

NATIONAL REPORT: HUNGARY
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August 2008

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A. GENERAL

1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses)?

According to Hungarian law, spouses are one man and one woman who entered into marriage before the registrar. Nevertheless, the matrimonial property rules mostly regulate the property relations of spouses living together and not the property relations of spouses generally.¹

The rules of family law including the matrimonial property rules are regulated not in the Hungarian Civil Code but in the independent Family Act. This Act is the Hungarian Family Act on marriage, family and guardianship, which has been amended on several occasions. The Act IV of 1986, modifying the Family Act, altered the matrimonial property rules, too. In addition to the rules of the Family Act, the directives of the Supreme Court are also important. Although the crystallized judicial decisions are not the source of law, they are very meaningful.

There is one point that must be emphasized at the very beginning concerning the Hungarian report on matrimonial property regimes. The Hungarian Family Act was codified in 1952 (Act IV of 1952), and at that time in a socialist country too much attention could not have been given to the matrimonial property issues. According to the governing idea of the socialistic era, family law should have ruled issues that were almost completely personal in nature, not property relations. This was fully in line with the socio-economic circumstances of the Hungarian fifties, as people did not have many assets at all. The Hungarian Family Act in effect now regulates matrimonial property issues very laconically (§§ 27 para. 1 – 31 para. 5 besides, 31/A para. 1 and 2 contains laconic rules governing the nuptial agreements on the use of the common dwelling). As the circumstances continually changed, the judiciary did its best. There are many principles and points regarding the legal regulations on matrimonial property issues that were introduced and developed in legal practice. These principles are very important and applied by the courts regularly and consistently. However, there are no particular judgments that could be mentioned and marked in connection with these main principles, as their establishment have lasted for many long years. Of course, there are

¹ Legal literature in English or German: E. Weiss, "Eheliche Gemeinschaft und Vermögen in ungarischen Recht", in: D. Henrich and D. Schwab (eds.), *Eheliche Gemeinschaft, Partnerschaft und Vermögen im europäischen Vergleich*, Bielefeld 1999, pp. 337-356; O. Szeibert-Erdős, "The Role of Self-Determination in Hungarian Family Law Primarily Concerning Matrimonial Property Settlements", in: M. Martín-Casals and J. Ribot (ed.), *The Role of Self-determination in the Modernisation of Family Law in Europe*, Girona 2006, pp. 129-149; O. Szeibert-Erdős, "Same-sex partners in Hungary. Cohabitation and registered partnership", www.utrechtlawreview.org Volume 4, Issue 2, June 2008 *Special on Current Debates in Family Law around the Globe*, E. Weiss, "Gesetz über die Registrierte Partnerschaft in Ungarn". *FamRZ* 2008, pp. 1724-1725. In Hungarian: A. Kőrös, "Házassági vagyoni jog. A házastársak lakáshasználatának rendezése. A háztartás költségei" (Matrimonial property law. Settlement of the use of the matrimonial home. Household costs), in: A. Kőrös (ed.), *A családjog kézikönyve I-II.* (Handbook of Family Law), Budapest 2007; A. Kőrös, *Házastársi közös vagyon, közös lakás (Matrimonial property law, matrimonial home)*, Budapest, 2002; O. Csiky and E. Filó, *Magyar családjog (Hungarian Family Law)*, Budapest 2002.

questions concerning the issue that the practice is diverging, but in the questions set out in this report the Hungarian judicial practice is equivocal. The paragraphs of the Hungarian Family Act will be referred to in the report, but this cannot be done as regards the actual judicial practice.

The Hungarian matrimonial property law (the property relationship between spouses) is regulated by special rules during marriage, upon divorce and upon annulment.

The Hungarian default matrimonial property regime is the community of property regime. Although the Hungarian Family Act makes it possible to enter into a matrimonial property agreement, it is not common in Hungary, so the property relations of spouses are regulated mostly by the rules of community of property regime.

a. upon marriage

The community of property regime has no importance upon marriage. The assets acquired before marriage remain the separate property of each spouse (§ 28 para. 1 a) Hungarian Family Act). One exception has been established in the judicial practice, namely if the spouses lived in cohabitation before marrying each other and the cohabitation was followed by marriage. In such cases, which are common, the judicial practice applies the rules of community of property regime not from the marriage, but from the beginning of the cohabitation. There is a presumption in legal practice that the spouses transfer their common property acquired during cohabitation into the matrimonial property with an implicit agreement. (This solution is not applied where the spouses cohabit after divorce.)

Nevertheless, not only spouses can enter into a matrimonial property agreement, but also future spouses, and it can have important marital consequences (§ 27 para. 2 Hungarian Family Act).

b. during marriage

During marriage – actually only during the matrimonial community of life according to the regulations of Hungarian Family Act (§ 27 para. 1). – the default rules to be applied if there is no marital property agreement are those of the community of property regime. According to these rules, everything that is acquired by the spouses together, or by each spouse during the matrimonial community of life, is their common property from the time of acquirement, excepting those assets which belong to the separate property of each spouse according to the Hungarian Family Act (§ 27 para. 1). This common property; its administration and disposal are regulated not by the general rules of common property but the special rules of Hungarian Family Act (§ 29 para. 1- 3 and § 30 para. 1- 5).

c. upon separation

The common acquirement of spouses terminates upon separation, as they acquire assets together only during the matrimonial community of life in the sense of family law (§ 27 para. 1 Hungarian Family Act). The assets acquired after separation do not belong to the common matrimonial property even if the division of community of property happens later after the separation.

d. upon death

Upon the death of each spouse, the common property terminates and either the survivor spouse or other inheritors of the deceased spouse can initiate the arrangement of claims originating from common acquirement during the matrimonial community of life.

e. upon divorce,

The division of the common property generally happens upon divorce. The division of the common property acquired during the matrimonial community of life usually happens in divorce cases either by spousal agreement or by judicial judgment. In addition to the division, the spouses can make settlements concerning the investments and other expenses of greater value from the common property to either spouse's separate property or, conversely, from one of the spouse's separate property to the common property (§ 31 para. 5 first sentence Hungarian Family Act). Each spouse must turn over the other spouse's separate property upon divorce. Nevertheless, it can be turned over earlier, as well.

The regulations of the Hungarian Family Act and also the general rules of the Hungarian Civil Code are to be applied in case of the division of the common property.

f. upon annulment.

There are special rules concerning the spouses' property upon annulment (§ 33 para. 1-2 Hungarian Family Act). The property consequences of a void marriage depend on the good or bad faith of the spouses at time of entering into marriage. If both spouses acted in good faith when entering into marriage, namely by not knowing and having no reason to know about the ground of invalidity, the property consequences are the same as for a valid marriage. In these cases, the property rules of divorce are to be applied.

