently in force under the Bulgarian Family Code 1985. It is not a full community, but rather a combination of community and separation of property. The community of property covers only the assets and the rights on assets (bank deposits are excluded). This regime will be applied if neither of the other options is selected by the spouses.
3. **Pre-marital agreement.** This option can only be concluded prior to the marriage (only, which means that this option is not open to those currently married) in written form registered by a notary. It covers the whole range of property and financial relationships, including maintenance between spouses and related to children during the marriage and/or after the divorce including:
 - property acquired before the marriage (including its transfer);
 - acquisitions during the marriage;
 - shares of either spouse on the termination of marriage;
 - spouses' debts;
 - maintenance between spouses and child support;
 - other property and financial matters.
4. **Briefly explain whether or not the rules regarding the property relationship between spouses also apply to registered or civil partnerships?**

No, they do not. The legislation of Bulgaria does not yet regulate any of the above relationships.⁸

5. **Are the rules concerning the matrimonial property relationship between spouses exclusive or are there other mechanisms of property law, such as joint ownership, which also play a role in relation between spouses?**

The rules concerning the matrimonial property relationship between spouses are not exclusive. Other mechanisms of Property Law (of 1951, last amended in 2007) can be applied between spouses,⁹ but in a limited number of cases and following the general rule of the first paragraph of the Additional Provisions of the Family Code that states: "The problems as to which there are no provisions in this Code the respective rules of the civil laws are applied, provided this does not contradict the principles governing the family relations and morality."

The spouses can jointly own an asset that has been obtained prior to the marriage. The marriage does not change the rights obtained before it has been contracted.¹⁰ The spouses can acquire property jointly even during the marriage, if they invest their own property in the future asset. Art. 21 Bulgarian Family Code entitled 'Transformation of Personal Property', states that: "(1) The properties, rights in properties and bank deposits, acquired during the marriage are personal where acquired in their entirety with personal property, according to Art. 20, Para 1 with other personal property acquired before the marriage. (2) Where the properties, rights in properties and bank deposits are acquired in part with personal

⁸ See Supreme Court of Cassation Judgments No. 459/1990-II and No. 1165/1996/I.

⁹ Supreme Court Judgment No. 476/1978.

¹⁰ Supreme Court Judgment No. 73/1972.

property, according to the foregoing sub Article, the personal property of the spouse is a corresponding part of the acquired property, unless this part is negligible.”

Another example of the application of rules of the Property Law in the relationship between spouses is the protection of the right of the co-owner to make use of the asset under joint ownership (Art. 31 Bulgarian Property Law). Judicial practice,¹¹ and legal doctrine acknowledge the application of this rule to spouses.¹² Nevertheless, this rule regulates the relationship between co-owners and not the community of property relationship, which does not have shares before its termination (Art. 22 para. 1 Bulgarian Property Law). Therefore, the courts grant relief in cases where one of the spouses has been deprived from making use of an asset, as part of the community of property. No matter what caused that deprivation, for example the conduct of the other spouse or the factual separation during which the asset has been possessed by one of the spouses, the deprived spouse is entitled to compensation according to the principles of Bulgarian Property Law.

6. What is the relationship, if any, between the law regarding the property relationship between spouses and the law of succession?

The death of a spouse terminates the marriage and the community of property (Art. 26 para. 1 Bulgarian Family Code). The community of property is converted into joint ownership with equal shares of the former spouses (Art. 27 Bulgarian Family Code). The share of the deceased spouse proceeds to his or her heirs. The surviving spouse is successor by law of his or her deceased spouse (Art. 9 Bulgarian Inheritance Law of 1949). He or she will receive a larger part of the assets in the community of property because the surviving spouse receives an equal share if he or she inherits together with children.

The law in force departed from the rule embodied in the former Family Code (1968). This law stipulated that the surviving spouse did not receive a share from the common property if he or she inherits together with children (Art. 14 para. 7 Bulgarian Family Code 1968).

In addition, the Family Code embodies a special provision in the title “Revocation of hereditary rights and dispositions in case of death”. Art. 104 of this title reads: “After the divorce the former spouses cease to be legal heirs to one another and forfeit all benefits resulting from the dispositions in case of death affected before that. The same consequences take place where the soundness of the action has been established after the death of the plaintiff.”

7. Are there distinct rules concerning general rights and duties of the spouses (as referred to in section B) that are independent of the specific property relationship of the spouses (matrimonial property regimes as referred to in section C)?

No, there are no such rules.

B. GENERAL RIGHTS AND DUTIES OF SPOUSES CONCERNING HOUSEHOLD EXPENSES, TRANSACTIONS IN RESPECT TO THE MATRIMONIAL HOME AND OTHER MATTERS IRRESPECTIVE OF THE SINGEL MATRIMONIAL PROPERTY REGIME

8. What, if any, are the obligations of spouses to contribute to the costs and expenses of the family household? In answering this question, briefly explain what your system understands by “costs and expenses of the family household”.

¹¹ Supreme Court Judgments No. 8/1980 and No. 557/1988-I; Supreme Court of Cassation No. 157/2002.

¹² L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 162.

The Family Code lays down one general complex common duty of the spouses to contribute according to their capabilities for the welfare of the family and for the rearing of children. As per Art. 18 Bulgarian Family Code, entitled 'Care for the Family': "The spouses are obliged by reciprocal goodwill and mutual efforts and according to each other's capabilities, property and income to ensure the welfare of the family and to take care for the rearing up, bringing and support of children."

The provision embodies the principle for a socially, morally and legally desirable marital behaviour. The law requires equal effort (but not equal contribution in terms of quantity) according to each spouse's ability.¹³ The interpretation of the broad term 'welfare of the family' used in Art. 18 Bulgarian Family Code suggests that it covers not only the 'costs and expenses of the family household', but also all personal relationships between the spouses and between them and the children of the family (biological, adopted or stepchildren). Therefore, the law imposes a general duty on the spouses to contribute to family life as it is regarded as a composite of social, emotional, moral and economical elements.¹⁴

Whether these duties are fulfilled is a matter for the court to assess in a case of divorce.¹⁵ The spousal conduct matters not only for granting a divorce based on irretrievable breakdown. The conduct is also considered in the division of common property assets (joint ownership after the dissolution of marriage) following the divorce when a deviation from the statutory principle of equality of shares is claimed. The care for the household and childcare are equally considered as a contribution to the community of property by the law: "The mutual contribution of the spouses may be expressed by the investment of means and labour, by care for the children and work in the household" (Art. 19 para. 2 Bulgarian Family Code).

The rule in question also contains an indication of the means of the spouses' contribution to the welfare of the family. The spouses should provide for the family not only by their common property, but also by their personal "property and income", with regard to their individual capacities.¹⁶ The investment in the family of each spouse's personal property and income does not provide for a ground for redress.^{17,18}

The rule in question is further developed in the rules concerning community of property and community of duties of the spouses. For instance, the specific regulation of Art. 25 Bulgarian Family Code, entitled: 'Expenses and Obligations for the Family', reads: "(1) The expenses necessary to meet the family needs are borne by both spouses. (2) For debts incurred by one or both spouses for the satisfaction of family needs both spouses are jointly responsible." It is obvious that the law draws a distinction between 'expenses' and 'debts'. The interpretation of the term 'expenses necessary to meet the family needs' suggests that it covers direct payments for the everyday needs of the household and family members (such as costs for food, clothes, services etc.), in contrast to the term 'debt' that means future payments incurred to meet the family needs.¹⁹ The rule is related to Art. 18 Bulgarian Family Code. These costs are covered by either spouse irrespective of the source - common or personal property or incomes. There is no right to compensation.

As far as debts are concerned, they are usually incurred for the acquisition of common property (e.g. credit to buy a family home, furniture, car etc.) or other specific needs (e.g.

¹³ See: H. Georgiev, I. Palazov and Ts. Damianov, *Family Code. Commentary*, 1975, pp. 77 et seq. L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp. 145-146.

¹⁴ H. Georgiev, I. Palazov and Ts. Damianov, *Family Code. Commentary*, 1975, pp. 77 et seq.

¹⁵ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp. 149-150.

¹⁶ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 102.

¹⁷ Supreme Court of Cassation Judgment No. 571/1989- I.

¹⁸ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp. 202-203.

¹⁹ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp. 199-200.

medical treatment of a family member, education for children etc).²⁰ In the case of common debts (incurred for the satisfaction of family needs) being covered by personal assets, the spouse has a right to compensation (but only after the dissolution of the marriage) to the level of unjust enrichment of the other spouse. This rule has been acknowledged both by the legal theorists,²¹ and judicial practice.²²

9. Is one spouse liable for the household debts incurred by the other? And if so, to what extent?

Art. 25 para. 2 of the Bulgarian Family Code reads: 'For debts incurred by one or both spouses for the satisfaction of family needs both spouses are jointly responsible.'

