

Extract from the Civil Code, Chapter 16 of the Laws of Malta

Title V

OF MARRIAGE CONTRACTS

Marriage contracts.

Substituted by:

XXI.1993.77.

1236. Except with regard to the acquisitions referred to in Subtitle III of this Title, no partnership or community of property between the spouses is established by law.

Parties may enter into other agreements not contrary to morals, etc.

Substituted by:

XXI.1993.77.

1237. (1) It shall, however, be lawful for the future spouses to enter into any other agreement, which is not contrary to morals, or inconsistent with the rules contained in this and the following articles of this Code.

(2) The spouses may, in an ante-nuptial or post-nuptial contract agree that their property acquired during their marriage shall remain separate or that it shall be governed by the system of community of residue under separate administration under Sub-title V of this Title, and without prejudice to sub-article (3) hereof, no partnership or community of property in general, may be established between the spouses except that referred to in this article or in article 1236.

(3) The spouses may, without the intervention of any court, whether alone or with others, and whatever system regulates their property, form a limited liability company under the Commercial Partnerships Ordinance*; voting rights attached to shares registered in the name of a spouse shall be exercised by the spouse in whose name the shares are registered. The ownership of the shares in any such company shall remain governed in accordance with the system governing the property of the spouses.

Certain agreements may not be made.

Amended by:

XLVI.1973.70.

Substituted by:

XXI.1993.77.

1238. (1) It shall not be lawful for the future spouses to enter into any agreement whereby either of them is established as head of the family, or into any agreement in derogation of any of the rights deriving from parental authority, or of the provisions of law relating to minority, or of any prohibitory rule of law.

(2) Nevertheless, any stipulation that all the children, or any of them, shall be brought up in the religion of either of the spouses shall be valid.

Agreements may not be made in derogation of legal order of succession.

1239. It shall not be lawful for the future spouses to enter into any agreement or to make any waiver tending to vary the legal order of succession either with respect to themselves in regard to the succession of their children or descendants, or with respect to the children between themselves, saving such testamentary dispositions and such donations as are allowed under the provisions of this Code.

Validity of certain promises made in marriage contracts.

Amended by:
XLVI.1973.71;
XXI.1993.78.

1240. (1) A promise made in a marriage contract by the parent of one of the future spouses to such future spouse -
(a) not to leave to such future spouse out of his or her estate a portion smaller than that which such future spouse would take on an intestacy; or
(b) not to diminish such portion by any donation in favour of his or her other children or of any other person; or
(c) not to give or leave, by donation or will, to any of his or her other children more than that which he or she would give or leave to such future spouse, shall be valid.

*Repealed by Act XXV of 1995 (Cap. 386).

(2) It shall also be lawful for either of the future spouses to renounce the succession of any of his or her own parents or other ascendants in return for what is given to him or her by such parent or other ascendant by way of donation in contemplation of marriage.

(3) Any such waiver, however, shall not be valid unless it is expressly stated.

Marriage agreements by minor.

Amended by:
XLVI.1973.72.
Substituted by:
XXI.1993.79.

1241. Marriage agreements entered into by a minor with the consent of the parents or parent exercising parental authority, or where both parents are absent, dead, interdicted or of unsound mind, with the authority of the court, are valid.

Person under disability to contract.

1242. The authority of the court shall, in all cases, be necessary for the validity of a marriage agreement entered into by a person who is under disability to contract.

Variation of marriage contract before marriage.

1243. Any variation or counter-declaration made in respect of the marriage contract by the future spouses before the celebration of marriage shall not be effectual unless it is made with the consent of all the parties to that contract.

Post-nuptial agreements.

Amended by:
XXX.1981.9;
XXI.1993.80.

1244. (1) After the celebration of the marriage, the spouses may, with the authority of the court, vary their marriage agreements, without prejudice to the rights of the children or of third parties.

(2) Where no ante-nuptial agreement was made, the spouses may also, with the authority of the court, enter into a marriage contract.

(3) Any agreement prohibited by law in respect of a pre-nuptial agreement is also prohibited in any post-nuptial agreement.

