

NATIONAL REPORT: FINLAND
 Dr. Kirsti Kurki-Suonio
 Office of the Parliamentary Ombudsman, Helsinki
 August 2008

A. General	Questions 1-7	p.
B. General rights and duties of spouses concerning household expenses, transactions with respect to the matrimonial home and other matters irrespective of the single matrimonial property regime	Questions 8-14	p.
C. Matrimonial property regimes		
C.1. General issues	Questions 15-19	p.
C.2. Specific regimes		
<i>I. Community of property</i>	Questions 20-56	Not relevant
<i>II. Community of accrued gains/Participation in acquisitions</i>	Questions 57-90	Not relevant
<i>III. Deferred community</i>	Questions 91-128	p.
<i>IV. Separation of property</i>	Questions 129-160	Not relevant
<i>V. Separation of property with distribution by the competent authority</i>	Questions 161-190	Not relevant.
D. Marital agreements	Questions 191-201	p.

NATIONAL REPORT: FINLAND

Dr. Kirsti Kurki-Suonio
Office of the Parliamentary Ombudsman, Helsinki
August 2008

Foreword

The main legislative source regulating property relations between married spouses is the Finnish Marriage Act (*avioliittolaki / äktenskapslag* 234/1929) with later amendments. An unofficial translation into English, attached to this report, is from 2002. The later amendments, which are rather minor, are indicated in this report as far as they relate to the questions in the report.

The decisions of the Supreme Court (*korkein oikeus, KKO / högsta domstolen, HD*) are published in the Yearbooks of the Supreme Court and on the Internet (www.finlex.fi). The Supreme Court publishes short summaries of the decisions in Swedish if the decision is taken in Finnish (and *vice versa*). Some of these Swedish summaries are included in the report.

The *National Report of Finland by Professor Eva Gottberg for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law* by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03) has been widely used and cited in this report.¹

As for the Finnish legal literature on Family Law, the main sources have been “*Perhesuhteet ja lainsäädäntö*”, Turun yliopisto, oikeustieteellinen tiedekunta 2007 by *Eva Gottberg*.

The Questions of the Report

A. GENERAL

1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses)?
If so, briefly indicate the current sources of these rules

a. upon marriage and b. during marriage

In Finland, only property relationships of married spouses are regulated by law. The marital property system is also applied to same-sex couples who have registered their partnerships according to the Finnish Act on Registered Partnerships (950/2001).

Spouses are the parties of a married couple on the day of the marriage or registration until one of them dies or their divorce becomes legally effective.

Unmarried cohabiting couples are not defined as spouses under Finnish family law. Property relationships between spouses only refer to married and registered couples.

The main principle in the Finnish marital property system is that spouses are personally and economically equal and they own their property independently, regardless of whether they have acquired it before or during the marriage. Each one is solely liable for any personal

¹ The author of this report would like to thank Prof. Eva E. Gottberg. She would also like to thank Marjo Kiukkonen, an experienced practising family lawyer who made valuable observations concerning Finnish marital property law in practice. Finally, thanks are also extended to Dr Salla Lötjönen from the Ministry of Justice for her expertise in Family Law and experience in the English language.

debts incurred before or during the marriage. Both are free to enter into contracts, also mutual agreements. If the spouses own property together their ownership is fractual, in general equal, as is the case with any normal co-ownership according to Finnish civil law. Each spouse administers his or her property independently.

There are, however, a few exceptions to the main rule, namely the common home and household and the debt incurred in the maintenance of the family (see Question 7 and Question 9).

If the common home is the property of one spouse only, he or she is not allowed to convey it without the consent of the other spouse. This applies both to real estate and to leasehold, stock or other rights entitling to possession of an apartment (§ 38 and 39 Finnish Marriage Act).

Both spouses are jointly and severally liable for a debt incurred by one spouse for the maintenance of the family; but not for a monetary loan taken out by one spouse (§ 52 Finnish Marriage Act.).

c. upon separation

The separation of the spouses in terms of a legal separation does not exist in Finnish family law. A factual separation has no effect on the marital property relationships of the spouses with one exception.

If one spouse incurs a debt for the maintenance of the family (§ 52 Finnish Marriage Act.), *and the creditor knows* that the spouses are separated due to the breakdown of their relationship, the other spouse shall not be liable for that debt as he or she would otherwise be as explained above.

d. upon death

The death of a spouse has in principle the same effect as divorce. The exceptions concern the administration of the property by the widow(er) and the heirs.

e. upon divorce

Each spouse has a so-called *marital right* to the property of the other spouse. This marital right has very little importance during the marriage itself, but it is of great importance after the dissolution of the marriage.

A marital right means, basically, that a spouse has a right to half of the common property of both of the spouses. The marital right covers all property whether acquired before or during the marriage. Also inherited property and gifts are, in principle, included.²

However, spouses may opt not to apply the marital property system in their marriage by making a marital settlement according to Sections 41- 45 Finnish Marriage Act. In a marital settlement future spouses or spouses may exclude from the marital right any property owned or later acquired. Most marital settlements concern the whole property of the spouses, which means that neither of the spouses has a marital right to the property of the other. After the dissolution of the marriage there will be a separation of properties instead of a distribution.

² E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 8.

f. upon annulment

The annulment of marriage does not exist in Finnish family law since the law reform of 1987. A marriage (or registered partnership) can only end in divorce or because of the death of the other spouse (or partner).

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

The Marriage Act of 1929 was preceded by the Law on Property and Debts of Married Spouses of 1889 and the Code of Marriage of 1734. The law of 1889 was based on the principle of community of property and the husband's guardianship over his wife. However, some property was excluded from the scope of the community property by law, e.g. certain kinds of inherited real property. The spouses were allowed to conclude a marital settlement before the marriage. The community system could be excluded completely or partially in the marital settlement.

During the marriage no settlements or transactions between the spouses were allowed. The husband administered the property and represented the wife in court and in transactions with third parties. Under certain conditions it was possible for the wife to effect a separation of property. The system of debts was complicated because of the possibility of three kinds of property (common, private/husband and private/wife) and the guardianship of the husband. After the dissolution of the marriage both spouses were entitled to half of the property, and, of course, to their private property.

The Marriage Act of 1929 came into force in 1930 and brought about remarkable changes in comparison to the old system: equality between the spouses, the abolition of the husband's guardianship, the principle of separate property etc. In personal matters the wife became completely equal with the husband. However, the old regime of property and the administration rules persisted in marriages concluded before 1930. Still, both spouses had equal rights to effect the separation of property and thereafter, if they so wanted, to make a marital settlement in order to place their property under the new regulation of marital property and the marital right. Therefore, the old system was still applied for a long time after 1930 up until the old marriages ended because of the death of the spouse, and even later if the distribution was not made until both of the spouses had died.

The Marriage Act of 1929 has been amended on many occasions during the past decades. As to the economic relationship between the spouses, the rules concerning conveyance restrictions concerning the common home were amended in 1987. In the same year it became possible to adjust the distribution of matrimonial property (§ 103 b; see below). However, the main principles of the marital property system have remained unchanged since 1930. (The most remarkable changes concern private international law and are therefore not included in this report.)³

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

No recent proposals can be referred to. The Ministry of Justice has established a working group to plan a reform concerning the protection of the weaker party when a cohabiting couple separate. The need for such a reform will be explored and evaluated in the course of 2008.

³ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 5-6

4. Briefly explain whether or not the rules regarding the property relationship between spouses also apply to registered or civil partnerships?

Registered civil partnerships are covered by the marital property system under Marriage Act as mentioned above (see the Finnish Act on Registered Partnerships, *laki rekisteröidystä parisuhteesta / lag om registrerat partnerskap*, 950/2001).

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?

In principle, spouses are just like other co-owners if they own something jointly. The civil law legislation concerning co-owners, the Act on Certain Co-ownership Relations (*laki eräistä yhteisomistussuhteista / lag om vissa samäganderättsförhållanden* 180/1958, unfortunately there is no English translation), may be applicable to the marital property relationship as a secondary rule. The Finnish Marriage Act rules are to be applied as primary rules. However, the general civil law regulation has little practical importance in solving the problems concerning the marital property regime, because problems normally arise in the context of the breakdown of a marriage, for which the marital property system provides a special solution, the distribution, as described above (see above, Question 1 e).

However, if the divorcing spouses have opted not to apply the marital right by making a marital settlement, their co-ownership shall be dissolved according to the Act concerning Certain Co-ownership Relations, like the co-ownership of any other persons. The spouses in question may, of course, also solve the problem by mutual agreement.