The provision is clear that spouses are joint liable for debts incurred by one or both spouses *ex lege*, but only for one category of debts, namely those debts incurred for needs of the family. If the debt of one of the spouses is incurred to satisfy his or her personal needs it establishes the personal liability of the debtor. A recent case of the Commercial Division of the Supreme Court of Cassation confirms the established judicial practice to require proof of the nature of the debt in cases where creditors claim joint liability of spouses.²³

Each of the spouses is liable before the creditor for the whole amount of the debt. If the debt is incurred by one spouse the liability of the other is created *ex lege*, notwithstanding the other spouse did not enter into the contract, nor did he or she even know about it. This statutory provision creates a specific mutual representation (*ex lege*) between spouses for debts incurred for family needs. The rule protects the creditor who is not obliged to check if the debtor is married or not. The joint liability established *ex lege* cannot be altered by virtue of spousal consent. The author of the main textbook on Family Law has, however, claimed that if one of the spouses disagrees with incurring the debt and presents her/his arguments to the other party to the contract, his or her liability should be discharged.²⁴ Against this opinion is the argument that the liability of both spouses is established *ex lege* and the will of one of them against incurring the debt cannot waive his or her liability.²⁵ The spouse that has paid the debt using his or her own money can claim compensation from the other, but only after the dissolution of the marriage and on the basis of unjust enrichment.²⁶

10. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of the matrimonial/family home irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by "matrimonial/family home".

There are no specific rules governing acquisition in respect of the matrimonial/family home. Art. 23 of the Family Code contains a specific rule governing the transactions in respect of the matrimonial/family home in the case it is a property of one of the spouses. It reads: 'Where the matrimonial home is the personal property of one of the spouses he or she may dispose with it only with the consent of the other spouse. Where an agreement can not be achieved the disposition may be effected with the permission of the regional court only if it is established that this is not harmful to the children and the family.'

²⁰ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp. 199-200.

²¹ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 39-40.

²² Supreme Court of Cassation Judgments No. 209/1988-I and No. 603/2002-I.

²³ Supreme Court of Cassation Judgment No. 644/2007.

²⁴ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 205.

²⁵ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 39-40.

²⁶ Supreme Court of Cassation Judgment Nos. 209/1988-I and 603/2002-I. P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 39-40.

The rule lays down a restriction in relation to the private property rights justified by the interests of the children and the family. The provision is linked to Art. 18 Bulgarian Family Code imposing mutual obligations on the parties to the marriage to ensure the welfare of the family and to take care for raising and support of any children. The consent of the other spouse is considered to be a condition for the contract, but not part of it.

The spouse-owner of the family home may claim before the court to grant permission for the transaction, if it is not harmful to the children and the family. The court order replaces the missing consent of the spouse who is not the owner of the matrimonial home. If the spouse-owner of the family home has transferred it without or against the consent of the other spouse, the latter spouse can claim before the court that the transaction is void.²⁷

The law does not contain a definition of the term 'family home'. Nonetheless, the Supreme Court in its Judgment No. 12-1971 provided such a definition, namely 'The family home comprises the living and service premises designed to fulfil the needs of the family – spouses, children and other elderly family members. The law envisages the home, occupied until the marriage dissolution, or in the case of factual separation – until the day of its start.'

11. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of household goods irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by "household assets".

There are no specific rules governing acquisition and/or transactions in respect of household goods in Bulgarian family legislation.

12. To what extent, if at all, are there other rules governing transactions entered into by one spouse irrespective of the matrimonial property regime (e.g. entering into guarantees, incurring debts...)?

The Bulgarian Commercial Law (of 1991, last amended in 2008) governs the case of insolvency of a spouse that has engaged in commercial activities and transactions in his or her capacity as a physical person, but not as a company. In case of insolvency, the spouse is liable to the extent of all his or her personal property and half of the share of the community of property (Art. 614 para. 2 and 3 Bulgarian Commercial Law). The start of the insolvency procedure terminates the community of property on equal shares by operation of law, thus providing an opportunity for the creditors of the spouse to start the enforcement procedure against that part (Art. 614 para. 2 and 3 Bulgarian Commercial Law).

13. To what extent, if at all, are there specific rules concerning one spouse acting as agent for the other?

The spouses could act as each other's agent based on the common regulations of the civil law (Law on the Obligations and Contracts of 1950, last amended in 2008, Art. 36–43, but applied in relation to para. 1 of the Additional Provisions of the Family Code that states: "The problems as to which there are no provisions in this Code the respective rules of the civil laws are applied, provided this does not contradict the principles governing the family relations and morality.")

One specific case where exclusive authorisation is needed for the spouse to act as an agent for the other is the case of disposal of matrimonial community property and rights therein that by law should be executed jointly by both spouses (Art. 22 para. 3 Bulgarian Family Code).

²⁷ Supreme Court Judgments No. 610-2001, No. 378-2003, No. 225-1985 and No. 487-1994.

The Bulgarian Family Code creates a rule for the specific legal representation of one spouse for the other in two cases. It is specific because the spouse acting as agent for the other obtains both rights and duties not only for his or her spouse but for him or herself too. The first hypothesis of the *ex lege* representation is when the one spouse enters legal actions for the administration of the matrimonial community property e.g. contracting renovations of the home, or renting property, the legal effect is based on Art. 22 para. 1 Bulgarian Family Code, namely "The spouses have equal rights of possession, use, disposal and management of the matrimonial community property and right in properties ... Acts of management of the matrimonial community property and rights in properties may be performed by each of the spouses." If one of the parties to the marriage is party to the contract it is considered that he or she has acted as an agent for the other party.²⁸

The second case is if a debt is incurred for needs of the family by one of spouses. The law creates a specific mutual representation (*ex lege*) between spouses in such a hypothesis: "... for debts incurred by one or both spouses for the satisfaction of family needs both spouses are jointly responsible" (Art. 25 para. 2 Bulgarian Family Code).

14. What restrictions or limitations, if any, are there concerning transactions between spouses irrespective of the matrimonial property regime (e.g. gifts...).

The spouses are only free to enter transactions with regard to their personal property. As stated in Art. 24 Bulgarian Family Code, entitled 'Disposition of personal property', "Each one of the spouses may dispose of his or her personal property with regard to third persons or to the other spouse." The Family Code stipulates void any transaction of a spouse of his or her future share from the community property: "During the marriage neither of the spouses is entitled to dispose of the share which he or she would obtain from the matrimonial community property at its termination" (Art. 22 para. 1 Bulgarian Family Code). The spouses are only free to make wills between themselves for their shares of community assets.

C. MATRIMONIAL PROPERTY REGIMES

C.1. General issues

15. Are spouses entitled to make a contract regarding their matrimonial property regime?

No, they are not. The Bulgarian Family Code 1985 lays down a single obligatory regime of matrimonial property that combines community of property for certain assets and a separation of property for the rest.

16. What regime is applicable, using the list below,²⁹ if spouses have not made a contract (default regime) or are not allowed to make a contract or are not allowed to make a contract with binding effect?

Community of property.

17. Using the list above, are there other alternative matrimonial property regimes regulated by statute for which spouses can opt besides the default regime (where applicable)?

No, there are no other alternative matrimonial property regimes, neither statutory nor contract based. The only matrimonial property regime is the statutory regime laid down in

²⁸ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 188.

²⁹ For an explanation of this list, see the document: CLASSIFICATION OF MATRIMONIAL PROPERTY REGIMES PROPOSED BY THE CEFL.

the Bulgarian Family Code 1985. It is applicable *ex lege* if the prerequisites of Art. 19 Bulgarian Family Code are in place.

18. Briefly describe the regimes indicated in the answers to:

a. Question 16

The Family Law Code lays down one single regime of community of property (for a certain category of assets only) during the marriage in combination with a regime of separation of property. The community covers only property (real property and movables), rights in property and bank deposits acquired during the marriage. Contracting a marriage is a prerequisite for the establishment of community of property *ex lege*. The community of property regime is compulsory. The spouses cannot avoid it, for example by (pre-marital) contracts. The disposal of the community assets can only be achieved if done by the spouses jointly. The spouses cannot make transactions with their future shares of the community property including between them apart from making wills.

Apart from the community assets, all other rights are in the regime of separation, e.g. assets acquired before the marriage, or during the marriage, or via gift or inheritance, the personal income, other takings, copyrights etc. The passive part of the community is the joint liability that is established *ex lege* for debts incurred by either spouse for meeting the needs of the family.

b. Question 17

There are no other matrimonial property regimes.

19. Indicate the frequency of the use made of the regimes (where possible by reference to statistical data) referred to in Questions 16 and 17.

All marriages are governed by the single statutory regime of community of property (combined with separation of property). The Bulgarian Family Code 1985, as well as the Bulgarian Family Code 1968 (abolished by the Bulgarian Family Code 1985), stipulates the retroactive effect of the matrimonial property regime. According to § 4 of the transitional provisions: "The rules of this Code in connection with the property relations between the spouses are to be applied also for existing properties acquired before its coming into force by spouses of existing marriages."

Please answer the following specific questions ONLY with regard to the following two regimes: (1) the default regime and (2) a regime, whether or not regulated by statute, which next to the default regime is most frequently used.

C.2. Specific regimes

I. Community of property

I.1. Categories of assets

20. Describe the system. Indicate the different categories of assets involved.

The community of property is established *ex lege* for the following category of assets:

1. property and rights in properties (e.g. occupation right, building lease);
2. bank deposits (saving accounts).