(4) After the celebration of the marriage the spouses may, without the necessity of any authority of the court, substitute a special hypothec for any general hypothec established in the

marriage contract.

Marriage contracts to be expressed in public deed,

1245. Any marriage contract, as well as any variation or counter-declaration made in respect thereof, shall, on pain of nullity, be expressed in a public deed.

and registered in Public Registry.

1246. No marriage contract, variation or counter-declaration shall be operative in regard to third parties, unless it is registered in the Public Registry Office.

Notary to draw up note of reference.

Cap. 55.

1247. In case of any variation or counter-declaration, the notary shall, under the penalties established in the Notarial Profession and Notarial Archives Act, draw up a note of reference as in the case of a deed of cancellation or rescission.

Provisions of this

Sub-title

substituted by:

XXI.1993.81.

*Sub-title I **

OF THE INSTITUTES OF DOWRY AND DOWER

Abolition of institutes.

1248. The institutes of dowry and dower are hereby abolished.

Repealed by:

XXI.1993.81.

§ I. OF SETTLEMENT OF DOWRY

Articles 1249 to 1258, both inclusive, were repealed by Act XXI of 1993.

Repealed by:

XXI.1993.81.

§ II. OF THE RIGHTS OF THE HUSBAND OVER THE DOWRY

Articles 1259 to 1267, both inclusive, were repealed by Act XXI of 1993.

Repealed by:

XXI.1993.81.

§ III. OF THE INALIENABILITY OF THE DOWRY

Articles 1268 to 1299, both inclusive, were repealed by Act XXI of 1993.

Repealed by:

XXI.1993.81.

§ IV. OF RESTITUTION OF DOWRY

Articles 1300 to 1312, both inclusive, were repealed by Act XXI of 1993.

Provisions of this

Sub-title

substituted by:

XXI.1993.81.

Sub-title II

OF DOWER (*Dotarium*)

Articles 1313 to 1315, both inclusive, were repealed by Act XXI of 1993.

*For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

Provisions of this

Sub-title

substituted by:

XXI.1993.82.

*Sub-title III**

OF THE COMMUNITY OF ACQUESTS

Marriage produces community of acquests.

1316. (1) Marriage celebrated in Malta shall, in the absence of an agreement to the contrary by public deed, produce *ipso jure* between the spouses the community of acquests.

(2) Marriage celebrated outside Malta by persons who subsequently establish themselves in Malta, shall also produce between such persons the community of acquests with regard to any property acquired after their arrival.

Community of acquests may be established after marriage.

1317. It shall be competent to the spouses, even after the celebration of the marriage, with the authority of the court, to establish the community of acquests which in virtue of the marriage contract or other act had been excluded, or to cause the cessation of the community of acquests established by contract or by operation of law.

Provisions may not be derogated from.

1318. It shall not be lawful for the spouses to derogate from the provisions of this Code in so far as they relate to the community of acquests.

When community begins and terminates.

1319. The right of each of the spouses to the community of acquests shall, saving any other provision of the law, commence from the day of the celebration of the marriage and terminate on the dissolution thereof.

Assets of community of acquests.

1320. The community of acquests shall comprise -

- (a) all that is acquired by each of the spouses by the exercise of his or her work or industry;
- (b) the fruits of the property of each of the spouses including the fruits of property settled as dowry or subject to entail, whether the husband or wife possessed the property since before the marriage, or whether the property has come to either of them under any succession, donation, or other title, provided such property shall not have been given or bequeathed on conditions that the fruits thereof shall not form part of the acquests;
- (c) saving any other provision of this Code to the contrary, the fruits of such property of the children as is subject to the legal usufruct of the father or of the mother;
- (d) any property acquired with moneys or other things derived from the acquests, even though such property is so acquired in the name of only one of the spouses;
- (e) any property acquired with moneys or other things which either of the spouses possesses since before the marriage, or which, after the celebration of the marriage, have come to him or her under any donation,

*For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

succession, or other title, even though such property may have been so acquired in the name of such spouse, saving the right of such spouse to deduct the sum

disbursed for the acquisition of such property;
(f) fortuitous winnings made by either or both spouses,
and such part of a treasure trove found by either of the
spouses, as is by law assigned to the finder, whether
such spouse has found the treasure trove in his or her
own tenement, or in the tenement of the other spouse,
or of a third party:

Provided that such part of the treasure trove as is
granted to the owner of the tenement shall belong
entirely to the party in whose tenement the treasure
trove is found.