If only one spouse acted in good faith on entering into marriage, this spouse has the right to choose either the property consequences of valid marriage or the property consequences of a non-existing marriage. If both spouses acted in bad faith, namely they knew or ought to have known about the existing ground of invalidity, the matrimonial property rules of Hungarian Family Act cannot be applied. Nevertheless, the spouses can also have property claims in this last case according to the rules of common property acquirement of the Hungarian Civil Code. Annulment cases occur very rarely, in contrast to divorce cases.

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

Before 1946, two legal property regimes were in force according to the Hungarian family law. The separation of property regime was applied to nobles and professional persons of non-noble birth, and the participation in acquisitions regime to other persons. Both nobles, professional persons of non-noble birth and other persons falling within participation in acquisitions regime could consensually enter into another matrimonial property agreement. The husband had no statutory right to administer the wife's separate property acquired either before marriage or during it. This was in contrast to other countries' legal regimes of that time.

In 1946, the participation in acquisitions regime was maintained. According to this regime each spouse's community property and the separate property could have been distinguished. The separate property was similar to the separate property of today; the property acquired before marriage, the inherited property and property acquired by free gift during marriage, the property replacing the separate property and the property which was declared as separate property in the matrimonial property agreement belonged to the spouse's separate property. The spouses acquired property on their own during the marriage, and at time of the marriage's termination they could claim half of the community property that appeared as an increase of assets. The separate property remained untouched, so neither spouse could claim the half of it under the main rule of the participation of acquisitions regime.

The Hungarian Family Act on marriage, family and guardianship (Act IV of 1952) provided the complex codification of family law for the first time in the Hungarian law. The regulations

of matrimonial property law were arranged in this Act in a laconic way. In 1952 the community of property regime became the default matrimonial property regime. According to the main rule of the community of property regime, the spouses acquire common property of the assets acquired both by one spouse and the spouses together during the matrimonial community of life from the time of acquirement itself. The fact that the common property comes into being at the time of acquirement and not upon termination of marriage was a decisive Hungarian legal change from the participation in acquisitions regime to the community of property regime. In 1952, the legislature took the position that the community of property regime better protected the equal rights of the spouses and emphatically took into consideration that one spouse's activity in managing the household and caring of children is equivalent to the another spouse's gainful employment.

The separate property is maintained by the community of property regime, too. The property acquired before marriage, the inherited property and the property acquired by free gift during the matrimonial community of life, the property providing only one spouse's personal needs and property replacing the separate property belongs to the separate property of one spouse.

The Hungarian Family Act abolished the legal opportunity to enter into a matrimonial property agreement which could exclude the community of property, either partly or fully. The legislature most likely wanted to protect the weaker party. Nevertheless, the Hungarian Family Act recognized the possibility that the spouses should declare that certain chattels belonging to the community of property belongs to the separate property of either spouse.

Act IV of 1986 modifying the Hungarian Family Act once more made it possible to enter into a matrimonial property agreement. This ruling itself is also very laconic. According to the regulation, both future spouses before a marriage and spouses during marriage can enter into a matrimonial property agreement in which they can deviate from the community of property regime's rules. This agreement has certain formalities.

Later modifications of the Hungarian Family Act left the matrimonial property rules untouched. Nevertheless, as the economic situation has been changing, the judicial practice and the judicial interpretation have continuously tried to adjust the rules of the Act to these changes. For recent reform proposals see Question 3.

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

There is currently an ongoing complex recodification of the Hungarian family law, so the matrimonial property rules are also currently being recodified. The preparation of the new Hungarian Civil Code provides a foundation for that; in the beginning of the codification process the government decided that the family law should be incorporated into the new Hungarian Civil Code. This is in contrast with the situation today; the family law currently regulated through an independent act. Although the proposal of the new Hungarian Civil Code is debated now as well, greater change in the proposal of the matrimonial property rules cannot be expected.

The proposal retains the community of property as the default matrimonial property regime. At the same time, the rules of the community of property regime are to be settled in a much more detailed way by making good use of established judicial practice. The legislature has taken into attention the economic changes, so the new rules are better adapted to the economic situation of today. There are several new regulations concerning the matrimonial property agreement. Some issues from the new or modified rules follow.

The proposal increases the notion of common property by mentioning the rights and obligations having financial value on one side and the burdens of the common property, the

debts originating from common obligations, on the other. The proposal also increases the notion of separate property by adding compensation for non-pecuniary loss in case of injury of personal rights, in harmonization with the established judicial practice and the debts of the separate property. The presumption of common property which has been followed in the judicial practice is incorporated into the proposal as a statutory rule. This rule is supplemented by the presumption that an obligation, concerning either common or separate property of either spouse, performed during the existence of the community of property, stems from the common property.

Concerning the administration and disposal of common property, the proposal fixes special rules to professional and business assets. There are also special rules concerning the exercise of rights that originate from company law, even if the spouses use common property to provide the financial contribution to the company. The proposal arranges the rules of disposal of common property from the termination of community of property until its division in a more realistic way, in contrast with its regulation of today.

Concerning the matrimonial property agreement, the proposal not only declares that the spouses can choose other matrimonial property regimes but also arranges the main rules of two alternative regimes, namely the community in accrued gains/participation of acquisitions regime and the separation of property regime. As the proposal follows the principal of contractual freedom, it fixes that the spouses can deviate either from the rules of the statutory matrimonial property regime or from the regulations of the alternative matrimonial property regimes. The relatively broad contractual freedom demands some rules to provide for the greater protection of third parties.

Lastly, it is worth mentioning that rules for the property issues of cohabitants are provided for in the proposal through the framework of the family law. Nevertheless, it distinguishes between the registered cohabitants (registered partners) and the cohabitants living in de facto partnership.

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

Neither registered, nor civil partnership is known in Hungary now (September 2008) but this situation will change. In December 2007, the Hungarian Parliament approved the Act on Registered (Life) Partnership (Act No. CLXXXIV. 2007), which will enter into force in January 2009. Although the name of the new institution, available both for heterosexuals and homosexuals, is "registered cohabitation", it is not cohabitation at all according to the European legal terminology. Although there are differences between the rules regulating marriage and those of registered partnership (registered partnership between heterosexuals and between homosexuals is also legally distinguishable), this new institution is very close to marriage. The Act orders that for issues not regulated specifically by this Act, the rules of the Hungarian Family Act concerning marriage are to be applied analogously; thus, for the most part a registered partnership results in the consequences of marriage. The property consequences are the same in their entirety; that is to say, the default property regime for registered partners is the community of property (§ 2 para. 1-2 Hungarian Family Act).

The proposal of the new Hungarian Civil Code also contains the same rules on registered (life) partnership and the property consequences.

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

The rules of Hungarian Family Act concerning the matrimonial property relationship between spouses are not exclusive. Some rules of property law and also some general rules of contract law of the Hungarian Civil Code can play a role in the relations between spouses. The regulations of Hungarian Civil Code governing joint ownership are important when dividing the common property and the general rules of contract law play a part as regards matrimonial property agreement, the agreement between spouses concerning division of common property and use of family home. Primarily the rules of civil law, but eventually also the indirect regulations of company law, can be of importance when adjudicating the matrimonial property relations between spouses, especially when third parties – either as contractual partners or creditors – are involved.