The regime is obligatory; the spouses cannot avoid it by choosing something else. The limited scope of the subject matter covered by community of property provides for a ground for it to be defined by case law as a limited community of property.³⁰ As stipulated by Art. 19 Bulgarian Family Code, entitled 'Matrimonial Community Property': "(1) The properties and rights in properties, and also the bank deposits, acquired by the spouses during the marriage as a result of their common contributions, belong jointly to them irrespective in whose name they have been acquired. (2) The mutual contribution of the spouses may be expressed by the investment of means and labour, by care for the children and work in the household. (3) The mutual contribution is presumed until proved otherwise."

The four prerequisites for the community of property are embodied in the above provision (para. 1), namely: (1) related to the person, (2) related to the subject matter, (3) related to the time and (4) related to the contribution. All conditions should be satisfied (i.e. the criteria are cumulative) in order for the asset to be included in the community of property:

1. The subject of the community of property: This is a spouse. Notwithstanding which one of the spouses has obtained the asset, the other spouse is joint owner of the property.
2. The object of the community of property: The category of the asset is crucial for the community of property. Art. 19 para. 1 Bulgarian Family Code envisages an exhaustive list of assets – all other categories are personal. These are only property, rights in properties (e.g. occupation right, building lease) and bank deposits.³¹ The bank deposit is a savings account of a spouse based on a deposit contract between the holder and the bank. The spouse becomes a creditor of the bank that in turn is a debtor of the spouse. All other rights of such a kind, in which the spouse is a creditor of a debt, are personal – e.g. deriving from tort, unjust enrichment, commercial transactions etc.
3. Time of the acquisition: this must be "during the marriage". The acquisition should be completed after the solemnisation of marriage but before its dissolution. The exact moment of the acquisition of the concrete asset is determined not by the Family Code, but by the other civil legislation.³² It depends on the means of acquisition (e.g. by purchase contract, by usucapion etc.). "During the marriage" also covers the period

³⁰ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 162.

³¹ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 166.

³² Supreme Court Judgments No. 5/1972 and No. 8/1980.

of factual separation, if any, since the legal dissolution of the marriage is crucial, and not the factual separation of the couple. However, if there is a long-term factual separation that has terminated all relationships between the spouses, the property acquired during the period of factual separation can be excluded by the community on the basis of lack of mutual contribution.³³ The property acquired before the marriage does not become community property even if acquired by both spouses. It remains joint ownership with defined shares.

4. Mutual contribution of both spouses to the acquisitions: This is the justification of the community of property, but not the mere fact of the marriage.³⁴ The contribution of either spouse can have different forms as listed in the legislation: "investment of means and labour, care for the children and work in the household" (Art. 19 para. 2 Bulgarian Family Code). Moreover, there is a rebuttable presumption for the existence of a mutual contribution until proven to the contrary during court proceedings either during the marriage or after its dissolution (Art. 19 para. 2 and 3 Bulgarian Family Code). The lack of mutual contribution could successfully establish a personal property over the assets notwithstanding it is acquired during the marriage.³⁵

21. What is the legal nature of the different categories of assets, in particular the community?

The community of property is an indissoluble right of joint ownership of property and rights in properties, as well as of bank deposits.

The community of property is compulsory: It is established *ex lege*, not upon the will of spouses. The spouses are neither permitted to agree between themselves nor between themselves and third parties something different than that stipulated in the legal regime. Any such stipulation is considered void. The compulsory nature of the matrimonial community of property is proven by statutory provision of para. 4 of the transitional provisions: "The rules of this Code in connection with the property relations between the spouses are to be applied also for existing properties acquired before its coming into force by spouses of existing marriages."³⁶

The community on property and rights in properties is an indissoluble joint ownership without shares. It is indissoluble until the dissolution of marriage or in the case of its termination during the marriage. The concept is based on the right of joint ownership governed by general property law, but with the exceptions as established by the family law, namely the indissoluble nature of the regime. The parties to the marriage do not have shares in their joint property: Art. 22 para. 1 Bulgarian Family Code: "During the marriage neither spouse is entitled to dispose the share, which he or she would obtain from the matrimonial community property at its termination". Thus the holders of the right to the community of property are both spouses. Shares are established equally after the termination of the community of property, which normally follows the dissolution of marriage: Art. 26 para. 1 Bulgarian Family Code: "The matrimonial community property is terminated by the death of a spouse, by divorce or the dissolution of the marriage."

The community of property can also be terminated during the marriage, but only upon limited statutory grounds: Art. 26 para. 2 and 3 Bulgarian Family Code:

- "... by judicial proceedings where serious reasons require this."

³³ Supreme Court Judgments No. 35/1971 and No. 1049/1990-II Ibid, p. 169.

³⁴ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 169.

³⁵ Supreme Court Judgment No. 241/1989-II.

³⁶ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 34-36.

- The execution directed against separate assets which are matrimonial community property for a personal debt of one of the spouses terminates the matrimonial community property as regards these assets.”
- The start of the insolvency procedure against a spouse for his or her commercial activities terminates the community of property (Art. 614 Bulgarian Commercial Act).
- The spouses cannot agree on different shares after the dissolution of the marriage. Difference in the shares could be established but on statutory grounds and based on a court judgment.

The disposal of matrimonial community properties and rights therein is to be executed jointly by both spouses (Art. 22 para. 2 Bulgarian Family Code). Any stipulation otherwise agreed between the spouses would be considered void based on the statutory regime.³⁷

The bank deposit as part of the community of property is a common undertaking against the bank. The community in this case typically exists only in the internal relations between spouses, but is not manifest in the account. Normally one of the spouses is the account holder. Thus, although the bank is jointly liable for the amount to both spouses, based on the definition of community of property (Art. 19 para. 1 Bulgarian Family Code), it normally only acts with respect to the holder of the account. As per Art. 22 para. 5 Bulgarian Family Code: “The spouse in whose name the bank deposit account is opened can dispose of it.”

The community of property with respect to the deposit account is evident in two cases: (1) at the termination of the community of property causing *ex lege* division of the deposit at equal shares and (2) in the case of mutual disposal of the deposit by the spouses. The latter condition can be invoked based on a court order upon the claim by the spouses who is not a holder of the account under Art. 22 para. 5 Bulgarian Family Code: “..... Where the acts of disposition jeopardize the interests of the family or of the other spouse the latter may request the court to issue an order for such dispositions to be performed by mutual consent of both spouses.” The personal assets are property rights or takings of a person regulated by private law.

22. What do the personal assets of each spouse comprise?

The sources of the rights on personal property are Art. 20-21 Bulgarian Family Code. As per Art. 20 Bulgarian Family Code: “(1) The properties, rights in properties and bank deposits, acquired before the marriage, and the properties, rights in properties and bank deposits, acquired during the marriage by way of inheritance or gift belong to the spouse who has acquired them. Personal are also the assets acquired by one of the spouses under the rules set by the Civil Procedure Code, where the execution of a personal debt of one of the spouses is directed against a property or rights in property which are part of the matrimonial community property. (2) Personal property is the assets acquired by each one of the spouses during the marriage which serve him or her for the ordinary personal use or are necessary in practicing his or her profession.”

The assets personal property could be classified based on the following criteria:

1. Type of the asset – *per argumentum a contrario* of Art. 19 Bulgarian Family Code, all economic rights apart from property rights are personal (shares and stocks in commercial entities, collections apart from the saving deposits and others).
2. Time of the acquisition – everything obtained before or after the marriage is a personal right. The property acquired by both spouses before the marriage does not

³⁷ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, p. 35.

become community of property. It remains joint ownership with defined shares (Art. 20 para. 1 Bulgarian Family Code). Factual separation can establish a personal property regime over certain assets acquired during the separation, but only after rebutting the presumption of mutual contribution.

3. Lack of mutual contribution (or according to the means of acquisition). The asset obtained during the marriage by inheritance or a gift is personal.
4. The function of the asset – two subgroups:
 - Assets that serve either spouse for ordinary personal use. The adjective ‘ordinary’ is important. It suggests that if a spouse has for his or her personal use assets that are luxurious, they will be considered as part of the community property rather than personal.
 - Assets that are necessary for the professional use of a spouse. The costs for assets of this kind do not matter if they are needed to secure the profession of the spouse. The assets of this kind need to be movable; the type of acquisition does not matter.³⁸ In an important judgment of the Supreme Court of Cassation No. 2 of 2001 the scope of this category of personal assets was enlarged. The Court stated that: “... assets that serve the commercial activity of a spouse, whose liability is unlimited, are his or her personal property but are not included into the community of property.” This statement of the Supreme Court was provoked by the different court’s interpretations of the nature of the assets involved in the commercial activities of a spouse in the absence of a clear statutory regulation in the period 1990–2000. Family law legislation did not contain any reference to a commercial activity, because this did not exist in 1985 when the Family Code was enacted. Commercial legislation does refer to the community of property by placing half of the property *ex lege* in the sphere of insolvency where such a procedure has been opened.

The contribution of spouses in obtaining the above two groups of assets is irrelevant. However, after the dissolution of the marriage by divorce or by annulment each one of the spouses is entitled to receive a portion of the value of the property necessary for the professional needs of the other spouse and his or her income, acquired during the marriage if they are of a considerable value and he or she has contributed to their acquisition with his or her labour, means or work at the household. The action may also be brought before the divorce proceedings where the behaviour of the spouse who has acquired the property puts the interests of the other spouse or the children in jeopardy (Art. 29 Bulgarian Family Code).