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

The relationship between the law regarding the property relationship and the law of succession is very close. This is so because the surviving spouse is not an heir of his or her deceased spouse. Because the marriage is dissolved by death, the surviving spouse has the right to half of the common property of the both spouses by the virtue of his or her marital right. This means that the heirs receive the property which they are entitled to only *after* the marital right of the surviving spouse has been realised. The marital regime shall be dissolved before the inheritance.

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)?

The spouse who solely owns the common home of the spouses may not convey it without the permission of the other spouse. For the application of these rules it is meaningless whether the spouse who is not the owner of the common home has a marital right to the other spouse's property or not. As a consequence, even if the spouses had excluded the application of the marital property regime by means of a marital settlement, the consent of the other spouse is needed.

This rule applies regardless of the nature of the property, e.g. real property or stock or leasehold or other rights entitling to the possession of an apartment. It is also irrelevant whether the property is inherited or is a gift from e.g. the parents or grandparents of the owner spouse. (See § 38 - 40 Finnish Marriage Act).

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”.

According to § 46 Finnish Marriage Act, *each spouse shall participate in the common household of the family and the maintenance of the spouses to the best of his or her abilities. The maintenance of the spouses means the fulfilment of the common needs of the spouses as well as the personal needs of each spouse.*

This section was amended in 1987. According to *Gottberg*, the *travaux préparatoires* concerning this section indicate that the intention was to modernise the wording of the section without changing, too much, the basic idea behind it.

So the “best of his or her abilities” still refers to *housework* as one possibility to participate in the common household and the maintenance of the spouses. Thus, a spouse is not supposed to be compensated for the work he or she does at home. He or she is rather fulfilling the duty of maintaining the family. Even if the spouse is employed by the other spouse’s enterprise, firm or company, it is the former who bears the burden of proof in showing that a salary had been agreed upon or was meant to be paid (§ 64 Finnish Marriage Act).

The maintenance of the spouses also refers, according to S.46, to the fulfilment of the personal needs of both spouses, for example costs concerning e.g. healthcare, clothing etc. This means that a dentist’s bill concerning one spouse’s dental care can be considered to be a debt for the maintenance of the family, of which both of the spouses are jointly and severally liable according to § 52 (2) of Finnish Marriage Act.⁴

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

Household debts provide an exception to the main rule according to which a spouse is solely liable for a debt that he or she has incurred (§ 52 (1) Finnish Marriage Act). Both spouses shall be jointly and severally liable for a debt incurred by a spouse for the maintenance of the family, but not for a monetary loan taken out by one spouse, according to § 52 (2) and (3) Finnish Marriage Act. A spouse is also not liable for a debt for the maintenance of the family if the spouses have separated due to a breakdown of their relationship *and* if the creditor was aware of this separation.

As to the meaning of the “maintenance of the family”, see above Question 8.

The number of judicial cases concerning household debts is extremely low. According to a decision by the Kouvola Court of Appeal, the use of a credit card was not even regarded as a debt if the credit card was used for household expenses. The Court of Appeal considered a credit card to be credit and was therefore associated with a monetary loan.⁵ This standpoint coincides with the opinion presented in the legal literature.⁶

⁴ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p.10-12.

⁵ Kouvolan hovioikeus / Kouvola hovrätt 20.7.1994, 1156, S 92/318.

⁶ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 26-27 and the literature referred to there.

There is now a new Supreme Court decision of 16.6.2008⁷ concerning maintenance debts. The case concerned the recovery of rent from a spouse. One spouse had solely paid the whole sum of the monthly rent for an apartment which both spouses had rented together for about six months after the other spouse had left due to the breakdown of their relationship. The spouse who had paid the rent claimed a part of this rent from the other spouse. The Supreme Court found that the rent was to be considered as a maintenance debt according to § 52 Finnish Marriage Act. The claim was rejected because it was based on general civil law and not on the Marriage Act.

(HD 2008:66, Makarna A och B hade tillsammans hyrt en bostad för en bestämd tid. Efter att B hade flyttat bort från bostaden hade A ensam betalat hela hyran ända tills hyresförhållandet upphörde. A:s rätt att av B få den andel av hyrorna som A betalat för B efter att B hade flyttat skulle bedömas utifrån bestämmelserna om makars underhållsskyldighet.).

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”.

§ 38 and 39 Finnish Marriage Act regulate transactions concerning the common home. The rules only concern the conveyance of the property which is used *solely or mainly* as the spouses' common home. Thus, the way the property in question has been acquired is not important. What is important, however, is that after a house or a flat etc. has become the spouses' common home, the conveyance of that property is restricted. Also leasehold or any other rights entitling the possession of an apartment are covered by the same restrictions. Transactions or conveyances concerning the common home of both spouses may only take place with the consent of the other spouse.

There is one exception concerning real property. The spouse's consent is not necessary if the property is mainly intended for some other use than the spouses' home and if, at the same time, the family home and the real property form a unit where the home cannot be excluded from the conveyance without resulting in a considerable reduction in the value of the real property. An example of this could be a farm or real estate such as a hotel of which the family home forms part.

A spouse's consent to the conveyance of real property must be given in writing according to § 38 (1). Written consent is, however, to be recommended in every case. The apartment market in Finland seems to have adapted quite well to this rule, as problems seldom arise in judicial practice.⁸

According the § 40 Finnish Marriage Act a court may upon petition grant permission for the conveyance of the common home if the other spouse has refused consent or if, for some other reason, it has not been possible to obtain consent.

§ 38 and 39 only play a role if one spouse is the sole owner of the property or is otherwise acting alone. If spouses are co-owners of the property, they must anyway act with mutual understanding as co-owners normally do.

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

⁷ KKO/HD 2008:66.

⁸ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 24.

regime? In answering this question, briefly explain what your system understands by "household assets".

§ 39 lists some other forms of property which should not be conveyed without the consent of the other spouse. These are 1) *movable property which forms part of the common household goods used by both spouses*, 2) *any necessary tools used by the other spouse*, or 3) *movable property which is meant for the personal use of the other spouse or the children*.

According to the same section, the transaction gains validity if the acquirer has obtained the possession of the property and was acting in a *bona fide* manner at the time, meaning that he or she had reason to assume the consent or approval of the other spouse or to assume that such consent was not needed concerning that particular property.

However, these restrictions hardly have any application in practice. A car meant for the use of the whole family although only one spouse is the sole owner, could amount to an exception.

No judicial decisions could be found on this question.

More detailed explanations of, for example, to the legal definitions which are referred to above cannot be given because these rules are so seldomly applied.

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...)?

No further restrictions concerning transactions involving the matrimonial property exist in the Finnish matrimonial property system.

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

In the Finnish Marriage Act there is no general rule concerning one spouse acting as an agent for the other spouse.

According to § 63 (2) Finnish Marriage Act a spouse can *at any time withdraw permission* given to the other spouse to administer his or her property.

The permission mentioned in § 63 is likely to be very rare today. No precedents could be found concerning this rule.

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

Gifts between spouses were prohibited up to 1992 with the exception of usual gifts such as birthday or Christmas presents of a reasonable value. The prohibition was repealed when the Finnish Act of Recovery of Assets to a Bankruptcy Estate came into force (*laki takaisinsaannista konkurssipesään /lag om återvinning till konkursbo*, 758/1991).

Inter partes (and in relation to the heirs of the spouses) all gifts are nowadays valid without special measures.

However, if a spouse donates *movable property* to the other spouse, he or she must still notify the gift to the local register office for the donee to be protected against recovery claims from the creditors of the donor in the event of bankruptcy or the enforcement of debts (§ 45 Finnish Marriage Act); please note that this task has been transferred from the District Courts to the *local register offices (maistraatti / magistrat* since 2002; the English translation of the Act still

follows the old version). A gift referred to in a marital settlement does not have to be separately notified by the spouses; such gifts can be publicly declared in the local register office (§ 43 Finnish Marriage Act).

Gifts of *real property* must always be registered and published under the general rules on conveyancing real property and so they are not subject to any special regulation as regards transactions between spouses.⁹

C. MATRIMONIAL PROPERTY REGIMES

C.1. General Issues

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

Spouses are entitled to make a contract, here referred to as a *marital settlement* according to § 41-46 Finnish Marriage Act.

16. What regime is applicable?

The applicable regime is described under Chapter III (*Deferred 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)?

Citing *Gottberg* one can say that there are no special rules on secondary regimes, but spouses may always make changes to the “primary” (i.e. only) regime by concluding a marital settlement.¹⁰

One can also say that spouses can opt out of the deferred community system into a *separation of property* by marital settlement.