There are also some principles of the Hungarian Family Act and the Hungarian Civil Code which are to be applied to the matrimonial property relations, namely the requirements of bona fides, fairness, the practise of law according to its social purpose and the prohibition of wrongful use of legal rights.

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

In Hungarian law, the property relationship between spouses (the rules of matrimonial property law) and the law of succession are arranged independently, without regard to each other. A surviving spouse has a legal right to a share of the community of property, which means the legal title of matrimonial property law, and the spouse has a right of succession, which means the legal title of succession law. The extent of assets inheritable by a spouse is not dependent on whether the spouse has a claim under the legal title of matrimonial property law. The claims of matrimonial property law are to be assigned first, and all remaining property is the estate of the deceased spouse, from which both the surviving spouse and other heirs can submit claims of succession.

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

No.

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

The spouses must meet the costs and expenses of the family household, primarily out of their earnings (§ 32 para. 1 first sentence Hungarian Family Act). If their earnings are not sufficient, the costs and expenses are to be borne out of their remaining common property, and if that is not sufficient, they must contribute from their separate property (§ 32 para. 2 Hungarian Family Act). It follows from the base concept of the community of property regime in the Hungarian matrimonial property law that one spouse’s activity in managing the household and caring of children is equivalent to the another spouse’s gainful employment in connection with the meeting of the costs and expenses of the family household, too.

There is no definition of “costs and expenses of the family household” in Hungarian family law. The costs of the residence (both in case of flat of their own or one of spouse’s own and in case of rented flat), of general expenses (e.g. heating, electricity, maintenance costs), of furnishings, of acquisition and substitution of assets of everyday life and of technical equipment belong to the costs and expenses of the family household. In addition, the costs of everyday life and of caring and nursing the child (children) are also part of these costs and expenses.

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

The spouses have common liability for the household debts, both – primarily - from their common property and from their separate property. So, one spouse is liable for the household debts incurred by the other with his or her share from the common property and also with his or her separate property.

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”?

The matrimonial family home is the flat where the spouses actually live, independent of whether they have common or separate autonomous legal title. Legally, spouses can live in the matrimonial family home under common legal title; if the flat belongs to their common property, they are joint lessees or they have right of enjoyment. It can occur that only one spouse has autonomous legal title to the flat if the flat belongs to the separate property of either of the spouses if; it is leased by one of the spouses or one of them has the right of enjoyment. It often occurs that the flat belonging to the separate property of either of the spouses is increased by their common property during the matrimonial community of life. Sometimes neither of the parties has autonomous legal title to the flat, e.g. if it belongs to the property of one of the spouse’s parents.

There are no specific rules governing acquisition of family home, but there is a specific rule governing transactions in respect of it, as neither of the spouses can dispose of the flat unilaterally if such disposal could hinder the right of the other spouse and/or their common child (children) to reside therein. This rule applies if the flat belongs to the separate property of either of the spouses.

In case of divorce, the spouses can agree on the use of the matrimonial home (§ 27 para. 2 Hungarian Family Act) and if they live there under the abovementioned common title or under the autonomous legal title of one of them, the court has competence to rule on the use of it, upon the claim of the spouses or one of them.

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

There is no specific rule governing acquisition and/or transactions in respect of household goods irrespective of the matrimonial property regime in the Hungarian family law. This explains why there is no special definition of “household assets” from the viewpoint of matrimonial property law.

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

The question of whether there are special rules governing transactions entered into by one spouse irrespective of the matrimonial property regime is closely connected with the disposal of common property; see the answer to Question 35.

The questions concerning transactions entered into by one spouse irrespective of the matrimonial property regime are to be settled according to the matrimonial property rules, discussed at Question 35. The proposal of the new Hungarian Civil Code contains some new rules about the transaction of business assets and such investments.

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

There are no specific rules concerning one spouse acting as agent for the other. Except for transactions concerning immovable property, there is not even a need for a formal delegation of authority.

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

Transactions between spouses are permissible with formal limitation. Agreements between spouses on sale, change, loan and gift are only valid if they have the form of a public instrument or private document, countersigned by lawyer § 3 para. 2 of the Decree concerning some issues of the Hungarian Family Act (4/1987 Decree of the Minister of Justice). Neither form is obligatory if the moveable was delivered under the contract on gift.

Additionally, if these contracts deprive a third party from his or her claim coverage, the regulations of the Hungarian Civil Code are to be applied. According these rules this can result in the ineffectiveness of the contract towards third parties.

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 arrange their matrimonial property relations in an agreement that deviates from the rules of the default property regime (which is the community of property regime according to the regulations of Hungarian family law) (§ 27 para. 2 Hungarian Family Act). They can arrange what should belong to their common property and separate property differently from the rules of the default property regime. Because the Hungarian family law does not arrange any other matrimonial property regime, the spouses' matrimonial property agreement can not refer to the regulations of another property regime.

The new Hungarian Civil Code proposal maintains the community of property regime as default matrimonial property regime but in addition, it arranges two alternative matrimonial property regimes, namely the community of accrued gains/participation in acquisition and the separation of property regimes.

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

The default matrimonial property regime of the Hungarian family law is the community of property regime (§ 27 para. 1 Hungarian Family Act).

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

There is no other alternative matrimonial property regime in the Hungarian Family Act for which the spouses can opt besides the default regime. See Question 15 and Questions on marital agreements.

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

a. Question 16.

The default matrimonial property regime of the Hungarian family law is the community of property regime. The assets acquired during the matrimonial community of life either by both spouses jointly, or by either of them, are the common undivided property of the spouses except for the assets listed in the Hungarian Family Act which belong to the separate property of the spouses (§ 27 para. 1 Hungarian Family Act gives the definition of the default matrimonial property regime. § 28 para. 1-2 Hungarian Family Act lists the assets belonging to the separate property). When dividing the common property, both spouses have claim for half of that without any regard to the extent of their contribution in the acquisition.

It is to be emphasized that with the community of property, the common acquisition exists not only when there is a marital bond between the spouses, but also when they live in matrimonial community of life. Thus, the acquisition of assets after the termination of the matrimonial community of life does not result in common property even if the divorce happens subsequently.

The rules of Hungarian Civil Code concerning joint ownership are not to be applied to this common property, as there are specific regulations (see Question 35 et sec.)

b. Question 17.

There is no other alternative matrimonial property regime in the Family Act.

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

Matrimonial property agreements do not often occur in Hungary, as neither future spouses, nor current spouses frequently enter into such an agreement. No statistical data is available. These agreements – as it was mentioned at Question 15 – do not direct the option for another matrimonial property regime but, the deviation from the default regime in some cases.