5. The assets acquired by one of the spouses under the rules laid down by the Civil Procedure Code are also personal, where execution of a personal debt of one of the spouses is directed against the property or rights in property which are part of the matrimonial community property (Art. 20/1 Bulgarian Family Code). In such a case the community of property on the particular asset is terminated and converted into joint ownership with equal shares. The asset will proceed to auction and the non-debtor spouse will receive half of the price. The non-debtor spouse is entitled to pay the creditor the debtor spouse’s share in the asset, thus preventing the auction and therefore becoming the outright owner of the asset (Art.s 502-506, Civil Procedure Code 2008).
6. Money in cash – two views exist on this matter: (1) the cash is personal because it is not an asset and (2) cash could be assessed based on its source; if the cash comes from a transaction of a community asset it is a community, otherwise it is personal.³⁹

³⁸ Supreme Court of Cassation No. 203/2000.

³⁹ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, p. 20.

23. Is substitution of personal assets (e.g. barter agreement) governed by specific rules? Distinguish where necessary between movables and immovables.

There are specific rules governing the substitution of personal assets regardless of whether they are movable/immovable (Art. 21 Bulgarian Family Code). The category of the asset under the substitution is important; it ought to be of the kind that is exclusively listed in Art. 21 para. 1 Bulgarian Family Code:

- any personal property acquired before the marriage (properties, rights in properties and bank deposits),
- properties, rights in properties and bank deposits, acquired during the marriage by way of inheritance or gift,
- assets acquired by one of the spouses by virtue of the execution of a personal debt of one of the spouses against the property or rights in property which are part of the matrimonial community property.

Two categories of personal assets cannot be substituted, namely assets that serve either spouse's ordinary personal use and assets that are necessary for the professional use of a spouse.

The law regulates two kinds of substitution: full and partial. Full substitution occurs when assets of the category attributed to the community of property, i.e. properties, rights in properties and bank deposits, have been acquired during the marriage in their entirety by personal property of the abovementioned kind. The new asset will be regarded as personal property (Art. 21 para. 1 Bulgarian Family Code). Partial substitution occurs where the properties, rights in properties and bank deposits are acquired in part with personal property. In this case, the personal property of the spouse is the corresponding part of the acquired property, unless this part is negligible (Art. 21 para. 2 Bulgarian Family Code).

Two-sided substitution is also possible where both parties to the marriage substitute their personal property for the acquisition of a new asset. Both spouses obtain a personal share in the new asset adequate to the value of his or her asset personal property substituted. The new asset is owned jointly.

24. Is investment of personal assets governed by specific rules? Distinguish where necessary between movables and immovables.

Art. 24 Bulgarian Family Code, specifically regulates this area, in that it governs the investment of personal assets regardless of whether they are movable/immovable. Each of the spouses may administer and dispose of his or her personal property with regard to third persons or to the other spouse. Moreover, all income of the personal property is personal (e.g. natural fruits, rents, interest).⁴⁰ Each one of the spouses can claim before the court to prove the personal nature of the asset by means of: (1) claim to rebut the presumption of mutual contribution (Art. 19 para. 3 Bulgarian Family Code) or (2) to prove the manner of the acquisition of the asset (Art. 21 para. 1 Bulgarian Family Code).

If the investment of a personal asset results in substitution of the asset, the rules for substitution should be applied. The category of the asset under the substitution is important; it ought to be of the kind that is exclusively listed in Art. 21 para. 1 Bulgarian Family Code 1985:

- any personal property acquired before the marriage (properties, rights in properties and bank deposits),
- properties, rights in properties and bank deposits, acquired during the marriage by way of inheritance or gift,

⁴⁰ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, p. 55.

- assets acquired by one of the spouses by virtue of the execution of a personal debt of one of the spouses against the property or rights in property which are part of the matrimonial community property.

Two categories of personal assets cannot be substituted, namely assets that serve either spouse's ordinary personal use and assets that are necessary for the professional use of a spouse.

The law regulates two kinds of substitution: full and partial. Full substitution occurs when assets of the category attributed to the community of property, i.e. properties, rights in properties and bank deposits, have been acquired during the marriage in their entirety by personal property of the abovementioned kind. The new asset will be regarded as personal property (Art. 21 para. 1 Bulgarian Family Code). Partial substitution occurs where the properties, rights in properties and bank deposits are acquired in part with personal property. In this case, the personal property of the spouse is the corresponding part of the acquired property, unless this part is negligible (Art. 21 para. 2 Bulgarian Family Code).

Two-sided substitution is also possible where both parties to the marriage substitute their personal property for the acquisition of a new asset. Both spouses obtain a personal share in the new asset adequate to the value of his or her asset personal property substituted. The new asset is owned jointly.

25. What assets does the community comprise? Are there special rules governing the spouses earnings?

The object of the community of property – the category of asset - is crucial for the community of property. The community comprises the assets exclusively listed in Art. 19 para. 1 Bulgarian Family Code 1985. These only relate to property, rights in properties (e.g. occupation right, building lease) and bank deposits.⁴¹ All other categories of assets are personal. Therefore the commentators define the community of property as a limited community. The spouse's earnings are personal. Earnings however, if invested in an asset of the category that is community property, become community of property.

26. To which category of assets do pension rights and claims and insurance rights belong?

The pension rights and claims and insurance rights belong to the spouse who has contributed to the scheme. These are personal rights of each of the spouses according the Bulgarian Family Code (*per argumentum a contrario* of Art. 19 para. 1 Bulgarian Family Code), as well as to Art. 80–84 Bulgarian Social Insurance Code of 1999 (last amended in 2008).

In the case the deceased spouse, the beneficiary to a universal contributory personal pension, has left dependants with no personal pensions (a spouse, children below the age of 18 and parents), the dependants can benefit from the pension rights of the deceased spouse. The surviving spouse has two options to benefit from that pension: (1) to receive a share of it in case he or she does not have a pension or is disabled and dependent upon the existence of other heirs (children below the age of 18 and parents) and (2) to receive a supplement of 20% from the pension (or the sum of pensions) of his or her deceased spouse to his / her own pension (Art. 82 Bulgarian Social Insurance Code).

Pension rights under the other schemes – additional compulsory insurance and additional pension insurance – go to the inheritance of the deceased holder (the remaining share) (Art. 170 and 245 Bulgarian Social Insurance Code).

⁴¹ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 166.

27. Can a third party stipulate in e. g. a gift or a will to what category of assets a gift or bequest will belong?

The property acquired by each of the spouses by a gift (or inheritance) irrespective of the time of its acquisition (during or out of the marriage) becomes personal property, because these means of acquisition are excluded by definition of mutual contribution (in the case of acquisition during the marriage – Art. 20 para. 1 Bulgarian Family Code).

Alternative interpretation exists in those cases where both spouses acquire by gift or will. The doctrine supports the view that the gift to two beneficiaries can only establish joint ownership and not a community of property. This is the only way to respect the autonomous will of the donor with regard to the shares of both beneficiaries, as stipulated in Art. 225 Law on Obligations and Contracts.⁴² Otherwise, the donor is obliged to donate in equal shares as stipulated by family law legislation. So, the answer to Question 27 will be – Yes, based on the academic interpretation.

However, the Supreme Court holds the opposite view. In its Ruling no. 8/1980, the Supreme Court aimed to balance the uncertain court practice on this matter. The Supreme Court stated that the property acquired by both spouses by means of a gift is to be regarded as community of property due to the fact of the acquisition takes place during the marriage. So, the answer to Question 27 will be – No, based on the court interpretation.

This opinion does not apply to gifts whose aim is to serve the ordinary personal needs of a spouse or his or her professional activities.⁴³ Such gifts will be regarded as the personal property of the relevant spouse.

If both spouses acquire by will, academics agree that the property should be held jointly. This is because each of the heirs by will have the opportunity (as per the Art. 48 and 52 Bulgarian Inheritance Act 1948) either to accept or the refuse his or her share of the property (the share should be stated by the testator, if not – it is considered to be one half of the property). If both spouses accept, they become joint owners.⁴⁴

28. How is the categorisation of personal or community assets proved as between the spouses? Are there rebuttable presumptions of community property?

The categorisation of personal or community assets is proven between the spouses based first of all on statutory criteria. Important for the categorisation of community assets are the two criteria laid down by Art. 19 para. 1 of the Bulgarian Family Code:

1. category of the asset: The community assets are the properties and rights in properties, as well as the bank deposits,
2. the time of acquisition: If during the marriage an asset of the above category is obtained, it is regarded as community property.

In addition, another important criteria set out by the Family Code 1985 is the rebuttable presumption of mutual contribution if the asset is obtained during the marriage, the mutual contribution is presumed until proved otherwise (Art. 19 para. 1). Each of the spouses can rebut the presumption by claiming before the court that his or her spouses did not contribute to the acquisition of a particular asset in any of the contribution forms (investment of means and labour, care for the children and work in the household - Art. 19 para. 2 Bulgarian Family

⁴² P. Venedikov, *Issues of the Matrimonial Community of Property*. Pp. 30-32. L. Nenova, *Family Law of the Republic of Bulgaria*, p.180.