Presumption with regard to acquests.

1321. (1) All the property which the spouses or one of them
possess or possesses shall, in the absence of proof to the contrary,
be deemed to be part of the acquests.

(2) Any property, however, which may have come to either of
the spouses under any title anterior to the marriage shall not be
included in the acquests, notwithstanding that such spouse may
have been vested with the possession of the property only after the
marriage.

Administration of the community of acquests

Amended by:

IV. 1995.2;

XIII. 2004.41.

1322. (1) The ordinary administration of the acquests and the
right to sue or to be sued in respect of such ordinary administration,
shall vest in either spouse.

(2) The right to exercise acts of extraordinary administration,
and the right to sue or be sued in respect of such acts or to enter
into any compromise in respect of any act whatsoever, shall vest in
the two spouses jointly.

(3) Acts of extraordinary administration are the following:

(a) acts whereby real rights over immovable property are
acquired, constituted or alienated;

(b) acts constituting or affecting hypothecation of
property;

(c) acts whereby immovable property is partitioned;

(d) acts granting rights of use and, or, enjoyment over
immovable property;

(e) donations other than those referred to in article
1753(2)(a);

(f) borrowing or lending of money, other than the deposit
of money in an account with a bank;

(g) the acquisition of movable property or of any right of
use or enjoyment over movable or immovable property
the consideration for which is not paid on, or prior to,
delivery;

Provided that this shall not apply to any debt incurred
for the needs of the family in terms of article 1327(c),
or to the hiring of movables or immovables when the
consideration therefor is moderate in relation to the
condition of the family and the duration of the lease is
for a short period;

(h) the contracting of any suretyship;

(i) the giving of a pledge;

(j) the entering with unlimited liability in a commercial partnership, or the subscribing to or acquisition of any shares in a limited liability company which are not fully paid up;

(k) the transfer of a business concern as well as the transfer of any share in a commercial partnership other than a public company;

(l) any act that may give rise to a special privilege in terms of paragraph (b) of article 2010;

(m) any act of rescission of any act referred to in paragraphs (a) and (c), and any act of declaration made *inter vivos* whereby any real right over immovables is acknowledged or renounced; and

(n) the settlement in trust of property forming part of the community of acquests and the variation or revocation of the terms of any trust in which any such property has been settled.

(4) Any money deposited in a bank to the credit of a married person may only be withdrawn by such married person and the bank shall not enquire whether such money belongs to the community of acquests or not.

(5) The provisions of subarticle (4) shall continue to apply even after the termination of the community of acquests for any reason whatsoever and are without prejudice to the right of each of the spouses to his or her full share of the community upon its partition.

(6) Either spouse may, by means of a public deed or a private writing duly attested in terms of article 634 of the Code of Organization and Civil Procedure, appoint the other spouse or any other person, as his or her mandatory with regard to acts of extraordinary administration and compromise.

(7) The notary publishing a public deed as is referred to in subarticle (6), and the advocate or notary public attesting a private writing as referred to in the same sub-article, shall in each case warn the spouse so appointing a mandatory of the importance and consequence of such appointment and shall in the public deed or the private writing, as the case may be, declare that he has so warned the spouse.

Refusal or absence of consent.

Amended by:

IX. 2004.14.

1323. (1) If one of the spouses refuses his or her consent to an act of extraordinary administration, the other spouse may apply to the competent court for authorisation when the act of extraordinary administration is necessary in the interests of the family:

Provided that the parties may, in such cases, choose to adopt the procedures contemplated in article 6A to arrive at an agreement or to have an arbitration between them.

Cap. 12.

(2) If one of the spouses is away from Malta or if there exists any other impediment in respect of one of the spouses and in either case there exists no authorisation by public deed or by private instrument duly attested in terms of article 634 of the Code of Organization and Civil Procedure, the other spouse may perform such necessary acts of extraordinary administration of the acquests which in terms of law require the consent of both spouses, and

which the court of voluntary jurisdiction may specifically authorise; so however that the court may not in such cases authorise the performance of all necessary acts of extraordinary administration generally.