C. 2. Specific regimes

I. Community of property

I. 1. Categories of assets

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

There are - there can be - three categories of assets in the spouses' property. According to the Hungarian default regime, the dominant role is played by the common property of the spouses. The assets acquired during the matrimonial community of life belong to the common property, except for the assets listed in the Hungarian Family Act (§ 27 para. 1). In addition to the common property, both spouses have - can have - separate property. The Hungarian Family Act enumerates the assets belonging to the separate property of the spouses (§ 28 para. 1-2).

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

The community assets are the undivided joint property of the spouses (§ 27 para. 1 Hungarian Family Act). The common rights, common demands and passive elements of the common property, namely the burdens and debts of the common property, belong to the community assets.

The personal assets are in the separate property of the spouse who acquired them. The obligations, debts and maintenance costs concerning these assets are also characterized as separate property. Nevertheless, if the personal assets provide the spouses' common standard of living, the maintenance costs of these assets are a burden to the community assets, as costs of the common standard of living.

Over the course of the matrimonial community of life, the community assets and the personal assets frequently mix. It is not unusual for the spouses to invest one category of assets into another category of assets. For example the increase of the family home belonging to personal assets can come from the community assets, and conversely as well. It also often occurs that the debts of the community assets are discharged from the personal assets of one of the spouses. The issues of reimbursement claims concerning these cases are settled in the Hungarian Family Act (§ 31 para. 2 second sentence).

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

The property acquired before marriage, the inherited property and the property acquired by free gift during the matrimonial community of life, the property which does not exceed the usual extent or quantity and provides only one spouse's personal needs and property replacing the separate property belongs to the personal assets according to the Hungarian Family Act (§ 28 para. 1).

There is one exceptional case when the property acquired before marriage does not unconditionally belong to the personal assets. This happens if the spouses cohabited before marrying. There is a presumption in legal practice in these cases that the spouses transfer their common property acquired during cohabitation into the matrimonial property with an implicit agreement, so it will belong not to the personal assets but to the community assets.

A free gift can be a present either from third party or from the spouse. If the third party does not make an express declaration, in certain cases it can be doubtful whether the donee is only one of the spouses or the giver had intended to give the present to both spouses. According to the legal practice the function and character of the gift and the opportunity for it can help to decide. Even if there is no express declaration, the judicial practice takes the putative wish of the giver into account, so the gift is regarded as belonging to the personal assets if a gift of greater value (even a greater sum of money) was given by one spouse's parent or his or her other close relative.

Concerning property that provides the spouse's personal needs, sometimes it will be judged whether it exceeds the usual extent or quantity or not, as the latter is a requirement for its belonging to the personal assets. In the judicial practice both the circumstances of the spouses' standard of living and their property and income relations are taken into account when adjudicating the legal character of these assets. In addition, the requirement of proportionality between the spouses is also regarded as principle. Consistently, the assets required for a profession do not belong to this category.

Concerning the property that replaces separate property, there is one exception stated by the Hungarian Family Act itself. According to the Act, the chattels which replace an article of

furnishing or equipment not exceeding the usual extent and providing the everyday way of common of living of the spouses, becomes part of the community assets after 15 years of marriage (§ 28 para. 2 Hungarian Family Act). The proposal of the new Hungarian Civil Code takes a rational stance and reduces this time to 5 years.

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

The substitution of personal assets is not governed by specific rules. The substitution of personal assets which were consumed in the course of matrimonial community of life is only exceptionally ordered. Nevertheless, the claims for reimbursement of investments that came from the personal assets of one spouse to the community of assets, or the contrary, and which increased the value of the assets are generally successful (§ 31 para. 2 Hungarian Family Act). These claims could be settled together with other matrimonial property claims after the termination of the matrimonial community of life (§ 31 para. 2 Hungarian Family Act).

24. Is investment of personal assets governed by specific rules?

See Questions 21 and 23. Also the regulations of company law are to be applied if the personal assets are invested into the spouses' common company or the company of either spouse.

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

All of the assets which do not belong to the personal assets of the spouses belong to the community assets (Hungarian Family Act 27 para. 1). Also the benefit of the separate property (after deducting the costs and other burdens of the separate property's administration and maintenance) which arises during the matrimonial community of life belongs to the community assets (§ 27 para. 1 second sentence Hungarian Family Act). There are no specific rules governing the spouses' earnings.

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

There is no special rule governing which category of assets the pension rights, claims and insurance should belong.

The pension rights and claims belong to the community assets if they are payable during the matrimonial community of life.

Concerning the insurance rights, a differentiation can be made upon whether the insurance rights are based on property insurance, accident insurance or life insurance. In case of property insurance the crucial point is whether the assets which were substituted by the insurance payment belonged to the community assets or personal assets. This rule is not exclusive to family law.

In case of accident insurance, the insurance money belongs to the community assets of the spouses if it is payable during the matrimonial community of life. There is only one exception from this main rule, namely the compensation for non-pecuniary loss. The compensation for non-pecuniary loss in case of injury of personal rights is regarded to be a part of personal assets in the judicial practice. The proposal of the Hungarian Civil Code is in line with this practice.

If payout on a life insurance policy is contingent on the beneficiary's attainment of a certain age, and this contingency happens during the matrimonial community of life, the insurance money generally belongs to the community assets. With life insurance for a case of death, the

contracting party nominates the beneficiary according to his or her wish, who can be either his or her spouse but also anybody else. These life insurances are not governed by the rules of matrimonial property.

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

A third party, both as giver of a gift and a person making a will, has the right to define whether the donee or the heir would be only one of the spouses or both of them. This intent will determine whether the assets would belong to the personal assets or the community assets of the spouses.

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

There is no special rule in Hungarian family law as to the evidentiary requirements that determine, either between spouses or against third parties, whether assets belong to the personal assets or to the community assets. It is not a statutory rule but a consistently followed and applied presumption that the existing assets of the spouses are their community assets. Nevertheless, it is a rebuttable presumption and either spouse can prove that certain assets belong to his or her personal property. This rebuttable presumption is a statutory rule in the proposal.

This presumption is very strong in practice, and as a consequence there is very little demand to enter into a matrimonial property agreement with the purpose of deviating from the statutory property rules concerning the acquisition during the matrimonial community of life. In addition, another consequence of this presumption is that there is a demand to fix, in an agreement, that certain assets acquired before the marriage are the personal assets of this or that spouse. This occurs if one of the spouses has greater extent of assets when marrying or remarrying and also if the parents of one spouse provide greater financial support for the beginning of the new life.

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

There is no special rule in the Hungarian family law for the evidence against third parties whether the assets belong to the personal assets or to the community assets. The judicial practice uniformly applies the rebuttable presumption that the existing assets of the spouses are their community assets. Not the legal practice but the Hungarian Family Act states that if spouses enter into a contract with third party, they are obliged to inform this third party about the fact that the assets which are affected by the contract are the personal property of one of the spouses.

The proposal is states that there is a rebuttable presumption that the existing assets of the spouses are their community assets, also against third parties.