According to the rules of private international law, spouses may have a right to opt for another matrimonial property system (see § 130 Finnish Marriage Act, and further the questions which are included in the matrimonial property regime, § 131). On the restrictions concerning the choice of law see § 132 – 135 Finnish Marriage Act. Since international family law questions are not included in the questionnaire, these options are not further dealt with here.

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

a. Question 16. (The deferred community of property)

The spouses are personally and economically equal in marriage. They own their own property acquired before or during the marriage, and each is solely liable for a debt that he or she has incurred before or during the marriage (an exception is made in the law concerning debts that are incurred by one spouse for the maintenance of the family, see above Question

⁹ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 15.

¹⁰ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 7

9). If the spouses own something together, their ownership is fractional as is the case with any normal co-ownership. If they have incurred a debt together during the marriage, they are jointly and severally liable for such a debt, unless otherwise agreed. This rule corresponds to the general regulation on joint debts.

However, the marital right, practically invisible during the marriage, becomes important after the dissolution of the marriage. The marital right can be characterized as being wide: it includes all the property of the spouses, whether it is acquired before or during the marriage, with the exception of:

- property excluded from the scope of the marital right by a marriage settlement;
- property expressly excluded from the marital right by a gift by deed or a will; or
- rights which cannot be conveyed or which otherwise are of a personal nature (e.g. pension rights, copyrights pertaining to unpublished works).

Also the surrogate of this kind of property is free of the marital right. Still, the marital right exists as to the proceeds of such property, if not otherwise stipulated or agreed upon (§ 35 Finnish Marriage Act).

This regime came into force in 1930, when divorces were few and the whole system was built on the idea of a life-long marriage and the primary aim was to protect the widow. The old Finnish Code of Inheritance of 1734 was in force until 1966. The hereditary rights of the widow under that Code were rather limited. With the increasing number of divorces, on the one hand the wide marital right and on the other the freedom of marital settlements led to the amendment of 1987 (adjustment of distribution § 103 b Finnish Marriage Act). The social changes have certainly contributed to the increasing number of marital settlements in order to protect personal property 'in advance' against the claims of the other spouse in the case of divorce.¹¹

b. Question 17. (The optional system of separation of property)

The spouses may choose to omit certain property from their matrimonial property system in a marital settlement as described above (in Question 18 a), but they may also opt for a complete separation of their property. In that case no distribution of the property will take place after the dissolution of the marriage (§ 85 Finnish Marriage Act).

The restrictions concerning the conveyance of the common home are to be applied irrespective of a marital settlement concerning the complete separation of property as described above in Question 10.

19. Indicate the frequency of the use made of the regimes referred in Questions 16 and 17.

According to *Henriikka Rosti* and *Marjukka Litmala*, "marriage settlements (here *marital settlements*) are no longer a marginal phenomenon. An increasing number of couples wish to move away from the main principle of the Marriage Act, that is, an equal distribution of property when a marriage is dissolved. By now, as many as every fourth marrying couple make a marriage settlement, whereas in the 1970s, for example, only every eight couple did so".

Rosti and Litmala described the frequency of marital settlements in Finland by comparing the number of new marital settlements in one year to the number of new marriages entered into in the same year. They found that in the 1970s the number of marital settlements amounted

¹¹ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 8-9.

to as many as 10 per cent of all marriages entered into. In the 1990s, the respective number was more than 20 per cent, and after 2000 the number has been more than 25 per cent indicating, as they say, that one in four marrying couples conclude a marital settlement.

However, this rate also includes those marital settlements which have a more restrictive meaning than a complete exclusion of the marital right of both of the spouses. According to the same study, in 2005 some 63 per cent of new marital settlements were concluded in order to exclude the marital right of both spouses. *This would indicate that in 2005 approximately 17 per cent of new married Finnish couples opted out of the system of a deferred community of property, thereby preferring a separation of property.*

The remainder of married couples, which is more than 80 per cent of those married in 2005, accordingly do not opt out of the deferred community of property.¹²

C.2. Specific regimes

I. Community of property

Not relevant.

II. Community of accrued gains/Participation in acquisitions

Not relevant.

III. Deferred Community

III.1 Categories of assets

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

Marriage does not restrict the right of a spouse to enter into transactions unless otherwise provided in the law. Spouses may also enter into mutual transactions of all kinds. The property that a spouse has when concluding the marriage shall remain his or her property. Each spouse solely owns his or her property. A spouse's sex has no meaning whatsoever.

Each spouse has the right to administer his or her property independently. However, there are special mandatory rules the main purpose of which is to restrict the right to convey the common home without the consent of the other spouse, as described above (Question 10).

Each spouse has a *marital right* to the property of the other spouse. Under this right, the surviving spouse (in the case of death) and the heirs of the deceased spouse or each of the spouses (in the case of divorce) shall acquire half of the net property of the spouses upon the distribution of the marital property (§ 35 Finnish Marriage Act). Net property is each spouse's property after his or her debts and/or his or her share of common debts have been deducted.

Some rights, according to § 35 (3) Finnish Marriage Act, are totally excluded from the scope of the marital right because of their personal nature. These rights include copyrights concerning unpublished works and pensions.¹³

¹² See *Henriikka Rosti and Marjukka Litmala: Marriage Settlements and Actions against the Distribution of Matrimonial Property - Assessment of the feasibility of property rules in the Marriage Act I*, National Research Institute Publication no. 223 of Legal Policy Helsinki 2006, English Summary.

¹³ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser*

The categories of assets used hereafter are the following:

Marital property

- indicating the property of one spouse which is covered by the marital right of the other spouse. This is the main category of property. If there is no marital settlement or no deeds of gift or wills specifically excluding the other spouse's marital right, all the property of the spouses belongs to this category.

Separate property

- indicating that this property has explicitly been excluded from the marital right of the spouse by a marital settlement or a specific condition concerning a deed of gift or will.

For instance, inherited property or property obtained as a gift by deed does not amount to a different category as such. The assets belonging to the marital property and separate property are categorised in Question 93 and 94.

92. What is the legal nature of the different categories of assets?

The *marital property* of a spouse is covered by the marital right of the other spouse and shall therefore be taken into consideration in the property distribution between the spouses as stipulated in § 35 (1) Finnish Marriage Act. Each spouse shall acquire half of the net property upon the distribution of matrimonial property after the dissolution of the marriage. If the marriage ends because of the other spouse's death the distribution of marital property will follow between the surviving spouse and the heirs of the deceased spouse.

The *separate property* of a spouse is excluded from the marital right. It shall therefore not be taken into consideration in the property distribution between the spouses. The marital right may be excluded through a marital settlement, or through a stipulation provided in a deed of gift or a will according to § 35 (2) Finnish Marriage Act. *Separate property* shall not be taken into consideration in the distribution. If both spouses only have *separate property* the separation of properties shall be carried out after the dissolution of the marriage instead of distribution.

93. What assets are categorised as marital property?

94. What assets are categorised as separate property? - Together (See the answer given to Question 91)

94 As the different categories of assets consist of those belonging to the marital property and of those not belonging to the marital property, the categories of marital property and separate property fall within the categories of those of different assets described above. This means that the assets belonging to the marital property can best be categorised by excluding those which belong to the separate property. The remainder of the assets basically belong to the marital property.

Separate property is defined in § 35 of the Marital Act. According to § 35, assets belonging to the separate property are the following:

- property excluded from the scope of the marital right by a *marital settlement*;
- property *expressly* excluded from the marital right by a *deed of gift or a will*;

Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03), p. 6.

The marital right can in the case of one spouse's bankruptcy be excluded by the other spouse alone, if he or she specifically announces this to the local register office (*maistraatti/magistrat*) within a year from the beginning of the bankruptcy (§ 35 (4) Finnish Marriage Act; please note that the English translation does not follow the present wording of this Section as it was amended in 2005 by Act 58/2005).

As described in Question 91, there are rights which cannot be conveyed or which are otherwise of a *personal nature* (such as pension rights, copyrights concerning unpublished works). These rights are by virtue of the law (§ 35 (3) Finnish Marriage Act) not to be taken into consideration when calculating the marital property. Consequently, they belong to the separate property of a spouse. This is the category of personal property which could also be called a third category of assets.

95. What assets are categorised as personal property?

According to § 35 (3) Finnish Marriage Act, the provisions on the marital right shall *only* apply to a right which cannot be conveyed or which is otherwise of a *personal nature* if this does not contradict any specific legal provision concerning such a right. According to a well established interpretation of this provision *copyrights to unpublished works* as well as the *right to receive a future pension* are not covered by the marital right.

96. Can spouses acquire assets jointly? If so, what rules apply?

Spouses can acquire assets jointly just as any other persons according to general civil law rules concerning joint ownership.