⁴³ Supreme Court of Cassation No. 5/1972.

⁴⁴ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 179.

Code). If successful, the claim will result in establishing the personal property over the assets instead of community of property.

If the asset does not match the above criteria it should be personal:

1. the asset is not of the category of property and rights in properties or is not a bank deposit, then it is personal;
2. the asset is acquired before or after the marriage;
3. the asset of any kind is acquired during the marriage, but by way of inheritance or gift (Art. 20 para. 1 Bulgarian Family Code);
4. there is no contribution of any kind of the other spouse in the acquisition of the concrete asset (Art. 19 para. 2 Bulgarian Family Code), or;
5. the asset serves the ordinary personal use or is necessary in practicing profession of ether spouse (Art. 20 para. 2 Bulgarian Family Code).

29. How is the categorisation of personal or community assets proved as against third parties? Are there rebuttable presumptions of community property?

Again, if third parties enter a contract with a spouse(es) they should be guided by the same statutory criteria: (1) the matrimonial status of the other party, (2) the category of the asset, (3) the time of the acquisition of the asset and (4) the rebuttable presumption of a mutual contribution to the asset.

Third parties should first of all determine the matrimonial status of their party; whether he or she is married, then subsequently the time of the acquisition of the asset, whether the property falls within the category of properties, rights in properties, or bank deposits. If all those premises are in place then the asset should be considered a community property.

The presumption of mutual contribution can be rebutted, but only by a spouse and not by third parties. The claim to establish a personal nature of a particular asset based on Art. 20 Bulgarian Family Code and belongs to a spouse but not to third parties.

30. Which debts are personal debts?

The Bulgarian Family Code does not explicitly regulate the personal debts of the spouses. *Per argumentum a contrario* of Art. 25 para. 2 Bulgarian Family Code that lays down the community debts (the debts incurred by either spouse in order to meet the needs of the family) – it could be affirmed that any debt that is not incurred to meet the needs of the family is personal. Personal debts are, for instance, the debts incurred to meet personal needs, to serve the commercial activities of the spouse or debts for the management of the personal property, to meet maintenance or child support obligations.

31. Which debts are community debts?

As Art. 25 para. 2 Bulgarian Family Code lays down, the community debts are those debts incurred by either spouse for the satisfaction of the needs of the family. The term 'needs of the family' is broad in order to cover not only every-day needs, but also larger debts incurred for specific needs of the members of the family not only of the spouses (e.g. medical treatment, education needs of the children).⁴⁵ The community debts actually are incurred mainly for the acquisition of the community property assets (e.g. purchase of matrimonial home, furniture, car, and holiday home). Therefore, the community debts are defined also as the 'passive part of the community of property'.

The community debts can be incurred either by both spouses acting together (taking a common bank credit) or by either one of them. In the last hypothesis the Family Code creates

⁴⁵ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 37-39.

a specific legal representation of one spouse for the other. It is specific because the law lays down a common liability for a specific category of debts meaning that incurring a debt of that category the spouse is *ex lege* acting as agent for the other: he or she obtains duties not only for his or her spouse but for him or herself too.

Each one of the spouses is liable for the whole amount of the debt (as per Art. 121–127 Bulgarian Obligations and Contracts Act) with all his or her property, including his or her personal property and with the respective share of the matrimonial community of property. The execution of the debt by one of the spouses frees the other from his or her liability.

32. On which assets can the creditor recover personal debts?

The creditor can recover personal debts on either asset – personal assets of the debtor spouse or on the assets community of property. The Civil Procedure Code 2008 lays down a special set of regulations for execution on the assets matrimonial community of property (Art. 502–506 Civil Procedure Code). If the creditor starts a procedure for the recovery of a personal debt on community property assets the consequences are: (1) the community of property on the particular asset is terminated and converted into joint ownership with equal shares (Art. 26 para. 3 Bulgarian Family Code), (2) the non-debtor spouse may pay the creditor the share of the debtor spouse in the asset, thus preventing the auction and becoming an owner in person of the asset (Art. 505 Civil Procedure Code and Art. 20 para. 1 Bulgarian Family Code). (3) In the case that the asset precedes to auction, the non-debtor spouse receives half of the price and the other half goes to the creditor Art. 504 Civil Procedure Code).

33. On which assets can the creditor recover community debts?

The creditor can recover community debts on either asset of his choice; personal assets of the debtor or on the assets community of property. The law does not lay down any order. Each one of the spouses is liable for the whole amount of the community debt (as per Art. 121–127 Bulgarian Obligations and Contracts Act) with all his or her property – the personal one and with the respective share of the matrimonial community of property. The creditor can recover the debt on both personal and community property assets. Usually the community debts are secured by a mortgage on the community asset and the debt will be recovered by execution as regards that asset.

I.2. Administration of assets

34. How are personal assets administered?

Academics and the courts have reached a common interpretation on the types of actions the spouses may perform in relation to their assets (regardless of whether the assets are personal or community), as well as on the legal implications of those actions.⁴⁶

The first are the actions on administration of personal or community assets. These are deeds to maintain, make use of, rent (up to 3 years) or others in relation to the personal (community) property. There are no limits imposed by family law on the rights of spouses to administer their personal assets.

The second are the actions on disposal of the assets, e.g. retail of the property, closing the bank deposit etc. The Bulgarian Family Code explicitly governs the right of each one of the spouses to dispose of his or her personal property with regard to third persons or to the other spouse (Art. 24 Bulgarian Family Code). One comment should be made with regard to a contract for selling the property of one spouse to the other who buys it. In order the property

⁴⁶ Supreme Court Judgment No. 91/1974; L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 187.

to become a personal property of the buyer, he or she should invest his or her own funds as per Art. 20 and 21 Bulgarian Family Code. Otherwise the regime of the matrimonial community of property will be circumvented that is contrary to the law.

The administration of one category of the personal assets differs from the regime explained above. Where the matrimonial home is regarded as the personal property of one of the spouses, he or she may dispose of it only with the consent of the other spouse. Where an agreement cannot be reached, the disposition may be effected with the permission of the regional court only if established that it is not harmful to the children and the family (Art. 23 Family Code 1985).

35. How are community assets administered?

The Family Code lays down a special set of rules that govern the administration of the community assets as part of the matrimonial community of property regime (Art. 22 Bulgarian Family Code). The main principle again is equality of rights. As Art. 22 para. 1 Bulgarian Family Code states: "The spouses have equal rights of possession, use, disposal and management of the matrimonial community property and right in properties."

Actions on administration of the community assets (e.g. possession, deeds to maintain, make use of, rent out up to 3 years etc.) may be performed by either one of the spouses, either solely or jointly. If sole action is undertaken, the other spouse does not need to be informed or to agree to such decisions. If either one of the spouses enters legal transactions with third parties for the administration of the matrimonial community property e.g. contracting renovations of the home, or renting the property, it is considered that both spouses has entered the contract *ex lege*. It is a case where one spouse acts as an agent of the other based on the equal right on administration and the need to ease the management of the community assets. Common rights and duties for both spouses result from this representation.

In contrast with the acts on administration, the disposal (e.g. retail of the property, exchange of assets etc.) of matrimonial community assets (only property and rights in properties) therein are executed (only) jointly by both spouses (Art. 22 para. 2 Bulgarian Family Code). The law does not set out the way the joint action should be performed. Two kinds of actions are possible - both spouses appear in person to sign the contract or one of the spouses appears in person and the other acts via agent (who may be the other spouse or a lawyer) exclusively authorised (with a notaries attestation for the disposal of immovables) to make the transaction.

The spouses cannot dispose of community assets to each other because during the marriage neither of them is entitled to dispose of the share which s/he would obtain from the matrimonial community property at its termination (Art. 22 para. 1 Bulgarian Family Code). Usual gifts (usual in terms of purpose as well as in terms of value) are excluded from this regulation.

The administration of the community bank deposit is governed by a specific provision. The spouse in whose name the bank deposit account is opened can dispose of it solely, including closing down the bank account. Where the acts of disposition jeopardise the interests of the family or the interests of the other spouse the latter may claim the court to issue an order for such dispositions to be performed by mutual consent of both spouses (Art. 22 para. 5 Bulgarian Family Code).

36. Can one spouse mandate the other to administer the community assets and /or his or her personal assets?

Yes, each one of the spouses may mandate the other to administer the community assets and/or his or her personal assets.

37. Are there important acts concerning personal assets or community assets (e.g. significant gifts, disposal of the matrimonial/family home or other immovable property) that require the consent of the other spouse?

The consent of both spouses is required for the disposal of all community assets (regardless of whether they are movables, immovables or the matrimonial home) (Art. 22 para. 2 Bulgarian Family Code). No specific regulation exists on the disposal of the significant gifts. However, by all means the significant gifts would not be considered a personal property because only gifts that serve the ordinary needs could become a personal property of a spouse beneficiary (Art. 20 para. 2 Bulgarian Family Code). The courts consider them as community of property so the disposal of the significant gifts is governed by the common regulation (i.e. it needs the consent of both spouses).