30. Which debts are personal debts?

The issue of personal debts is not specifically regulated in the Family Act. The burdens and debts of personal assets, the costs of the bequest's acquisition in case of succession, the debts originating from contracts affecting the personal assets and the loans received in connection with the personal assets are personal debts. Generally, the maintenance costs of personal assets are also personal debts unless the personal assets provide for everyday common living. If that is the case, the maintenance costs of personal assets are to be covered from the spouses' earnings and their community assets.

Although there is no statutory rule, the unified stance of the legal literature is that if one of the spouses causes damage to either a third party or to the other spouse, intentionally, recklessly or by committing a crime, his or her liability is his or her personal debt.

31. Which debts are community debts?

Spousal debts arising from the matrimonial community of life are generally characterized as community debts. The costs associated with acquiring, administrating and maintaining community assets and other burdens in connection with the community assets, the debts originating from contracts affecting the community assets, are community debts. The presumption according to which the existing assets of the spouses are community assets means, primarily towards third persons, that the existing debts are community debts.

According to the judicial practice if a spouse has a child from an earlier marriage or relationship, and this spouse has paid for the maintenance of this child together with his or her spouse during the matrimonial community of life, the non-parent spouse can not claim for the reimbursement of his or her contribution by referring to the fact that this is personal debt.

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

A creditor can recover personal debts from a debtor spouse's personal assets and his or her share from the community assets. As sometimes the third party contracting with both spouses, or one of them, does not know whether the assets affected by the contract are personal or common property, the Hungarian Family Act obliges the spouses to inform the third party that the assets are in his or her separate property.

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

As a general rule, a creditor can recover community debts from both their community and personal assets. See also Question 41 in connection with the liability for transactions by injuring the rules on disposal of the common property.

I. 2. Administration of assets

34. How are personal assets administered?

The Hungarian Family Act contains regulations with regard to the administration of personal assets only in a laconic way (§ 29 para. 2 Hungarian Family Act). As a general rule, only the owner has the right to administer and dispose of the personal assets.

Nevertheless, in reality the use of the personal assets frequently provides the common standard of living, and the personal assets mix with the community assets. In addition, the gain of the personal assets belongs to the community assets (§ 27 para. 1 second sentence Hungarian Family Act).

There are some rules in the Hungarian Family Act settling the use of the personal assets and the accounting methods when the personal assets and community assets mixed. If the costs of the common household and common standard of living can not be covered from the community assets, both spouses are statutorily obliged to equally contribute to these costs from their personal assets (§ 32 para. 1 and 32 para. 2 first sentence Hungarian Family Act). If only one of them has personal assets, he or she alone is obliged to cover all these costs (§ 32 para. 2 second sentence Hungarian Family Act). The costs of the maintenance and administration of chattels belonging to the community assets are also to be covered primarily from the community assets, but if these are not sufficient, both spouses are statutorily obliged to contribute proportionally to these costs (§ 29 para. 3 Hungarian Family Act).

In reality, the mix of the community and personal assets occurs much more frequently than is regulated by the Family Act. The spouses often cover the costs of everyday living from the personal assets, invest from the personal assets to the community assets, or the contrary, they maintain the chattels belonging to the personal assets from the community assets and invest from the community assets to the personal assets. The claims concerning these investments and maintenance costs can be raised in the course of accounting after the termination of the community of property (§ 31 para. 2 second sentence Hungarian Family Act). The reimbursement of personal assets used up in the course of the common standard of living is possible only exceptionally (§ 31 para. 2 fourth sentence Hungarian Family Act).

35. How are the community assets administered?

In conjunction with the administration of community assets, the Hungarian Family Act contains rules about the use and administration of community assets, their maintenance costs, the costs of safeguarding from loss of their value and disposal of the chattels. These rules – according to the sense - deviate from the regulations of the Hungarian Civil Code concerning civil law co-ownership, as these take into account the viewpoints of the spouses living together and having a common life.

According to the rules of the Hungarian Family Act both spouses can use the chattels belonging to the community assets according to their function (§ 29 para. 1 Hungarian Family Act). They have the common right to the administration of them (§ 29 para. 2 first sentence Hungarian Family Act). In connection with that, either spouse can claim that the other spouse should contribute to the measures that are needed for the maintenance of the community assets, or for their protection from a loss of value (§ 29 para. 2 second sentence Hungarian Family Act). The costs of the maintenance and administration of chattels belonging to the community assets are to be covered primarily from the community assets, but if that is not sufficient, both spouses are statutorily obliged to contribute proportionally to these costs (§ 29 para. 3 Hungarian Family Act).

The most problematic issue is the statutory settlement of disposal of the community assets. A rule stating that the spouses can only dispose of community assets together would be justified by several reasons. Firstly, the community of property regime is based on the rule that the assets acquired during the matrimonial community of life belong to the common property of the spouses from the acquisition itself and the community of assets primarily provides for the common standard of life. Nevertheless, the disposal of the community of assets – the sale and charge of the chattels or their investment – generally requires a contract, so the interests of the third contracting party also require protection. The external and the internal relationships of the spouses must be distinguished. With the internal relationship of the spouses, it is justifiable to dispose of the assets upon their agreement, but with external relationships, the interests of a third party proceeding in good faith and the safety of the trade must be protected. The interest of a spouse who does not contract with the third party and the interest of this third party who does not know about the fact that the contract affects the community assets face one another. It is the task of the legislature to reconcile the competing interests and decide which one is preferred.

The Hungarian Family Act prefers the principle of safe trade, the protection of the third party of good faith who contracts with one of the spouses, as a main rule. It obviously can not be expected that a third party who proceeds in good faith and acquires the chattels for consideration should investigate whether his or her contracting party is married or not, and even if a third party knows that his or her partner is married, he or she is can not be expected to ask whether the spouse of the contracting party consented to the contract. Similarly, partners of a company are not to be expected to investigate whether a new partner who joins the company with more money or assets is married or not. Such expectation would endanger the safety of economic life and everyday transactions.

The Hungarian Family Act requires the spouses to dispose of their community assets only upon their agreement (§ 30 para. 1 Hungarian Family Act), but with regard to the protection of third parties, certain presumptions are added to this main rule. The presumption is that there is spousal consent for transactions for consideration entered into between either of the spouses and a third party (§ 30 para. 2 first sentence Hungarian Family Act). This is a rebuttable presumption and from this point of view there is a distinction between everyday transactions and contracts of other types. In a contract of greater value, it must be proved that the third party either knew or ought to have known about the circumstances surrounding the fact that the other spouse did not consent to the transaction (§ 30 para. 2 first sentence Hungarian Family Act). Concerning an everyday transaction, the presumption can be rebutted by proving that the other spouse expressly protested against the contract by the third party before the contract was made (§ 30 para. 2 second sentence Hungarian Family Act).