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

According to § 35 (2) Finnish Marriage Act, property that has been acquired *in lieu* of property which is not covered by the marital right is equally not covered by the marital right, and *vice versa*: Property that has been acquired *in lieu* of property which was covered by the marital right also belongs to the marital property.

However, the *proceeds* of any property, such as rent from real estate belonging to the *separate property* of a spouse, will belong to the category of *marital property*, unless the profits are *explicitly excluded* from the marital right in a marital settlement, a deed of gift or a will (§ 35 (2) Finnish Marriage Act). Such excluding conditions are quite common in practice.

98. What is the position of pension rights and claims and insurance rights?

Pensions and insurance rights are considered to belong to the rights of a "personal nature" which, according to § 34 (3) Finnish Marriage Act, are not part of the *marital property* (i.e. belonging to the third category, as described in Question 93-94). This means the following:

A right to a pension is considered to be a personal right. This means that a spouse's right to *receive pension payments in the future* is a personal right which is not covered by the marital right. However, concrete pension payments which are already paid or at least payable to the spouse are part of the marital property, i.e. covered by the marital right, unless the spouses have excluded them by a marital settlement as being part, for instance, of all future income and earnings.¹⁴

¹⁴ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 20.

A spouse can, as the policyholder, freely determine who is the beneficiary of his or her life insurance. The distribution of the insurance benefit is regulated by the Insurance Contract Act (*vakuutusopimuslaki / lag om försäkringsavtal* 543/1994) when specific individuals have not been named as beneficiaries. According to § 50 of the Insurance Contract Act, a *spouse* refers to a married spouse. If the beneficiaries are defined as “*next of kin*” (*omaiset/ anhöriga*) this refers to a married spouse and to the children of the policyholder as giving the spouse 50 per cent and the children together 50 per cent of the insurance benefit.

A right to an insurance benefit which is not yet payable is one of the *personal rights* which are not covered by the marital right, as referred to above. However, if the beneficiary has already acquired the insurance benefit, the concrete sum is covered by the marital right thus being part of the *marital property*.

However, an endowment insurance (*säästöhenkivakuutus / sparlivförsäkring*), if payable upon dismissal, forms part of the marital property concerning its surrender value. The same applies, for instance, to an employee fund (*henkilöstörahasto / personalfond*) subject to the same conditions.

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

§ 35 (2) Finnish Marriage Act explicitly stipulates the following:

A spouse shall, however, not have a marital right to property excluded from the scope of the marital right by a marriage settlement, a gift deed or a will.

A third party can, accordingly, stipulate in a gift by deed or in a will that the particular property mentioned shall remain outside the scope of the marital right as the separate property of a spouse.

To be valid such a deed of gift must be in writing, and it must be dated, properly signed and witnessed by two disinterested persons (§ 66 Finnish Marriage Act).¹⁵

100. How is the ownership of the assets proved as between the spouses? Are there rebuttable presumptions?

The Finnish Marriage Act contains a presumption according to which spouses own *movable objects* jointly with equal rights. If it otherwise cannot be proven to which spouse the particular object belongs, the presumption is that each spouse owns half of that object (§ 89). This presumption is meant to be applied to normal household belongings which spouses generally use for their common needs and interests.¹⁶

The Act concerning Certain Co-ownership Relations (*laki eräistä yhteisomistussuhteista /lag om vissa samäganderättsförhållanden* 180/1958, unfortunately no English translation is available) stipulates that this particular Act only applies to married couples if there are no other specific rules on the matter. As there are no other rules than the one mentioned above, that Act seems to apply to the co-ownership of real property by spouses.

¹⁵ The formal requirements for a will are stipulated in Ch. 10 Section 1 of the Code of Inheritance. These formal requirements also apply to a deed of gift.

¹⁶ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 15-16.

The crucial point according to the general civil law rule is, however, the *intention of the spouses* when the property was acquired. Thus, a court can confirm that a particular property was meant to be owned by both spouses even if it was registered in the name of one spouse only. This also applies to real property or movable property which is registered, such as cars.

The registered ownership of one spouse can be rebutted in court if the other spouse can provide evidence that the property was meant to be acquired as property belonging to both spouses - which of course is not very easy.¹⁷

101. How is the ownership of the assets proved as against third parties? Are there rebuttable presumption

The so-called *secret ownership* is not protected against third parties. The creditors must be able to rely on public registers concerning ownership.

For instance, in its decision in 2003 the Supreme Court clearly decided that contrary to the records in the public register of real property, the spouses could be seen as joint owners with equal rights in their mutual relationship concerning a house which they had built together and where they had lived as a family because they were able to prove that the property was meant to be their common property. Her part of the building was then not to be considered as forming part of the other spouse's property when he was declared bankrupt.

(KKO 2003:82 / HD 2003:82)

En fastighet hade köpts i A:s namn och han hade ensam fått lagfart på den. A:s hustru B hade tillsammans med A finansierat fastighetsköpet samt de byggnader som senare uppförts på fastigheten och uppfattningen mellan makarna hade varit att fastigheten med byggnader var gemensam egendom. A försattes senare i konkurs. Fastigheten hörde till A:s konkursbo förutom den andel som hustrun ägde, dvs. hälften av fastighetens byggnader.)

According to this decision, the wife could only be considered to own half of the *building*, because only the building was not to be regarded as real property and therefore was not covered by the rules concerning the registration of real property.

102. Which debts are personal debts?

According to § 52 Finnish Marriage Act, *each spouse shall be solely liable for a debt he or she has incurred before or during the marriage*. The spouses can, of course, incur a debt together and are then together responsible for those debts according to what was agreed. The main rule is thus that debts are personal debts if not otherwise agreed. The only exceptions are the debts for the maintenance of the family - but not monetary loans - as explained in Question 9 above.

103. Can spouses have joint debts? If so, on what conditions?

The spouses can, of course, agree to incur a debt together and are consequently together responsible for those debts according to what has been agreed.

In practice, today the most common monetary loan is a bank loan to purchase an apartment and most banks normally presume that both spouses incur the loan together and are both responsible for that loan.

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

¹⁷ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 13-14.

As spouses solely own their property and are solely liable for a debt that he or she has incurred before or during the marriage, the creditor can recover personal debts against the property belonging to the spouse who has incurred the debt (§ 52 Finnish Marriage Act).

The exceptions concerning the debt for family maintenance (but not a monetary loan) have been explained in Question 9 above. (See § 52 (2) and (3) Finnish Marriage Act). The creditor has to demand the payment of a debt for family maintenance within two years from the due date (§ 54 Finnish Marriage Act).

For voidable transfers there are special regulations in the *Finnish Act on Recovery of Assets to a Bankruptcy Estate (laki takaisinsaannista konkurssipesään /lag om återvinning till konkursbo, 758/1991)* and in the *Finnish Code of Enforcement (ulosottokaari / utsökningsbalk, 711/2007)*.

105. If there are joint debts, on which assets can the creditor recover them?

§ 53 Finnish Marriage Act stipulates that the spouses shall be jointly and severally liable for a debt incurred by both spouses together during the marriage unless otherwise agreed. Thus, the creditor may recover the debts all assets of both spouses regardless of the possible property regime.

§ 54 Finnish Marriage Act concerns the nowadays unusual kind of debt for the maintenance of the family by one of the spouses, but not a monetary loan, according to the § 52 (2) and (3) Finnish Marriage Act (see above Question 8 and 9). If the creditor wants to demand payment from a spouse for such a debt incurred by the other spouse, he or she shall bring an action within two years from the due date or, if the debt is payable upon demand, from the date when it was incurred. If this time-limit has expired, no action can be brought.

III.2 Administration of assets

106. How are the different categories of assets administered?

Each spouse shall administer his or her property subject to the restrictions referred to in § 37-39 (§ 36 Finnish Marriage Act). These restrictions concern transactions of the common home of both spouses and movable property which is used in the common household by both spouses, necessary tools used by the other spouse and movable property which is meant for the personal use of the other spouse or the children as explained above in Question 10 and 11.

There is a general rule in § 37 Finnish Marriage Act according to which also all other property *that is subject to the marital right* shall be administered so that *it will not unnecessarily decrease in value to the detriment of the other spouse*. However, this section does not give the other spouse any concrete possibilities to prevent the owner spouse from conveying or otherwise decreasing his or her property subject to the marital right *during* the marriage. Still, *after the dissolution* of the marriage, § 94 Finnish Marriage Act gives the other spouse a right to compensation in the *distribution* of assets.