The only specific regulation of this kind concerns the disposal of the matrimonial home where it is a personal property of one of the spouses. For its disposal the consent of the other spouse is required as a condition for the validity of the transaction (Art. 23 Bulgarian Family Code). Where the consent cannot be obtained the disposition may be effected with the permission of the regional court only if established that it is not harmful to the children and the family. If the disposition is completed against this regulation – without both the consent of the spouse non-owner or the court permission, the courts hold the view that the deal is void. The ground is that it is made against the law – Art. 23 Bulgarian Family Code in relation to Art. 26 Bulgarian Obligations and Contract Act.⁴⁷ The claim to annul the transaction belongs only to the non-owner spouse.

38. Are there special rules for the administration of professional assets?

Professional assets are personal property of the spouse as per Art. 20 para. 2 Bulgarian Family Code. This means that the administration of such goods is as a rule governed by the common rules governing the administration of personal assets. The spousal owner can solely administer (including the disposal of) professional assets (the consent of the other spouse is not required). However, the professional assets do not qualify for substitution, or at least the ones that have been acquired during the marriage with the mutual contribution of both spouses (e.g. computer, sewing machine).

The assets involved in the commercial activities and transactions of a spouse are also personal.⁴⁸ These assets are under the sole administration of the individual owner.

39. Is there a duty for one spouse to provide information to the other about the administration of the community assets?

The answer depends on the category of the acts of administration being performed. The answer will be: (1) Yes, if the administration of community assets concerns acts of their disposition. (2) No, if the administration of community assets concerns acts of their every day common possession, use, rent, but not of disposition.

In fact, the law applies the principle that either one of the spouses may administer the community assets assuming that spouses inform each other about their actions with regard to the community assets, but the internal relationships between the spouses are not subject for legal regulation. Thus the law gives a priority to the pace of actions rather than to over regulate the internal relationships between the spouses.

⁴⁷ Supreme Court Judgements No. 1083/1991-I, No. 230/1995-IV, No. 324/1999-IV, No. 644/2000-II, No. 610/2001-II and No. 378/2002-II.

⁴⁸ Supreme Court of Cassation Ruling No. 2/2001.

If one of the spouses engages in legal transactions with third parties for the administration of the community assets, e.g. contracting for renovations of the home, or renting the property, it is considered that both spouses have entered into the contract *ex lege*. The reason for this rule is that the spouse is acting as an agent for the other spouse based on the equal right to administration and the need for easy management of the community assets. Common rights and liabilities for both spouses result from this representation.

In contrast to the acts on administration, if either one of the spouses initiates actions for disposal (e.g. sale of the property, exchange of assets etc.) of community assets (only property and rights in properties) he or she not only has to inform the other, but also needs his or her consent for the transaction. In this case, however, the law does not lay down the manner in which the joint action should be performed. Two kinds of actions are possible: both spouses appear in person to sign the contract or one of the spouses appears in person and the other acts via the agent (who may be the other spouse or a lawyer) exclusively authorised (with a notaries attestation for the disposal of immovables) to make the transaction.

40. How are disputes between spouses concerning the administration of personal or community assets resolved?

There is no specific statutory provision to resolve this obvious situation. It would appear that the Family Code does not take on board that a conflict on property issues may arise between the spouses. The dispute can be brought to the court with alternative claims:

1. A petition for the proper administration of the assets (according to Art. 31 para. 2 Bulgarian Property Law. The court may divide the administration if possible.⁴⁹
2. A petition for the dissolution of the community of property based on the fact that the dispute constitutes a serious reason for dissolution (under Art. 26 para. 2 Bulgarian Family Code). This will convert the community of property into joint ownership allowing the spouses to divide the assets.

41. What are the possible consequences when a spouse violates the rules governing the administration of personal and community assets? What are the possible consequences in other cases of maladministration of the assets?

The possible consequences when a spouse violates the rules governing the administration of personal and community assets are laid down in the Family Code. The consequences depend on the category of the asset: (1) immovable, (2) movable and (3) bank deposits. The provisions derive from common private law regulations on voidable deals stipulated by the Bulgarian Obligations and Contracts Act (Art. 26 -35) and Art. 70 Bulgarian Property Act. The provisions of family law are adjusted, attempting to balance the protection of the interests of the parties to the marriage and the interests of the third parties.

The *first* violation of the rule governing the administration of community assets is the disposal (e.g. sale of the property, exchange of assets etc.) of matrimonial community asset(s) (only immovable property and rights in properties) by one of the spouses, contrary to the rule that such a disposal ought to be made by both spouses jointly (Art. 22 para. 2 Bulgarian Family Code). The consequence of such action is regulated by Art. 22 para. 3 Bulgarian Family Code: "the disposal of common real estate or right over such estate, executed by one of the spouses has legal effect for the other spouse only if he or she does not dispute it by action proceedings in a six months time limit from the time he or she gains information about this." If the spouse whose consent has not been received does not dispute the transaction before the court within the six months after the information has reached him or her, the transaction is regarded as having legal effect as regards him or her.

⁴⁹ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, p. 99. See also Supreme Court Judgments No. 8/1980 and No. 1286/1981-II.

Different theoretical views prevail regarding the legal status of the transaction before the petition is filed before the court and in the time during which the case is before the court:

1. the transaction effectively transfers the property. If there is a claim before the court by the spouse who is not party to the transaction, it has to suspend the contract retroactively with respect to both spouses and to the vendee.⁵⁰
2. the transaction has a "pending status" concerning its effect to transfer the property. It only obliges the vendor to transfer the property right. The completion of the deal depends on the spouse that is not a party to the contract.⁵¹ The rationale is that the statutory obligation for both spouses to jointly enter the deal because neither of them has a share until the community exists. So the spouse party to the transaction does not have a sole power to transfer the property right.
3. the transaction has full effect in transferring the property, but the third party may claim its annulment on the basis that the transaction has been made contrary to the law.⁵²

The *second* violation of the rule governing the administration of community assets is the sole voluntary settlement of matrimonial community movable assets (Art. 22 para. 4 second proposition Bulgarian Family Code). In this case the consequence is the same as it is in the case of disposal of community immovable assets: (it)..." has legal effect for the other spouse only if s/he does not dispute it by action proceedings in a six months time limit from the time s/he gains information about this." (as per Art. 22 para. 3 Bulgarian Family Code).

The *third* violation of the rule governing the administration of community assets is the sole disposal of matrimonial community movable assets (Art. 22 para. 3 Bulgarian Family Code). In this case the contract is not binding on the other spouse, if the third party has known, or under the circumstances ought to have known, that the consent of the other spouse is not present (Art. 22 para. 4 first proposition Bulgarian Family Code). The majority of academics consider such a transaction as void.⁵³ If the third party has acted in a good faith the contract is binding as regards the second spouse.

The *final* violation regulated by the law is the sole disposal of community bank deposits (Art. 22 para. 5 Bulgarian Family Code). The administration of community bank deposits, however, as a rule, is assigned to the spouse in whose name the bank deposit account is opened. He or she can dispose of it solely including closing it down. In cases where the acts of disposition jeopardise the interests of the family or of the other spouse the latter may request the court to issue an order for such dispositions to be performed by mutual consent of both spouses. The claimant must prove that the interests of the family (children) have been put at risk. If the court grants an order for joint disposal of the bank deposit, the bank should require the consent of both spouses for the future administration of the deposit.⁵⁴

The disposal of the matrimonial home, by the spousal owner without the consent of the other spouse (or the permission by the court that replaces it) (Art. 23 Bulgarian Family Code) is considered to be a violation of the rule governing the administration of personal assets. The spousal non-owner can protect his or her rights or the interests of the family by claiming that the contract is voidable because it has been concluded in breach of the law.⁵⁵

⁵⁰ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp.189-190.

⁵¹ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 70-72.

⁵² V. Tadjer, "Disposal of Rights in Properties – Community of property", *Pravna missal*, vol. 3 1986.

⁵³ V. Tadjer, "Disposal of Rights in Properties – Community of property", *Pravna missal*, vol. 3 1986. L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, p. 191.

⁵⁴ Supreme Court Judgment No. 49/1987.

⁵⁵ Supreme Court Judgements No. 1083/1991/I, No. 230/1995/IV, No. 324/1999/II and No. 22/2001/II.

42. What are the possible consequences if a spouse is incapable of administering his or her personal assets and the community assets?

If a spouse is incapable of administering his or her personal assets/community assets, he or she may need to be placed under guardianship or trusteeship (Art. 109 Bulgarian Family Code) depending on the level of his or her legal incompetence acknowledged by the court (according to Art. 336-340 Bulgarian Civil Procedure Code). According to Art. 128 para. 3 Bulgarian Family Code, the full legal guardian of a person under full supervision or the trustee of a person under restricted interdiction is his or her capable spouse.

The legal incompetence of a spouse could be considered as a 'serious reason' under Art. 26 para. 2 Bulgarian Family Code. It is a ground for the dissolution of the community of property during the marriage based on a court judgment as per Art. 26 para. 2 Bulgarian Family Code.

I.3. Distribution of assets upon dissolution

43. What are the grounds for the dissolution of the community property regime, e.g. change of property regime, separation, death of a spouse or divorce?

The grounds for the dissolution of the community property regime are the grounds for the dissolution of the marriage: (1) death of a spouse, (2) divorce or (3) a determination that the marriage is voidable (Art. 26 para. 1 Bulgarian Family Code). The end of the marriage terminates the community of property since it is designed to serve the marriage. After its dissolution the community of property converts to joint ownership in equal shares (Art. 27 Bulgarian Family Code). This is the rule.