Another issue is the liability of the spouses towards contracting third parties. The liability of the spouses depends on whether they entered into the contract together or one of them entered into the contract with the other spouse's consent, or one of them entered into the contract and the other party's consent could be presumed or, lastly, one of them entered into the contract and the consent of the other party could not be presumed or this presumption was rebutted.

The rule is unambiguous if both spouses are contracting parties. In this case, both are liable for their share from both the community and personal assets. If only one of them is a contracting party but the other spouse consented to the contract, according to the majority opinion the non-contracting spouse is liable only with his or her share from the community assets. If one spouse enters into the contract and the other's consent is to be and can be presumed, the non-contracting spouse is similarly liable only with his or her share from the community assets according to the Hungarian Family Act (§ 30 para. 3). Although the non-contracting spouse's liability is limited to the share from the community assets in these last mentioned two cases, the liability of the contracting spouse is full: he or she is liable both with his or her share from the community assets and also his or her personal assets. If the presumption of contribution does not exist or it was successfully rebutted, the non-contracting spouse is not liable even for his or her share from the community assets.

In the internal relationship of the spouses, the non-contracting spouse can claim for the reimbursement of his or her financial contribution at time of the division of community of property if the other spouse entered into a contract without his or her consent but a presumption existed. Even in this case it must be taken into account whether the transaction resulted in the growth of the community assets or its decrease.

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

According to the rules of the Hungarian Family Act either spouse can mandate the other to administer the community assets or the personal assets of either spouse, or to dispose of chattels belonging to the community assets. Generally, no formal requirement is required for the validity of the disposal of chattels belonging to the community (§ 30 para. 5 Hungarian Family Act). According to Hungarian civil law, not only is an express order of the owner registered in the registry of immoveable possessions required to validate a sale or charge of an immoveable, but also a lawyer's countersignature.

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

There are different rules concerning the consent to the disposal of the personal assets and the community assets. If the proprietor spouse would dispose of his or her personal assets, the consent of the other spouse is needed only if the disposal affects the matrimonial home. The spouses may only dispose of their community assets together according to the general rule of the Hungarian Family Act § 30 para. 1), but if one of them enters into a contract for consideration with third party, there are broad presumptions that this disposal is made with the other spouse's consent (§ 30 para. 2 Hungarian Family Act). These presumptions do not exist in case of contracts on gift (§ 30 para. 2 Hungarian Family Act). If one of the spouses would dispose of community assets without consideration, either the express consent of the other spouse or at least an implicit, and later unchallenged, consent is needed.

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

The Hungarian Family Act contains only laconic rules concerning the administration of professional assets. According to a rule of the Act, both spouses can use the chattels belonging to the community assets with regard to their function (§ 29 para. 1 Hungarian Family Act). If the function of these chattels is connected to the profession of either of the spouses, these can be used normally by this spouse. In addition, it is to be emphasized that the assets brought into a company are to be judged according to the rules of company law and not family law.

The proposal contains specific rules concerning the professional assets in a broader range than they are regulated today.

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

No, Hungarian family law does not determine such duty.

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

While the matrimonial community of life exists, there are commonly no disputes concerning the administration of personal or community assets that would require authoritative settlement. There is a rule in the Hungarian Family Act which makes it possible for either spouse to make a judicial claim for the termination of the community of property during the matrimonial community of life, if it is justified by a serious reason, e.g. there are serious disputes (§ 31 para. 1 Hungarian Family Act). Nevertheless, it is not realistic and does not occur in the practice that either spouse would request this while maintaining and wishing to continue to maintain the matrimonial community of life.

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

One of the most serious cases concerning maladministration of the community assets is when judicial enforcement is to be brought against one of the spouses to recover his or her debts. In such case it is possible to exempt the personal property of the non-debtor spouse from the enforcement.

Another case of maladministration seriously damaging the community assets is activity by one of the spouses in a company which results in the liquidation of that firm. The spouse who was not active in the company can claim for satisfaction in most cases after the termination of the community of property, during the division of the common property.

In the abovementioned cases, or in other cases when one of the spouses violates the rules governing the administration of personal or community assets, the violating spouse can be obliged to compensate the other spouse for the damages. The damaging spouse even is liable for the damages with his or her personal assets.

The maladministration of the community or the other spouse's personal assets or the illegal disposal of them can result in illegal pecuniary benefit for a third party, but the issues concerning the liability of third party towards the injured spouse do not fall within the family law.

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

The incapability of administering either the personal or the community assets can mean both permanent and transitory incapability, and there can be distinguishable cases of incapability as well. Hungarian law contains a rule for only one case of incapability of administering the assets, namely if the cause of the incapability is the incapacity of the spouse. He or she can have either limited or full incapability. Fully incapable persons can not enter into marriage (it would result in the marriage's invalidity), but if the incapacity is limited, it is not an obstacle to marriage. With either case of incapacity, the incapable person is to be taken under the care of a guardian, and then the administration of property is the guardian's task. It is for the guardianship authority to decide whether the other spouse or other proper person should be the guardian of the incapable spouse.

It is to be emphasized that the spouse can not be incapable of administering only because of his or her age. The marital age is 18, but both women and men can marry from the age of 16 with the permission of the guardianship authority. In cases of marriage between the ages of 16 and 18, the spouse becomes of legal age and having full capacity.

I.3. Distribution of assets upon dissolution

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

The community of property regime is the default property regime in the Hungarian family law (§ 27 para. 1 Hungarian Family Act). If the spouses' matrimonial relations – lacking some other agreement – are governed by this regime's rules, the community of property regime terminates if one of the spouses dies, if the marriage is dissolved and also if the matrimonial community of life terminates without any regard to whether the marriage will be dissolved or not (§ 31 para. 2 first sentence Hungarian Family Act). The temporary suspension of the matrimonial community of life which lasts for a short time does not mean the final termination of the matrimonial community of life if this suspension is followed by the restoration of the community of life.

There are two other possibilities of dissolution of the community of property regime. The spouses can enter into a matrimonial property agreement (§ 27 para. 2 Hungarian Family Act) and agree on the termination of this regime while maintaining their matrimonial community of life. Another possibility is that one of the spouses can make a claim before the court for the termination of the community of property regime while they maintain the matrimonial community of life if it is justified by serious reason (§ 31 para. 1 Hungarian Family Act). Nevertheless, it does not occur in practice.

- 44. What date is decisive for the dissolution of the community property? Distinguish between the different grounds mentioned under Q 43. At what date are the community**

assets determined and valued? Is the fact that the spouses are living apart before the dissolution of the marriage relevant?

If the marriage terminates because of the death of one spouse and the matrimonial community of life existed at the time of death, the day of death is the decisive date for the dissolution of the community of property. If the marriage terminates by divorce, a distinction is to be made according to whether the divorce was preceded by the termination of the matrimonial community of life. If the date of divorce coincides with the termination of the matrimonial community of life, the date the divorce decree obtains legal force will be the decisive date. In other cases, the date the matrimonial community of life terminated will be decisive (§ 31 para. 2 Hungarian Family Act). The same is true if the matrimonial community of life terminates without divorce.