According to § 58 Finnish Marriage Act, if a spouse, without the consent of the other spouse, conveys or pledges joint property or property belonging to the other spouse, the other spouse shall have the right to redeem it. If the third party was not acting in good faith or if no consideration was paid, the other spouse shall regain the property without redemption. This rule is said to correspond to the normal civil law rules in case a person conveys or pledges property which is completely or partially owned by another person. These rules have been included in Marriage Act mostly in order to accentuate the fact that, after 1930, also married

spouses are, in their internal relationship, equated with normal owners in case of a violation of an owner's right.¹⁸

107. Can one spouse mandate the other to administer the assets?

As spouses may act as any other persons according to civil law, nothing prevents them from mandating each other to administer their assets.

In the Finnish Marriage Act there is one specific rule, according to which a spouse can *at any time withdraw* any permission given to the other spouse to administer his or her property (§ 63). § 66 presumes that this kind of permission is made in writing, dated, signed and witnessed by two disinterested persons in order to be valid. See further Question 13 above.

108. Are there important acts concerning assets (e.g. significant gifts, disposal of the matrimonial/family home or other immovable property) that require the consent of the other spouse? Is the categorisation of the property as separate or as marital property of relevance in this respect?

The restrictions described above are laid down in § 37 and 38 Finnish Marriage Act. The most important restriction concerns the common home of both spouses, whether immovable or movable property (stock, leasehold or other rights entitling the possession of an apartment). The restrictions concerning the conveyance or transfer of the family home are applicable irrespective of the category of assets i.e. marital or separate property. See above Question 7 and 10.

As explained above in Question 14, all gifts between spouses are valid without any special measures. For measures to be taken in order to protect the donation of movable property against creditors, see also Question 14.

A spouse can donate his or her property to a third person without the permission of the other spouse even if he or she would donate something specific from the *marital property*. The other spouse may request compensation if the donation could be seen as "*inappropriate to his or her circumstances*" according to § 94 Finnish Marriage Act. The right to claim compensation is explained in Question 106.

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

§ 39 § 1 (4) Finnish Marriage Act concerns *necessary tools used by the other spouse*. The conveyance or transfer of such tools by one spouse shall not occur without the permission of the other spouse. See above Question 11 on, for instance, the rules to be followed when the acquirer has obtained possession in good faith.

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

A spouse has the right to request that the other spouse co-operates in drawing up a list of the movable property belonging to each spouse (§ 60 Finnish Marriage Act). If one spouse does not have a marital right to certain property, also this fact shall be recorded upon request. If the other spouse has not complied with the drawing up of the list, a trustee shall be appointed at the request of the spouse to represent the other spouse. This spouse has the right

¹⁸ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 14.

to have a notary public certify the date on which the list was presented to him or her. In case of a dispute concerning the property, the court shall decide the probative value of the list.

This section is applied extremely seldomly (if ever) in practice.¹⁹

111. How are conflicts between the spouses concerning the administration of assets resolved? Do they have access to a conflict resolution mechanism?

The relevant conflict would concern the case where one spouse solely owns the common home of both spouses and for the conveyance of which the consent of the non-owner other spouse is required. The court may, upon petition, grant permission for a conveyance or for another transaction if the other spouse has refused consent (§ 40 Finnish Marriage Act).

If spouses are joint owners of property, their conflict will be resolved according to the general civil law rules. See also Question 112.

After the dissolution of a marriage an *estate distributor* (*pesänjakaja / skiftesman*) can be ordered for the distribution of the property according to the Inheritance Code (§ 98 Finnish Inheritance Code *perintökaari / ärvodabalk*, 40/1965, Ch. 23). The estate distributor shall also resolve a possible conflict concerning the grounds for distribution. The distribution can be contested in court within six months (Ch. 23 § 10 Finnish Inheritance Code).

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

(Here, what has already been said in Question 106 is partly repeated.)

There is a general rule in § 37 Finnish Marriage Act according to which also all other property *that is subject to the marital right* shall be administered so that *it will not unnecessarily decrease in value to the detriment of the other spouse*. However, this section does not give the other spouse any concrete possibilities to prevent the owner spouse from conveying or otherwise decreasing his or her property subject to the marital right *during* the marriage. Still, the other spouse can obtain compensation, but this compensation will be realised *after the dissolution* of the marriage. The Finnish Marriage Act gives the other spouse a right to compensation in connection with the *distribution* of assets. The possibilities to receive compensation are explained later.

According to § 58 Finnish Marriage Act, if a spouse, without the consent of the other spouse, conveys or pledges joint property or property belonging to the other spouse, the other spouse shall have the right to redeem it. If the third party was not acting in good faith or if no consideration was paid, the other spouse shall regain the property without redemption. This rule shall *correspond to the normal civil law rules* in case a person conveys or pledges property completely or partially owned by another person. These rules have been included in Finnish Marriage Act mostly in order to accentuate the fact that (after 1930) also married spouses are, in their internal relationship, equated with normal owners in the case of a violation of an owner's right.²⁰

¹⁹ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 16.

²⁰ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 14.

113. What are the possible consequences if a spouse is incapable of administering the assets?

A *guardian (edunvalvoja/ intressebevakare)* can be appointed for a person who is not capable of administering his or her assets. The appointment of a guardian is regulated in the Finnish Guardianship Services Act (*laki holhoustoimesta / lag om förmynderskapsverksamhet 442/1999*).

The legal rules concerning the validity of transferring or conveying assets because of the incapacity of a spouse are the same as for any other persons in civil law. There are no special rules for cases concerning incapable spouses.

III.3 Distribution of property upon dissolution

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

A distribution of the matrimonial property shall be carried out when *proceedings relating to divorce are pending or when the marriage has been legally dissolved*. A legal separation no longer exists in the Finnish Marriage Act. A factual separation of the couple is not a legal ground for the distribution of marital property (§ 85(1) Finnish Marriage Act).

A distribution of the matrimonial property is also to be carried out if the marriage has been dissolved *because of the other spouse's death* and if the spouse or an heir of the deceased spouse so demands (§ 85(1) Finnish Marriage Act).

If the property of a spouse has been surrendered in the case of bankruptcy, the other spouse has a right to a "one-side marital settlement". Neither spouse shall have a marital right to the other spouse's property if the other spouse makes an announcement to the local register office within a year from the beginning of the bankruptcy (see Question All: the property of both spouses shall thereafter be regarded as *separate property*. The bankruptcy of one spouse is not a ground for property distribution (or separation). The other spouse's interests are protected by the separate property category.²¹

115. What date is decisive for the dissolution of the matrimonial property regime? Distinguish between the different grounds mentioned under Question 114.

The decisive date is the date when the court proceedings for the divorce have been instituted (§ 90 (2) Finnish Marriage Act). This is in practice the date when the divorce application by one spouse or the common application of both spouses has been submitted to the district court. The property that a spouse earns, inherits or receives as a gift or under a will after this date is not covered by the marital right of the other spouse.

However, if the divorce proceedings are later discontinued, the said rule shall not be applied.

[Divorce proceedings in Finland normally mean that a spouse or both spouses submit a divorce application to the court. No specific reason has to be given. The court makes an order concerning a period for reconsideration. After this period, which is at least six months and a year at most, a spouse or both spouses can submit the second application concerning the divorce to the court. The court shall then grant the divorce. However, if neither of the spouses submits the second application to the court within the period of one year, the divorce proceedings are simply lapsed. Reconciliation has been made as easy

²¹ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 80–81.

as possible for the spouses. In reality, divorce applications are discontinued every now and then. See § 25-30 Finnish Marriage Act].

If the marriage was dissolved because of the death of the other spouse, the date of the death is decisive.

(Please note that the original § 90 Finnish Marriage Act was amended in 2004 (Act 784/2004, in force since 1.11.2004) and that this amendment has not been included in the English translation. According to the present § 90 the appointment of an estate distributor has no effect on the date in question.)

116. Upon dissolution of the matrimonial property regime which assets belong to the deferred community? How are those assets valued? Can, and if so on what conditions, any property belonging to the deferred community be withheld from the property division?

The property that a spouse earns or inherits or receives as a gift or under a will after the date explained in Question 115 - i.e. the date when the divorce proceedings became pending or the date of the death of a spouse - is not covered by the marital right of the other spouse.

The assets shall be valued according to the current value on the date when the distribution is made. If the spouses cannot agree on the current value of a certain property, the correct value will be established by the estate distributor who can also consult an expert for this purpose.²²

An *estate distributor* can be appointed by the court at the request of one spouse or both spouses together (§ 98 Finnish Marriage Act, § 3 (2) Finnish Inheritance Code; see Question 111 above). After the estate distributor has carried out his or her work, the parties may contest the distribution in court.