(3) The registration required by article 996 or 2033 as the case may be, in respect of any act alienating the ownership or any real right over immovable property, and any hypothecation whether general or special shall contain also the name of the other spouse as if such other spouse were a party to the deed of alienation or hypothecation, and where such registration is made in the name of one spouse only it shall in respect of third parties be operative only in relation to the spouse in whose name it is registered.

Administration of trade, business, etc.

1324. Normal acts of management of a trade, business or profession being exercised by one of the spouses, shall vest only in the spouse actually exercising such trade, business or profession even where those acts, had they not been made in relation to that trade, business or profession, would have constituted extraordinary administration.

Exclusion of a spouse from the administration of the community.

*Amended by:
IX. 2004.14.*

1325. (1) The competent court may at the request of a spouse order the exclusion of the other spouse either generally or limitedly for particular purposes or acts, from the administration of the community of acquests, where the latter spouse -

- (a) is not competent to administer; or
- (b) has mismanaged the community;

and in any such case the administration of the community of acquests shall to the extent to which such spouse has been excluded, vest exclusively in the spouse not so excluded.

(2) The spouse who has been so excluded from administering the acquests may, if the grounds upon which he or she has been excluded no longer subsist, request the court to reinstate such spouse in the administration.

Cap. 56.

(3) Any order made in terms of this article shall be notified within twenty-four hours by the registrar to the Director of the Public Registry who shall keep the same in a special register and keep a special index thereof. Such orders shall contain all particulars of both spouses as are required for notes of enrolment under the Public Registry Act and shall become operative with regard to third parties upon such registration.

(4) Without prejudice to any order made in terms of sub-article (1) of this article, in the case of the interdiction or incapacitation of one of the spouses and until such interdiction or incapacitation ceases, such spouse shall be excluded from the administration of the acquests and in any such case the administration of the acquests shall vest solely in the spouse not so excluded.

Acts performed without the necessary consent.

1326. (1) Acts which require the consent of both spouses but which are performed by one spouse without the consent of the other spouse may be annulled at the request of the latter spouse where such acts relate to the alienation or constitution of a real or

personal right over immovable property; and where such acts relate to movable property they may only be annulled where the rights over them have been conferred by gratuitous title.

(2) An action for annulment may only be instituted by the spouse whose consent was required and within the peremptory term of three years from -

(a) the date when such spouse became aware of the act, or

(b) the date of registration, where such act is registerable,
or

(c) the date of termination of the community of acquests,
whichever is the earliest.

(3) Notwithstanding the provisions of subarticle (2), the right given by subarticle (1) to a spouse to request the annulment of an act shall lapse at the expiration of three months from the day on which notice of the act shall have been given to such spouse by means of a judicial act, unless within such time of three months such spouse shall have instituted an action for such annulment.

(4) The spouse who has not instituted the action for annulment within the stipulated time and who has not expressly or tacitly ratified the act, shall nevertheless have an action to compel the other spouse to reintegrate the community of acquests or, where this is not possible, to make good the loss suffered.

(5) Saving the preceding provisions of this article, where in any act which requires the consent of the other spouse and which relates to movables, a spouse has acted unilaterally, there shall be no right competent to the other spouse to demand the annulment of the act; where however, the other spouse has not ratified such act, whether expressly or tacitly, such spouse shall have an action to compel the spouse who has acted unilaterally to reintegrate the community of acquests, or where this is not possible, to make good the loss suffered.

(6) The provisions of this article shall be without prejudice to any right competent to a spouse under this Code or any other law.

Debts chargeable to the community.

1327. Saving the provisions of article 1329, the assets forming part of the community of acquests shall be charged only with the following debts:

(a) the burdens and obligations which encumber the assets under the act of their acquisition;

(b) the expenses and obligations incurred in the administration of the acquests, except such expenses as are incurred by acts which require the consent of both spouses but which are performed by one spouse only without the consent of the other spouse;

(c) the expenses and obligations, even if incurred separately, for the needs of the family including those for the education and upbringing of the children;

(d) every obligation which is contracted by the spouses jointly;

(e) debts relating to the ordinary repairs of the property of either of the spouses, the fruits of which are included in the acquests; and

(f) any debt or indemnity due as a civil remedy by either spouse where such indemnity is not due as a civil remedy in respect of any offence wilfully committed.