The community of property could be terminated also during the marriage, but only on limited statutory grounds as stipulated by Art. 26 para. 2 and 3 Bulgarian Family Code.

First, the community of property can be terminated as an exception by judicial proceedings where serious reasons require this (Art. 26 para. 2 Bulgarian Family Code). The term "judicial proceedings" refers to a claim by a spouse who can prove serious reasons. The reasons suggested in the case law may be: (1) irresponsible behaviour of a spouse that jeopardises the interests of the other family members, or (2) the case when a spouse becomes incapable to administer his or her personal and community assets.⁵⁶ Another 'serious reason' could be the factual separation that creates inconvenience for the spouses to use and administer the community assets.⁵⁷ As far as the object of the termination is concerned, the court is of the opinion that depending upon the reasons, the court can terminate the community with respect to a single asset or in relation to the whole community of property (including future acquisitions), thus converting it to joint ownership with equal shares. The majority of scholars hold the same view.⁵⁸

The next option to terminate the community of property during the marriage belongs to the creditor of a spouse; the execution for a personal debt of one of the spouses directed against community assets terminates *ex lege* the matrimonial community property as regards these assets (Art. 26 para. 3 Bulgarian Family Code).

⁵⁶ Supreme Court Judgment No. 5/1972.

⁵⁷ See V. Todorova, *Termination of the Matrimonial Community of Property during the Marriage*, 1999.

⁵⁸ L. Nenova, *Family Law of the Republic of Bulgaria*, 1994, pp. 210-211. P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, p. 100. V. Todorova, *Termination of the Matrimonial Community of Property during the Marriage*, 1999, pp. 73 et seq.

The start of an insolvency procedure against a spouse for his or her commercial activities is the final option to terminate the community of property during the marriage (Art. 614 Bulgarian Commercial Law).

As far as the shares in the joint ownership are concerned, as a rule they are equal (Art. 27 Bulgarian Family Code). The law allows the court to establish different shares only when the community has been terminated based on divorce (dissolution of marriage) or during the marriage based on serious reasons (Art. 28 Bulgarian Family Code).

44. What date is decisive for the dissolution of the community property? Distinguish between the different grounds mentioned under Q 43. At what date are the community assets determined and valued? Is the fact that the spouses are living apart before the dissolution of the marriage relevant?

The dates, decisive for the dissolution of the community property, as per the concrete ground, are as follows:

Death of a spouse

The date of the death of the spouse.

Divorce

The date of the court order pronouncing the divorce or the dissolution of the marriage (Art. 325 and 330 para. 5 Bulgarian Civil Procedure Code)

Determination that the marriage is voidable

The date of the judgment on termination of the community of property during the marriage enter into force;

Art. 26 para. 2 and 3 Bulgarian Family Code

The date either of the start of the execution directed against the community asset for a personal debt of one of the spouses or of the insolvency procedure against a spouse for his or her commercial activities.

The community assets are determined and valued at the date of the start of the division of the property, and not upon the date of the community of property dissolution. If the joint property is divided by an agreement the value of assets is also a matter of the agreement. If the division is established by the court the assets are valued by an expert on the basis of their actual market value upon the date of the assessment (division).

The factual separation before the dissolution of the marriage is relevant as to the quantity of assets that are comprised by the community of property. If an asset is acquired during the factual separation, the spouse that has acquired it may claim before the court to establish it is personal property due to the lack of mutual contribution (one of the 4 prerequisites for the community of property – Art. 19 Bulgarian Family Code).

45. What happens if community assets have been used for investments in the personal property? What happens if personal assets have been used for investments in the community property? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?

The following hypotheses are possible for the community assets to be used for investments in the personal property:

- both spouses invest community assets in assets allocated for their ordinary personal use, or in assets that are necessary for either spouse in practicing his or her profession or needed for his or her commercial activities. In this case the asset becomes personal property (as per Art. 20 para. 2 Bulgarian Family Code).

- if one of the spouses individually disposes of community assets (excluding bank deposits) contrary to the rule for joint disposal, the other spouse can bring the transaction before the court claiming annulment.

If personal assets have been used for investments in the community property, the spouse that has invested his or her personal property could have the right to compensation, but only after the dissolution of the marriage. The judicial practice considers that in such a case the spouse has acted within the common duty of the spouses to ensure the welfare of the family and to ensure the raising, upbringing and support of their children by reciprocal goodwill and mutual efforts and according to each other's capabilities, property and income. The Supreme Court of Cassation has also an established practice (cases where a spouse has invested personal money to pay a common debt) to acknowledge the compensation right to the level of the proved injustice enrichment of the other spouse.⁵⁹ The compensation in this case will be nominal.

46. What happens if community assets have been used for payment of personal debts? What happens if personal assets have been used for payment of community debts? Is there a rule of compensation? And if so, how is compensation calculated?

The following hypotheses are possible for community assets to be used for payment of personal debts: (1) spouses dispose of community asset jointly. The money is used to pay the personal debt. (2) one of the spouses dispose individually of community assets (excluding bank deposits) against the rule for joint disposal. The other spouse can bring the transaction before the court claiming annulment. (3) The spouse in whose name the community bank account is opened uses the money to pay a personal debt. Since the sole disposal of community bank deposits is a rule (Art. 22 para. 5 Bulgarian Family Code), the other spouse can claim before the court to order the future disposal of the bank account to be made jointly. The claimant must prove that the interests of the family (children) have been put at risk. If the court grants an order for joint disposal of the bank deposit, the bank must obtain the consent of both spouses for the future administration of the deposit.⁶⁰ (4) The creditor of a spouse may direct the execution of a personal debt against property or rights in properties that are part of the matrimonial community property (Art. 20 para. 1 Bulgarian Family Code). In such a case the community of property with regard to a particular asset is terminated and converted into joint ownership with equal shares. The asset proceeds to auction and the non-debtor spouse receives half of the price. The non-debtor spouse can intervene and pay the creditor the debtor spouse's share in the asset, thus preventing the auction and becoming an owner in person of the asset (Art. 502-506 Bulgarian Civil Procedure Code).

The Family Code does not provide an easy answer to the question "what happens if personal assets have been used for payment of community debts?" The Code does not stipulate compensation rights between spouses. Theory and judicial practice acknowledge,⁶¹ however, that such rights can exist, but only after the dissolution of the marriage thus applying paragraph 1 of the Additional Provisions of the Family Code that state: "The problems as to which there are no provisions in this Code the respective rules of the civil laws are applied, provided this does not contradict the principles governing the family relations and morality." The right to compensation may be claimed following the dissolution of the marriage since it converts the community of property into joint property with equal shares. This allows for the unjust enrichment to be calculated. So, in the case of common debts (incurred for the satisfaction of family needs, mainly to purchase the matrimonial home) being covered by

⁵⁹ Supreme Court Judgments No. 209/1988-I, No. 88/1992-II, No. 495/1992-II , No. 799/1992-I and No. 674/2000-II .

⁶⁰ Supreme Court Judgment No. 49/1987 and No. 869/1987.

⁶¹ P. Venedikov, *Issues of the Matrimonial Community of Property*, 2000, pp. 39-40.

personal assets, the spouse has a right to compensation to the level of unjust enrichment of the other spouse in nominal value.⁶²

47. What is the priority order between compensation rights and community debts?

There is neither statutory provision nor an established judicial practice to resolve this matter. In practice the community debts should have priority, because the compensation rights if claimed, would arise only after the dissolution of the marriage (or of the community property). The compensation rights would derive only from a court order.

As laid down by Art. 25 para. 2 Bulgarian Family Code, the community debts are those debts incurred by one or both spouses for the satisfaction of family needs. The community debts establish joint liability for both spouses for the benefit of the creditor. Usually, one of the spouses incurs the debt and he or she is personally liable to the creditor. If the marriage (community of property) ends the debtor (spouse) continues to pay the debt and could claim compensation against the other. The compensation will be nominal, according to the principal amount of the debt (no account is paid on the interest paid, costs around the debt or inflation).

48. How are community assets administered after dissolution but before division?

The termination of the community property creates joint ownership with equal shares for the owners (Art. 27 Bulgarian Family Code). The ownership is governed by the property Law. It stipulates for equal rights of the co-owners to use the asset. The co-owner who holds the asset owes compensation to the others from the day it has been required (Art. 31 para. 2 Bulgarian Property Law). The co-owners may agree on the administration of the assets (Art. 32 Bulgarian Property Law). Each of the co-owners may claim for division of the property (Art. 34 Bulgarian Property Law).

49. Briefly explain the general rules governing the division of the community assets.

The division of community assets follows the dissolution of community property that has converted to a joint property on the grounds of marriage dissolution, death of a spouse or dissolution during the marriage. As a rule the shares of spouses are equal.

The general rules governing the division of the joint property are laid down not only by the Bulgarian Family Code, but also by the Property Act (some specific rules such as: reserved shares, shares of the survived spouse according to the duration of the marriage and others are envisaged by the Inheritance Law). The division may proceed on the basis of agreement or by the court if no agreement could be reached.

If the division is brought to the court it has to decide on: (1) assets within the joint property, (2) shares and (3) their allocation.