The only possibility to withhold *marital property* from the property division is to request an adjustment of the distribution if it would otherwise lead to an unreasonable result or to an unjust financial benefit for the other spouse according to § 103 b Finnish Marriage Act.

That which falls within *separate property* will not be distributed as *marital property*. However, separate property can be taken into consideration concerning compensation claims and concerning the adjustment of the distribution. These situations are explained later under Question 119 and 127. However, any property received after the date when the divorce proceedings became pending cannot be taken into consideration.

If neither spouse has a marital right to the property of the other spouse, a separation of the property shall be carried out instead of the distribution (§ 85 (2)).

117. What are the relevant dates for the determination and valuation of assets? E.g. is the fact that the spouses are living apart before the dissolution of the marriage relevant?

Assets shall be valued according to the exchange value on the date when the distribution is carried out (see Question 116 above).

This means that if there is a long period after the divorce proceedings were instituted and before the actual distribution of the assets will be carried out, this can be relevant for the result of the distribution.

²² E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 30–31.

The simple fact that spouses are living apart has no relevance as such to the distribution of the matrimonial property. Decisive in this respect is the date of the first divorce application (see above Question 115).

118. What happens if assets belonging to one category have been used for investments in the assets belonging to another category? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?

The Finnish Marriage Act includes different rules for compensation which enable compensation because of an investment in assets belonging to the *marital property* when this investment has been made from the *separate property* of the other spouse and *vice versa*. (§ 92 and 95 Finnish Marriage Act).

Compensation is also possible in cases where a spouse has caused, by mismanaging his or her financial affairs or by misusing his or her right to administer the marital property of the other spouse or through other *action inappropriate to his or her circumstances*, an *essential decrease* in the net value of the *marital property* (§ 94 Finnish Marriage Act).

If spouses cannot agree on the possible compensation, the estate distributor shall deal with the requirements for compensation (see Question 116 above). The distribution can always be contested in the courts.

119. What happens if assets belonging to one category have been used for payment of debts belonging to another category of assets? Is there a rule of compensation? And if so, how is compensation calculated

Compensation is also possible when the investment has been made to pay debts belonging to another category of assets, but the compensation shall in principle not take place to the detriment of the creditors.

For instance, according to § 95 Finnish Marriage Act, if a spouse has used his or her marital property in order to acquire or improve his or her separate property *or in order to pay a debt* incurred for such a purpose, the compensation to the other spouse shall also in this case primarily be taken from the net *marital property*. If that is not sufficient, *half* of the compensation may also be taken from the *separate property* of that spouse, *provided that the said property is not needed to cover a debt* (§ 95 Finnish Marriage Act).

The same applies to a *debt* which is due to a spouse's careless administration of his or her financial affairs or through other action which is *inappropriate in his or her circumstances* (§ 94 Finnish Marriage Act).

If a spouse has incurred a debt in order to acquire or to improve his or her *separate property*, the amount of this debt shall primarily be covered by the value of that particular *separate property*, but if this is not enough, the remainder shall be covered by the part of the *marital property* of that spouse (§ 99 (2) Finnish Marriage Act). *The other spouse* (or his or her heirs) shall obtain compensation from the net *marital property* (§ 93 Finnish Marriage Act).

120. How are assets administered after dissolution of the matrimonial property regime but before allocation? Can a spouse's rights in relation to the division of property be protected against transactions by the other spouse? If so, how?

If the marriage has been dissolved by a court order, a spouse shall have the right, until the property has been distributed, to administer the property which he or she had at the time of the dissolution of the marriage *as if the marriage still continued* (§ 86 (3) of MA).

Since the restrictions concerning the transactions according to § 38 - 39 Finnish Marriage Act in respect of spouses' common home etc. do not depend on whether the property in question belongs to the *marital property* or *separate property*, the restrictions are valid until the distribution of the assets has been completed.²³

The compensation claims explained above refer explicitly only to the time *before the divorce proceedings became pending*, i.e. to the time when the marital right is valid. According to an authoritative opinion in the family law literature, a spouse shall have a right to compensation also in cases where the other spouse has caused an essential decrease in the value of his or her property *after the divorce proceedings have been pending* but before the distribution has taken place. The compensation is calculated in accordance with the so-called *restitution model*.²⁴

121. Briefly explain the general rules governing the division of the assets. Explain who may carry out the division (spouses/competent authority) and what means are available when a spouse refuses to cooperate in the division?

In the distribution, each spouse shall acquire half of the net property of both spouses. The distribution only concerns the spouses' *marital property* with the exception of the possible compensation from a spouse's *separate property* as explained above.

In the distribution calculation each spouse's marital property and separate property are calculated separately. Debts are to be recovered from that property for which the respective investment has been used. However, if the debt incurred for an investment in the separate property cannot be covered by the separate property of that spouse, *the remainder shall be covered by the marital property* of that spouse.

The spouse whose net *marital property* is the larger shall hand over to the other spouse an amount from his or her matrimonial property that makes their final *matrimonial property* shares equal. If the net marital property of one or both spouses proves to be negative, he or she is *not obliged to hand over anything*. The same applies to both of them if the net marital property of each shows a negative result.

This means that when both spouses have more debts than assets the marital right simply loses its meaning. The spouse's right to obtain property from the other spouse through the marital right cannot diminish the creditors' right to receive the payment. In principle, the creditor's right has preference. The legal principles are contained in § 98-100 Finnish Marriage Act.

The spouses can always agree on the distribution of their property. They may also choose not to strictly follow the rules of MA. The distribution documents shall be dated, properly signed by both spouses and witnessed by two disinterested persons (§ 66 Finnish Marriage Act). In practice advocates, of course, often assist spouses in drafting distribution documents, but this is not necessary.

If spouses want to ensure that their distribution is valid also in regard to their creditors, the distribution instrument shall be registered at the local register office (§ 104 (2) Finnish Marriage Act, enacted in 4.2.2005, Act 58/2005, i.e. after the English translation of the Finnish

²³ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 24.

²⁴ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 17 and the literature referred to there.

Marriage Act was made). However, this has been said to be relatively infrequent in practice and it is, of course, not necessary for the validity of the distribution *inter partes*.²⁵

According to the first paragraph of the same § 104(1) if, in the distribution of matrimonial property, a spouse has handed over property to the other spouse and the amount thereof considerably exceeds what he or she should have handed over, the distribution may be reversed into a bankruptcy estate in accordance with the provisions in the Finnish Act on the Recovery of Assets into a Bankruptcy Estate (*laki takaisinsaannista konkurssipesään / lag om återvinning till konkursbo*, 758/1991).

Each of the spouses may resort to the District Court to have an estate distributor appointed (Ch. 23 § 3 Finnish Inheritance Code). Each of them also has the right to contest the distribution by bringing an action against the other spouse within six months at the District Court (Ch. 23 § 10 Finnish Inheritance Code).

122. How are the assets allocated?

As explained above (Question 121), the distribution results in a calculation which shows which of the spouses shall hand over property to the other spouse and how much.

Thereafter, the spouse who is obliged to hand over property may decide what property he or she will give to the other spouse. That spouse may also always pay his or her part in money (§ 103 Finnish Marriage Act). If he or she does not define, within a reasonable time, the property to be given to the other spouse, the right to define that property will be transferred to the estate distributor.²⁶

The estate distributor may also request the court for permission to sell a particular piece of property (Ch. 23, § 8 Finnish Inheritance Code).

[In practice, the major question is often the property which spouses own jointly. Finnish couples are often joint owners of an apartment or a house serving as their common home. (They may also share a car, boat, summer cottage etc., but most often it is the common home which is the most valuable asset.) If none of the spouses is able buy the other one's share of the apartment or the house, the only solution may be to sell the property on the open market and to divide the net price received. The problems of joint ownership may arise irrespective of the property system. Thus, even if spouses would only have *separate property*, they are often joint owners of a property which at the same time has meant a large investment for both of them and which must be sold for the future needs of both of them.]

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

According to § 103 (3) if a spouse is to receive property from the other party, he or she may, irrespective of the right of the other, define the property he or she will hand over, *receive tools* and other movables which he or she needs *in order to carry out his or her business* if this can

²⁵ So E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 16.

²⁶ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 33.

take place without causing an essential detriment to the other spouse. This rule is very seldomly applied in practice.

124. Do the spouses have preferential rights over the allocation of other assets?

Before the distribution, a spouse has the right, first, to take clothing and other articles for his or her personal use only, but nothing more than that which can be deemed reasonable with a view to the circumstances of the spouses (§ 91 Finnish Marriage Act). This rule is seldomly applied because normally spouses (and lawyers and advocates who help spouses with the distribution) omit personal belongings from the distribution anyway due to their relatively small value.²⁷

125. To what extent, if at all, does the dissolution of the matrimonial property regime affect the attribution of maintenance?