If the spouses maintain their community of life but enter into a matrimonial property agreement in which they terminate the community of property regime, the decisive date will be the date marked in the agreement. If one of the spouses makes a claim before the court to terminate their community of property regime while maintaining their community of life, the date determined in the judicial decree will be the decisive date.

At the date of termination of the matrimonial community of life, the community assets are determined. Nevertheless, the fact that the spouses lived apart before the dissolution of marriage can be relevant when adjudicating the community of property. As a general rule the actual division of the assets is relevant concerning the determination and value of the community of property. An exception to the main rule is when the value of the assets changed between the termination of matrimonial community of life and the division of the common property, and the cause of this change – which can be either the increase or the decrease of the value – is solely the conduct of one of the spouses. This conduct can be a value-increasing investment or a misuse of the assets. In this case the increase or decrease of the assets' value is to be regarded only to the benefit or the detriment of this party.

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

If the community assets have been used for personal property, or to the contrary, if personal assets have been used for community property investments, a claim can be made for compensation (reimbursement according to Hungarian legal terminology) of the value-increasing investments when the community of property is divided (§ 31 para. 2 second sentence Hungarian Family Act). Nevertheless, there are several exceptions to the general rule. A primary exception is if the assets that were added from the community assets to the personal assets, or if to the contrary, were used up in the course of daily living or lost their value because of extraneous circumstances (§ 31 para. 2 third and fourth sentences Hungarian Family Act).

When the court adjudicates and values the claims for reimbursement the main point is the extent of value-increasing character of the investment or input. In certain cases an investment of greater value can result not only in compensation claim but even a share of property.

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

If community assets have been used for the payment of personal debts, or personal assets have been used for the payment of community debts, rules similar to those discussed in Question 45 are to be applied. Nevertheless, there are some differences. If community debts

were covered from personal assets, namely personal assets were used up in the course of everyday living, it is exceptional to order the reimbursement of this. The payment of these debts from another category of assets often happens based on the family relationship and the common everyday life. As a consequence, it is to be assumed in many cases, mainly if the debts are not large, that the payment of personal debts from community assets, or community debts from personal assets, happened by the abandonment of the reimbursement claim. Nevertheless, the express abandonment of the reimbursement claim, at least at time of payment, is hardly to be expected if the relationship between the spouses is in order. Thus, the court must investigate, at the common property division dispute adjudication, whether there was any intention of abandonment.

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

If there is no other statutory rule, the spouses are liable for the community debts, both from their personal assets and their share from the community assets. (E. g. an exception is if one of the spouses contracted with third party and although the other, non-contracting spouse did not consent to it, there is a statutory presumption of consent towards the third person. In such a case, the non-contracting spouse's liability is restricted to his or her share from the community assets. This spouse is not liable with his or her personal assets.) Concerning the priority order between compensation rights and community debts, the spouses' liability for community debts precedes the compensation claims. In the course of the community asset division, it is possible to order the compensation of the other spouse.

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

The Hungarian Family Act does not contain any rule concerning the use and administration of the community assets between the dissolution of the community of property and division of the common property. The rule governing the use of community assets in the course of the matrimonial community of life, according to which the spouses use the chattels belonging to the community assets with regard to their function, also gives direction for the time between dissolution and division, so the professional assets can be used solely by the spouse who requires these chattels for his or her profession; the business assets can be used by the spouse who is active in that business. Those assets upon which possession is agreed by the spouses can be used by the possessor spouse alone. Although there is no specific rule about it, the costs of asset maintenance and administration must be covered by the spouse who uses the asset, with the exception of extraordinary maintenance costs.

There are some rules in the Hungarian Family Act concerning the disposal of the community assets. The rule according to which the chattels belonging to the community assets can be alienated only upon the spouses' consent is also to be applied for the time between the dissolution and division (§ 30 para. 1 Hungarian Family Act). The judicial practice endeavours to mitigate this rule's rigidity and unrealistic character. Although the courts take into attention the rationality, the non-contractor spouse's interests are sometimes left out of consideration.

The proposal of the new Hungarian Civil Code maintains the regulation in force as a general rule, but lists the cases in which the other spouse's consent would not be needed after the dissolution of the matrimonial community of life. These would be, among others, the following: the disposal of professional assets, assets which came into one of the spouses' possession upon their agreement after the dissolution of the community of life and the undertaking of an obligation to protect and restore the community assets.

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

The community of property can be divided upon the agreement of the spouses or, lacking it, by the judgment of the court. The general rules governing the division of the community

assets are to be applied primarily to judicial settlement. Not only the rules of the Hungarian Family Act (§ 31 para. 1-5), but also the regulations of Hungarian Civil Code concerning the joint ownership and the division of the joint ownership and, in case of sharing in company assets, the rules of Company Act, are to be applied.

Both spouses have the right to half of the community assets. During the division not only the chattels belonging to the community assets, but also the rights and claims having financial value and debts of the community assets must be taken into account. In addition, the compensation claims between the community assets and personal assets also must be settled in the course of the division.

The share of the spouses must be generally be given out in nature (§ 31 para. 3 Hungarian Family Act). If this is not possible, or if only partially possible, one of the spouses obtains pecuniary satisfaction. The same happens if a natural division of the community assets would result in a larger decrease in value (§ 31 para. 3 third sentence Hungarian Family Act) or professional assets would have to be given out to the spouse who does not need them by his or her profession.

The division of the community assets, namely the giving out of the chattels, if agreement between the spouses is lacking on this issue, should happen with regard to the spouses' usual standard of living, their rational needs, economic activity and also the requirement of equity. According to practical experience, a division of the immovable assets is not always possible at the same time as the community assets are divided. In this case, joint ownership can be maintained between the spouses, or former spouses, according to the rules of the civil law, and the division of this joint property can happen at a later date by the application of the civil law. In connection with the use of the matrimonial home after the dissolution of the community of property regime, see Question 51.

Concerning the debts of the community property, it must be taken into account which spouse gets the concrete chattel being burdened. Nevertheless, one of the spouses can be exempted from liability for debt with the consent of the creditor third party; namely the general rules of assumption of debts are to be applied.

50. How are the community debts settled?

Concerning the settlement of community debts a distinction is to be made between the internal relationship of the spouses and their external relationship, namely their relations with third parties. In the internal relationship, it is to be taken into account which spouse gets the chattel which is concretely burdened with the debt. The spouses must make these accounts. Towards third parties, as their interests are to be protected, the general rules of assumption of debts are to be applied.

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

The spouses have preferential rights concerning the use of the matrimonial home, but this is primarily with the aim of protecting their minors' right to reside there. This preferential right means financial benefit, as the right to use of the matrimonial home has great financial value in Hungary. There is generally no preferential right to the household's assets, with the exception of those assets that are needed for the minor. Consequently, these later mentioned chattels are generally not considered when dividing the common property.