The spouses have at their disposal two claims that might be used if they want to establish personal property over some assets, thus taking them out of the community of property, i.e. the object of division. Firstly, a spouse may rebut the presumption of mutual contribution in the acquisitions during a certain period of time. The claimant must prove a lack of any of the forms of the contribution as per Art. 19 para. 2 Bulgarian Family Code: "The mutual contribution of the spouses may be expressed by the investment of means and labour, by care for the children and work in the household." If proven, the court must order that all the acquisitions during that period are to be regarded as personal property. The factual

⁶² Supreme Court of Cassation Judgements No. 209/1988-I, No. 88/1992-I, No. 799/1992-I, No. 674/2000-II and No. 603/2002-I.

separation is one of the obvious grounds to exclude the mutual contribution, but this is still not an absolute ground.⁶³

The conversion/substitution of personal assets is also a ground to establish a personal property over the new asset as per Art. 21 para. 2 Bulgarian Family Code: "The properties, rights in properties and bank deposits, acquired during the marriage are personal where acquired in their entirety with personal property, according to Art. 20, para. 1 with other personal property acquired before the marriage." Either spouse may establish that an asset is to be regarded as personal property on the ground of substitution via a court order.

If the spouses do not dispute the number of assets in the community property they may proceed to their division.

The shares may also be an object of dispute between the spouses. Difference in shares could be established by a court order on a claim by either spouse based on two grounds stipulated by Art. 28 Bulgarian Family Code:

1. By the termination of the matrimonial community property by divorce the court may assign a larger share of the common property to the spouse to whom the care for the raising and upbringing of the children, still not of full age are transferred, if this imposes on him or her serious hardship (Art. 28 para. 1 Bulgarian Family Code). Judicial practice is clear that the sole exercise of the parental rights and duties does not establish a claim for a larger share. The exercise needs to impose a serious hardship for the parent in cases for instance – children have special needs, health problems etc.⁶⁴
2. By the termination of the matrimonial community property by divorce or according to the rules under Art. 26 para. 2 Bulgarian Family Code the court may apportion a larger share of the common property to one of the spouses where his or her contribution to its acquisition is considerably larger than that of the other spouse. Judicial practice is clear in that the plaintiff should prove a considerably larger contribution in to the community of property order to have a successful claim. The larger income is not sufficient.⁶⁵

In addition, in cases of divorce each of the spouses is entitled to receive a portion of the value of the property necessary for the professional needs of the other spouse and his or her takings, acquired during the marriage if they are of a considerable value and he or she has contributed to their acquisition with his or her labour, means or work at the household. The action may also be brought before the divorce proceedings where the behaviour of the spouse who has acquired the property puts the interests of the other spouse or the children in jeopardy (Art. 29 Bulgarian Family Code).

The above claims should be brought to the court within one year of the divorce or the order on the execution of the parental rights and duties (Art. 30 Bulgarian Family Code).

50. How are the community debts settled?

As Art. 25 para. 2 Bulgarian Family Code lays down, the community debts are those debts incurred by either or both spouses for the satisfaction of family needs. The community debts establish a joint liability for both spouses for the benefit of the creditor. Usually, one of the spouses incurs the debt and he or she is personally liable to the creditor. If the marriage (community of property) ends the debtor (spouse) continues to pay the debt and could claim compensation against the other. The compensation will be nominal, according to the principal

⁶³ Supreme Court Judgment No. 35/1971.

⁶⁴ Supreme Court Judgment No. 908/1995-I.

⁶⁵ See Judgment of Cassation Judgment No. 1065/1998-II.

amount of the debt (no account is paid on the interest paid, costs around the debt or inflation).

There is no established practice for the court to divide the debt according to the shares of ex-spouses from the joint property within the procedure for the division of the joint property. The reason is that both the law and legal academics only consider the community of property to be a community of assets, and thus not as a community of debts. Therefore, the debtor spouse is liable to the creditor.

51. Do the spouses have preferential rights over the matrimonial/family home and/or the household's assets?

The Bulgarian Family Code governs the use of the matrimonial home after divorce (Art. 107 Bulgarian Family Code). It stipulates two grounds for *preferential rights* over the use of matrimonial home after the divorce (or annulment) of the marriage: (1) children of the marriage below the age of majority and (2) the indivisibility of the use of the matrimonial home and special circumstances such as: the fault for the marriage breakdown, health status of spouses and others. This ruling is only applied in cases of divorce based on irretrievable breakdown because the consequences of the divorce based on mutual consent are to be agreed by the spouses.

The divorce court orders the use of the matrimonial home *ex officio*, where there are children of the marriage below the age of 18. The parent who will exercise the parental rights and duties after the divorce (as per the court judgment) has the preferential right to use the matrimonial home.⁶⁶ The law specifically governs two situations:

1. the matrimonial home belongs to one of the spouses. In such a case, the court may assign the use of it to the other spouse, to whom the exercise of parental rights has been granted, until he or she continues to do so. Usually, this will last until children reach the age of majority (18 years);
2. the matrimonial home belongs to close relatives of one of the spouses. In such a case, the court may assign the use of the house to the other spouse to whom the exercise of the parental rights has been granted, but only for a limited period of time. The court order should specify the time, which is usually long enough to provide the ex-spouse the opportunity to find alternative lodging.

In both cases, the parent (ex-spouse) non-owner of the home should pay the rent for his or her part of the home.⁶⁷ The use of the matrimonial home may be terminated before the expiry of the term, where the beneficiary enters into a new marriage.

Where there are no minor children from the marriage the court will decide the case on the use of the matrimonial home based on the claim. If the matrimonial home is community of property and it cannot be used separately by both ex-spouses, a preferential right to use it may arise from the situation of matrimonial fault, health status and others. The court assigns the use of the matrimonial home to one of the spouses based on those conditions that have been proven to be true during the hearing.⁶⁸ If the matrimonial home is the property of the guilty spouse, the court may assign the use of it to the other non-guilty spouse, although only for a fixed period of time. The use of the matrimonial home in the last case may also be terminated before the expiry of the term, where the beneficiary enters into a new marriage.

There is a specific regulation in the Civil Procedure Code (Art. 349 para. 1) on the allocation of the matrimonial home to a spouse during the proceedings for the division of the

⁶⁶ Supreme Court Judgments No. 12/1971 and No. 5/1976.

⁶⁷ Supreme Court of Cassation Judgment No. 1813/2002-IV.

⁶⁸ Supreme Court Judgments No. 1327/1994-II, No. 1205/1995-II and No. 921-1996-II.

community of property (converted to joint property after the divorce or a death of a spouse). The statutory preconditions for the ex-spouse or surviving spouse to receive the matrimonial home as his or her share are as follows: (1) he or she to be assigned with the exercise of the parental rights and duties, (2) that he or she does not own the lodging, and (3) the home must be indivisible.

52. Do the spouses have preferential rights over other assets?

After the divorce, the spouse responsible for the care for the rearing and upbringing of the children who have not yet reached the age of majority receives together with his or her share, the assets designated for their rearing and upbringing of the children (Art. 28 para. 2 Bulgarian Family Code). Those assets follow the children and are not part of the shares of spouses from the community property.

53. To what extent, if at all, does the division of community property affect the attribution of maintenance?

Such an issue is not a subject for discussion among family law scholars in Bulgaria. Judicial practice has also not yet been called upon to decide the issue. The law does not make any link between the division of community property and the attribution of maintenance.

The division of community property does not affect the attribution of maintenance. The guiding principle as to the community of property is the contribution of each of the spouses. While the guiding principle as to the maintenance are the needs and earning abilities of the spouse that claims for maintenance, as well as the ability of the other spouse to pay. As per Art. 79 Bulgarian Family Code: "Only a person who is disabled and cannot support himself from his property has a right to support." Art. 84 Bulgarian Family Code stipulates: "The amount of support is determined according to the needs of the person who has the right to support and the means of the person who is liable to furnish it."

54. To what extent, if at all, does the division of community property affect the pension rights and claims of one or both spouses?

There is no link between the community property and the pension rights and claims of one or both spouses.

55. Can the general rules of division (above Q 49) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?

Since the community of property creates joint ownership, the joint owners could divide it based upon their consensual agreement. This means that the general rules of property division (Question 49) could be set aside or adjusted by the agreement between the spouses. If the division is brought to the competent authority, i.e. the court, the court cannot set aside or adjust the general rules of division of joint property established by the Bulgarian Family Code or by the Bulgarian Property Law.

56. Are there besides the rules of succession specific rules for the division of community assets if one of the spouses dies? If so, describe briefly.

The only specific rule is contained in Art. 349 para. 1 Civil Procedure Code regarding the allocation of the matrimonial home to a spouse during the proceedings for the division of the community of property (converted to joint property after the death of a spouse). The statutory conditions for the surviving spouse to receive the matrimonial home in his or her share are: (1) that minor children from the marriage are alive, (2) that he or she does not own lodging, and (3) the home is indivisible.

II. Community of accrued gains/Participation in acquisitions

Not relevant.

III. Deferred community

Not relevant.

IV. Separation of property

Not relevant.

V. Separation of property with distribution by the competent authority

Not relevant.

D. MARITAL AGREEMENTS

Not relevant.