The spouse's right to maintenance from the other spouse is relatively restrictive in Finnish legislation. An important moment in this respect is when the divorce becomes final. As long as the marriage is valid, the maintenance obligation is considered to be stricter than after the divorce. (See § 46, 47 and 48 Finnish Marriage Act).

The conditions for a maintenance order are not directly connected to the distribution. However, there can be an indirect factual connection. Maintenance can be ordered if a spouse is deemed to be in need of maintenance. The court can also take into consideration the amount of assets after the distribution when evaluating the spouse's need. A recent case by the Supreme Court is quite illuminating.

The facts in the Supreme Court decision from 19.10.2004²⁸ were briefly the following: During the marriage, the wife stayed at home for 16 years after the first child was born. During the reconsideration period, she began to receive unemployment benefit. She requested maintenance. Her request covered both the period of reconsideration and the period after the divorce.

The Supreme Court found that the grounds for maintenance were different regarding the reconsideration period, since the marriage was still valid and therefore the rule concerning maintenance obligations during the marriage was to apply here (§ 46 and 47 Finnish Marriage Act). The court found the request for maintenance during the marriage well founded and ordered a monthly maintenance payment for 6 000 FIM (during the year 2001, approximately 1010 euros,) reduced by the unemployment benefit (2 300 FIM, approximately 387 euros, a month).

After the divorce the case was to be decided according to separate rules concerning the maintenance obligation (§ 48 Finnish Marriage Act). According to the Supreme Court, the main rule is that the economic bond between spouses ends upon divorce as well as the obligation to pay maintenance. A maintenance payment can be ordered if the former spouse has no possibilities to maintain him/herself after the divorce because of the marriage. The Supreme Court found that the wife was able to work and also took into *consideration the fact that she had assets which she had inherited and received from the distribution*. Those assets would also enable her to maintain herself. Thus, no maintenance payment was ordered for the time after the divorce had become final.

²⁷ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 30.

²⁸ KKO/ HD 2004:104 *Fråga om underhåll till make under betänketiden för äktenskapsskillnad och efter det makarna dömts till äktenskapsskillnad.*

The Finnish Marriage Act also includes a rule concerning the *maintenance debt* for the spouse. The application of § 102 provides that a spouse has already been obliged to pay maintenance according to § 46 or 47 Finnish Marriage Act. According to § 102, maintenance *payable by a spouse to the other spouse which has fallen due* shall be paid upon the distribution of the matrimonial property, provided that the spouse under the obligation to pay the maintenance receives assets upon the distribution or otherwise has sufficient assets to cover any debt.

Since maintenance orders for the benefit of spouses are nowadays very rare, § 102 is applied only in very rare cases.

126. To what extent, if at all, does the dissolution of the matrimonial property regime affect the pension rights and claims of one or both spouses?

In Finland pension rights are regarded as personal rights. According to the national pension system each person has an individual right to a pension which does not depend on the spouse's earnings. The matrimonial property system has no effect on pension rights at all (see above Question 91).

127. On what conditions, if at all, can the general rules (above Question 121) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?

The agreement between spouses on the distribution can in practice be regarded more or less as the main rule (see Question 121 above). Spouses are free to set the legal rules aside. However, creditors may in certain situations have the right to interfere with the distribution if their rights have been violated (§ 104 Finnish Marriage Act, see above Question 121).

The general rules can, to a certain respect and under certain conditions, also be set aside by an adjustment to the distribution. Spouses can subject their request concerning any adjustment to the estate distributor. It is also possible to request an adjustment by contesting the distribution at the District Court (§ 103 b (3) Finnish Marriage Act).

The conditions for any adjustment are strictly determined in § 103 b (1) and (2) Finnish Marriage Act.²⁹

The distribution may be adjusted if it would otherwise lead to an *unreasonable result* or the other spouse receiving an *unjust financial benefit*. Special attention will be paid to the *duration* of the marriage, the activities of the spouses in their common household and the accumulation and preservation of the property as well as other comparable facts regarding the finances of the spouses (§ 103 b (1) Finnish Marriage Act).

The distribution can only be adjusted as regulated in § 103 b (2) of MA. According to this Section the following can be ordered:

1. a spouse shall not receive any property as a result of the distribution or that the right shall be restricted;
2. certain property shall totally or partly be excluded from the *marital property* subject to distribution; such property can only be totally or partially excluded
 - a. if the spouse has earned or received the property while the spouses were living apart or
 - b. if the spouse already had the property when the spouses married or
 - c. if the spouse had received the property during the marriage as an inheritance or a gift;

²⁹ See also E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 17-18.

3. all or part of the *separate property* based on a marital settlement, shall, in the distribution, be considered as *marital property*.

According to § 107 Finnish Marriage Act the separation of the property of the spouses can also be adjusted. The conditions stipulated in § 103 b are to be applied which means that all or part of the *separate property* based on the marital settlement can be considered as *marital property* (see above).

However, separate property based on a deed of gift or a will shall not be considered as marital property by adjustment.³⁰

The spouses' agreement concerning distribution can also be adjusted. The general rules concerning the adjustment of a contract in contract law are applied. The preconditions for adjusting an agreement must be in accordance with the conditions laid down in § 103 b.³¹

128. Are there besides the rules of succession specific rules applicable if one of the spouses dies?

In principle, the same rules are followed when the marriage has dissolved because of the other spouse's death. A distribution of property shall take place if the surviving spouse or any of the heirs of the deceased spouse so demands. It is however quite common that no distribution is made. This is especially so if all the heirs are children of the deceased spouse and the surviving spouse. (The surviving spouse is not an heir, according to Finnish inheritance law, if the deceased spouse had children or grandchildren). In principle, if the widow and the children can agree on the administration of the property, it is mostly advantageous not to make any distribution.³²

However, there are cases where a distribution of the property will take place. There is one important rule in § 103 (2) Finnish Marriage Act. According to the said section, the surviving spouse does not need to hand over his or her property to the heirs of the deceased spouse. Thus, even in the case where the *marital property* of the surviving spouse was greater than the one of the deceased spouse, the widow does not have to give up any of his or her property in the case of distribution. This right of the widow is personal and cannot be contested by his or her heirs if the distribution takes place after the death of both spouses.³³

The surviving spouse does not need to hand over property after the distribution even if the deceased spouse had been declared bankrupt (§ 103 (2) Finnish Marriage Act).

From the point of view of social protection, in practice even more important is the rule in the Finnish Inheritance Code according to which the widow may always remain in the spouses' common home even if the owner of the home was solely the deceased spouse (Ch. 3 § 1 a (2) Finnish Inheritance Code).

³⁰ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 41.

³¹ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 42.

³² E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 18.

³³ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 19.

IV. Separation of property

Not relevant.

V. Separation of property with distribution by the competent authority

Not relevant.

D. MARITAL AGREEMENTS

191. Are future spouses permitted to make a pre-nuptial agreement regulating their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?

Here the term *marital settlement* is used instead of marriage settlement as this is used in the Finnish Marriage Act translation for *avioehto /äktenskapsförord*.

Future spouses can make a marital settlement either before or during the marriage. Engaged persons have the same right to conclude a marital settlement as married spouses (§ 41 (1) Finnish Marriage Act). The marital settlement becomes effective after registration at the local register office. The concluded marriage is, of course, a prerequisite to the effectiveness of a marital settlement (§ 44 Finnish Marriage Act).

In § 41 future spouses are called *engaged persons*. According to § 1 (1) Finnish Marriage Act, a woman and a man who have agreed to marry each other shall be considered as being engaged. An engagement as such has no legal consequences according to Finnish family law. (The legal consequences of an engagement expired in 1988 as the reform of the Finnish Marriage Act (Act 411/1987) came into force.)

192. Are spouses permitted to make a post-nuptial agreement regulating or changing their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?

Spouses may at any time during their marriage make a marital settlement or change their marital property system by making a new marital settlement (§ 41 Finnish Marriage Act).

193. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid as between the spouses?

A marital settlement can be regarded as an agreement with special formal requirements (See Question 194). The marital settlement which is not registered is, in principle, not valid between the spouses (see § 44).

It is, of course, up to the spouses themselves to agree on their mutual distribution. But if an unregistered agreement would be presented to the estate distributor as a marital settlement, he or she would have to decide *in casu* regarding the circumstances as whole whether such a document shall be given any meaning.

194. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid in relation to a third party? Is there a system of registration of pre- and/or post-nuptial agreements? If so describe briefly the system and its effect.