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

The spouses have preferential rights to professional assets and the assets which are used for a hobby of one of the spouses. If these assets belong to the community property, their value is

taken into account during the determination of the common assets, so the preferential rights can be validated when the community assets are actually divided and given out. These preferential rights do not change the equal share of the community assets.

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

One of the conditions of the former spouse's claim of maintenance is the lack of means. The division of community of property can affect the attribution of maintenance the most when, after the division of community assets, the spouse lacking means receives profitable assets which can terminate his or her lack of means.

If the community property cannot be divided equally, the spouse getting the larger share can provide maintenance to the other spouse, upon their consent, with the aim of providing an equal share to each in the end. In this case, a lack of means is not a condition of the maintenance of the former spouse. It is a possibility but it does not often occur.

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

The division of community property does not affect the pension rights and other claims of the spouses.

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

The division of community property is often settled by agreement between the spouses. One cause of the frequency of this is that a condition for divorce by consent, which is also a frequent category of divorce, is that according to the rules of the Hungarian Family Act the spouses should agree on all issues of community property except for the immoveable assets. This agreement can deviate from the general rules of division. The court controls this agreement, but at most from the viewpoint of whether the agreement results in the unjust exploitation of either spouse.

In Hungary, the court is the competent authority to decide, lacking an agreement, on the division of community property. The court can depart from the general rules of division if the interest of the minor claims for it or the application of the general rules would result in serious inequity for either spouse.

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

Aside from the rules of succession there are no specific rules for the division of community assets if one of the spouses dies. According to the rules of intestate succession, besides the descendants the surviving spouse inherits the right of enjoyment of the whole bequest. If there is no descendant inheritor, the surviving spouse inherits the bequest on a large scale, and even inherits the right of enjoyment to the chattels which were not inherited by him or her. The right of enjoyment can be redeemed but the redemption can not be claimed for the flat, furnishing or equipment used by the spouse.

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?

Future spouses are permitted to make a matrimonial property agreement regulating their property issues for the future, for the time of matrimonial community of life (§ 27 para. 2 Hungarian Family Act). This agreement is binding on the spouses. Nevertheless, they can modify it upon common agreement, even during the matrimonial community of life. In the framework of such an agreement the future spouses can alter the rules which govern their property issues; namely they can determine which assets would fall into the community assets and the personal assets, deviating from the general rules of the Family Act. They can even choose another property regime, but the Hungarian Family Act does not contain any other regime except for the regulations of the default regime. This matrimonial property agreement, which does not occur frequently, determines the property issues of the spouses.

There is only one rule in the Hungarian Family Act laconically governing the pre- and post-nuptial matrimonial property agreement (§ 27 para. 2 Hungarian Family Act). The background rules are in the Hungarian Civil Code, namely the contract law. It should be mentioned, concerning the binding character of the matrimonial property agreement, that it is a debated issue whether – in case of dispute between the spouses - one of the spouses can refer, and if so, to what and which extent, to the general rules of contract law e.g. in connection with the validity of the contract. Another debated issue is whether one spouse can successfully refer to the requirement of equity when there is a dispute over the agreement. According to the Family Act, equity is to be taken into account by the courts when judging the property issues of the spouses. Nevertheless, the interest of the common minor, or sometimes and to a lesser extent the weaker party, must be taken into account.

If e.g. the spouses agree in a pre-nuptial agreement that one spouse will leave the future matrimonial home that is in the property of the another spouse, without claim for compensation, the judge can leave this agreement out of account in special circumstances where the common minor's right to reside is affected (31/A para. 1-2). A matrimonial property agreement which does not govern the use of the matrimonial home, but the property relations, can not be left out of account.

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?

The spouses can enter into a matrimonial property agreement at any time during their matrimonial community of life (§ 27 para. 2 Hungarian Family Act). The agreement is binding on the spouses. Nevertheless, they can modify it upon their common agreement.

There is only one rule in the Hungarian Family Act laconically governing the pre- and post-nuptial matrimonial property agreement. The background rules are in the Hungarian Civil Code, namely the contract law. It should be mentioned, concerning the binding character of the matrimonial property agreement, that it is a debated issue whether – in case of dispute between the spouses - one of the spouses can refer, and if so, to what and which extent, to the general rules of contract law e.g. in connection with the validity of the contract. Another debated issue is whether one spouse can successfully refer to the requirement of equity when there is a dispute over the agreement. According to the Family Act, equity is to be taken into account by the courts when judging the property issues of the spouses.

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

The formal requirement is a public instrument or private document, countersigned by a lawyer (§ 27 para. 3 Hungarian Family Act).

194. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid in relation to a third party?

There is no special formal requirement for the validity in relation to a third party, only the requirement; namely that the public instrument or private document must be countersigned by lawyer (§ 27 para. 3 Hungarian Family Act).

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

No, there is no requirement of full disclosure.

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-nuptial agreement? If so, what happens if the official does not fulfil his or her obligation?

There is no such requirement.

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

No statistical data is available. Neither the pre- nor the post-nuptial matrimonial property agreements occur with any frequency. Nevertheless, the spouses and, especially, future spouses, sometimes record in a document which assets belonged to the separate property of which spouse before marriage. This makes it easier to prove certain assets' belonging. The cause of the infrequency of the matrimonial property agreements can be that the Hungarian Family Act contains only one rule about this agreement and does not regulate any other alternative property regime.

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?

As the Hungarian Family Act contains regulations of only one, the default matrimonial property regime, the spouses or future spouses can not choose another regime. Nevertheless, they can modify the default system, the community of property regime, by deviating from the statutory rules. They can record which assets would become the community assets and which ones personal assets of this or that spouse. They can even create their own regime, which would mean the separate property regime.

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

- a. categories of assets;
- b. administration of assets;
- c. distribution of assets;
- d. depend upon the ground of dissolution of marriage?

The modifications can affect the categories of assets (this can be typical), and also their distribution. The modifications may not actually affect their administration, but the costs of administration. The modification can not depend upon the ground of dissolution.

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?

No.

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 background rules of matrimonial property agreements are the general contract rules contained in the Hungarian Civil Code. The extent to which the court, as the competent authority, can override or set aside these agreements is debated. The legal judicial practice has not been crystallized yet because of the infrequency of these contracts. The rules of judicial modification are very severe according to the Hungarian Civil Code, so it does not seem possible to apply them. The basis of a setting aside can be due to the grounds of an invalidity, e.g. if the agreement is contra good faith, there is undue influence or an unconscionable advantage-taking are stated. On the one hand there is the right to self-determination and the freedom of contract, on the other there are requirements to protect the weaker party and, primarily, the common minor. If e.g. the spouses agree in a pre-nuptial agreement that one spouse will leave the future matrimonial home, that is in the property of the other spouse, without even claim for compensation, the judge can leave this agreement out of account in special circumstances where the common minor's right to reside is affected. A matrimonial property agreement which does not govern the use of the matrimonial home but only the property relations can not be left out of account.