A marital settlement shall be made in writing, dated, properly signed and witnessed by two disinterested persons and submitted to the local register office in order to be registered. (§ 42, 43, 44 and 66 Finnish Marriage Act. Please note that § 43 Finnish Marriage Act has

subsequently been amended after the English translation from 2001. From 2003 onwards the local register offices replaced the District Courts in keeping many public registers).

195. Is full disclosure of the spouses' assets and debts necessary for the making of a pre- and/or post-nuptial agreement?

A disclosure of the spouses' assets is not needed for making a marital settlement.

196. If the agreement has to be made before an official (e.g. a notary), is that official obliged to inform the spouses about the content and the consequences of the pre- and/or post-marital agreement? If so, what happens if the official does not fulfil his or her obligation?

Spouses or future spouses are free to make their marital settlement by themselves or to appoint a lawyer or an advocate for that purpose.

(An advocate has a general duty to explain the meaning of signed documents to his or her clients. Advocates act under the legal supervision of the Finnish Bar Association and the Chancellor of Justice.)

The task of the local register office is purely to register the agreement.

197. Provide statistical data, if available, regarding the making of pre- and/or post-nuptial agreements.

(As in Question 19)

According to *Henriikka Rosti* and *Marjukka Litmala* "marriage (=marital) settlements are no longer a marginal phenomenon. An increasing number of couples wish to move away from the main principle of the Marriage Act, that is, an equal distribution of property when a marriage is dissolved. By now, as many as one in four marrying couples make a marriage settlement, whereas in the 1970s, for example, only one in every eight couples did so".

Rosti and Litmala described the frequency of marriage settlements in Finland by comparing the number of new marital settlements in one year to the number of new marriages entered into in the same year. They found that in the 1970s the number of marital settlements amounted to as many as 10 per cent of all marriages entered into. In the 1990s the respective percentage was more than 20 per cent and after 2000 it has been more than 25 per cent indicating that one in every four marrying couples conclude a marital settlement.³⁴

198. May spouses through pre- and/or post-nuptial agreements only choose, where applicable, a statutory matrimonial property regime and/or do they have the freedom to modify such a regime or even create their own regime?

§ 41 Finnish Marriage Act regulates exclusively what spouses or future spouses may agree upon in a marital settlement. However, these possibilities give them a wide range of possibilities to arrange their marital property relationships. Spouses or future spouses may *exclude* from their *marital property* any property owned or later acquired by a spouse or both spouses and again subsequently *restore* it to the marital property by another marital settlement. They may, for instance, exclude the marital right to property already acquired or

³⁴ See *Henriikka Rosti* and *Marjukka Litmala*: Marriage Settlements and Actions against the Distribution of Matrimonial Property - Assessment of the feasibility of property rules in the Marriage Act I, National Research Institute Publication no. 223 of Legal Policy Helsinki 2006, English Summary.

to be acquired in the future by one or by both by will or gift, but leave the marital right otherwise intact.³⁵

Anyway, the property in question shall be clearly defined because of the interests of third persons. Thus, the marital right cannot be partially excluded (such as, for instance, only for 30 per cent of the property or some property). Spouses may even not agree in a marital settlement to the effect that a spouse shall have a marital right to a property given by a third person under the condition that the other spouse shall not have a marital right concerning that property (§ 35 (2) Finnish Marriage Act).³⁶

The Supreme Court³⁷ considered a marital settlement to be valid even when it was only concluded *in the case that the marriage should be dissolved by divorce*. According to the settlement it was not to be applied if the marriage would be dissolved by the other spouse's death. Such marital settlements are said to be rather common in practice.³⁸

Makar hade dömts till äktenskapsskillnad. I ett äktenskapsförord mellan makarna hade avtalats att ingendera maken skulle ha giftorätt i den andra makens egendom, om äktenskapet upplöses genom äktenskapsskillnad. Om äktenskapet upplöses genom den ena makens död skulle den efterlevande maken ha giftorätt i den avlidnes egendom. Äktenskapsförordet ansågs giltigt. (Omröstn.)

199. If spouses can modify through pre- and/or post-nuptial agreements a statutory regime or create their own regime, can those modifications be made to:

a. categories of assets;

Yes, actually the most common marital settlement concerns the total exclusion of the marital right of both spouses (§ 41(1) Finnish Marriage Act).

b. administration of assets;

A marital settlement has no direct impact on the administration of assets. The restriction in the administration which is of importance concerns the spouses' common home which can only be conveyed with the consent of the other spouse. This restriction concerns both marital and separate property. Thus, changing the category by a marital settlement has no relevance concerning this restriction (§ 38-39 Finnish Marriage Act).

As explained above in Question 106 and in Question 112 a spouse has an obligation to take proper care of his or her marital property and the possibilities for compensation follow from maladministration. This means that the choice of property regime by a marital settlement *may have an indirect impact* to the way a spouse will administer the property, since the obligation of proper administration only concerns marital property.

³⁵ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 11.

³⁶ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 20.

³⁷ KKO/HD 2000:100.

³⁸ E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 11. According to E. Gottberg, the precedent set by the Supreme Court may not necessarily create a precedent in the case of death as the case in question concerned a divorce (ibid.).

c. distribution of assets;

The choice whether certain property shall be *marital* or *separate property* has a direct impact on the distribution of property. If spouses only have separate property, no distribution takes place after the dissolution of the marriage, because only the separation of properties is possible.

d. depend upon the ground of dissolution of the marriage?

This has not previously been considered to be possible in Finland. However, in its decision (KKO 2000:100) on 24.10.2000, the Supreme Court found that a marital settlement which was concluded *only if the marriage should be dissolved by divorce*, was valid in the case of divorce. Thus the legal situation has changed in this respect.

According to the said settlement, it was not to be applied if the marriage would be dissolved by the other spouse's death.

(See above Question 198)

200. Are there typical contractual clauses used in practice to modify essential elements of the matrimonial property regime, where applicable, or to achieve a certain result, e.g. that certain rights are excluded only upon divorce but not on death of a spouse?

Here reference is made to what is said above in Question 198 and 199 d.

201. Can the competent authority override, modify or set aside pre- and/or post-nuptial agreements on account of unfairness or any other ground?

The adjustment of the marital settlement must be considered in the context of the distribution (or separation). (See above Question 127 concerning the *adjustment of the distribution*.)

A spouse may request an adjustment to the distribution. He or she can ask the *estate distributor* to adjust the distribution, but he or she may also contest the distribution at the District Court and request an adjustment (§ 103 b (3) Finnish Marriage Act).

The preconditions for the adjustment are strictly determined in § 103 b (1) and the way in which the distribution can be adjusted is laid down in § 103 b (2) Finnish Marriage Act.³⁹

According to § 103 b (1), the distribution may be adjusted if it would otherwise lead to an *unreasonable result* or to the other spouse receiving an *unjust financial benefit*. Special attention shall be paid to the *duration* of the marriage, the activities of the spouses in their common household and the accumulation and preservation of the property as well as other comparable facts regarding the finances of the spouses.

The distribution can only be adjusted as regulated in § 103 b (2) Finnish Marriage Act. Thus, it can be ordered, that

1. a spouse shall not receive any property as a result of the distribution or that the right shall be restricted;
2. certain property shall totally or partly be excluded from the *marital property* subject to distribution; such property can only be totally or partly excluded

³⁹ See also E. Gottberg, *National Report of Finland, for the Study on Matrimonial Property Regimes and the Property of Unmarried Couples in Private International Law and Internal Law by the TMC Asser Instituut (Commission Européenne, General direction Justice and Home Affairs Unit A3 Judicial Cooperation in civil matters JAI/A3/2001/03)*, p. 17-18.

- a. if the spouse has earned or received the property while the spouses were living apart or
 - b. if the spouse already had the property when the spouses married or if the spouse had received the property during the marriage as an inheritance or a gift.
3. all or part of the *separate property* based on the marriage settlement shall, in the distribution, be considered as *marital property* .

According to § 107 Finnish Marriage Act the separation of the spouses' property can be adjusted. The conditions stipulated in § 103 b are to be applied, which means that all or part of the *separate property* based on the marital settlement can be considered as *marital property* (see above).⁴⁰

However, separate property based on a deed of gift or a will shall not be considered as marital property by adjustment.⁴¹

The spouses' agreement concerning distribution can also be adjusted. The general rules concerning the adjustment of a contract in contract law are applied. The preconditions for adjusting an agreement must be in accordance with the conditions laid down in § 103 b.⁴²

⁴⁰ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 39.

⁴¹ E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 41.

⁴² E. Gottberg, *Perhesuhteet ja lainsäädäntö*, Turun yliopisto, oikeustieteellinen tiedekunta, 2007, p. 42.