Creditors of a particular spouse.

1328. Creditors of a particular spouse shall, unless they enjoy a lawful cause of preference, rank after the creditors of the community of acquests.

Obligations separately contracted by either spouse.

1329. (1) Subject to the following provisions of this article, the creditors of a spouse for debts which are not chargeable to the community of acquests whether such debt has arisen before or after the marriage, may, when such creditors cannot satisfy their claim against the paraphernal property of such spouse, enforce their claim *in subsidium* against the assets forming part of the community of acquests but only to the extent of the value of the share which such spouse has in the community of acquests.

(2) Saving the right of the debtor's spouse to seek the judicial separation of property, the debtor's spouse shall not have a right to oppose an act enforcing the credit against any property of the debtor or of the community of acquests except where the property upon which execution is being attempted is the paraphernal property of such debtor's spouse.

Where paraphernal property is subject to the debts of the community.

1330. When the assets of the community of acquests are insufficient to satisfy the debts which burthen it, the creditors of such community may enforce their claim *in subsidium* against the paraphernal property of the spouses:

Provided that where -

(a) the debt is due as a civil remedy in respect of a wilful offence committed by either spouse; or

(b) the debt is one arising out of the exercise of a trade, business or profession as is referred to in article 1324;

the creditors may not enforce their claim against the paraphernal property of the spouse who has not given rise to the claim, but may in such cases enforce their claim to the extent of any part remaining unsatisfied by the assets of the community of acquests, against the paraphernal property of the spouse giving right to such claim.

Reimbursement and restitution.

1331. (1) Each of the spouses is bound to reimburse the community of acquests with any sum of money or the value of any thing which he or she may have appropriated from the acquests to satisfy debts which do not fall under the provisions of article 1327, unless he can show that the act was one which was advantageous to the community or was performed to satisfy the needs of the family.

(2) Each one of the spouses has a right to be reimbursed with any sum of money or the value of any thing which has been taken from his or her paraphernal property where such money or thing was spent or consumed in connection with a debt or an investment of the community of acquests.

(3) The spouse who is a creditor of the community of acquests may demand to be assigned property of the community up to the value of his or her credit. The reimbursement from the property of the community of acquests shall be made first by assigning money, then other movables and finally immovables.

(4) These reimbursements are to be made at the termination of the community of acquests:

Provided that the court may allow that any such reimbursements take place at an earlier date when the interests of the family so require or permit.

Judicial separation of property.

1332. (1) The judicial separation of property may be pronounced -

(a) upon the interdiction or incapacitation of one of the spouses; or

(b) where the disordered state of affairs of one spouse or his or her conduct in relation to the administration of the acquets jeopardises the interest of the community of acquets, or of the family or of the spouse requesting the judicial separation of property; or

(c) where one of the spouses fails substantially in his or her duty to contribute to the needs of the family in accordance with article 3 of this Code; or

(d) where one of the spouses has been excluded from the administration in terms of article 1325, either generally or to a great extent.

(2) The judicial separation of property may only be demanded by either spouse or by his or her lawful representatives; so however that such separation may not be demanded by the spouse or the representatives of the spouse who has given rise to the causes for judicial separation referred to in paragraphs (b) or (c) of sub-article (1) of this article.

(3) Where the judicial separation has been demanded by the spouse excluded from the administration of the community of acquets in terms of paragraph (d) of sub-article (1) of this article, the court shall, where the judicial separation causes financial damage to the other spouse, order the spouse demanding judicial separation to pay compensation to the other party for the loss that such party may have suffered because of the separation.

(4) In the judgment pronouncing the judicial separation of property, the court shall direct that the community of acquets between the spouses shall cease as from the day on which the judgment becomes *res judicata*:

Provided that the court may however, without prejudice to any right legally acquired by any third party, direct that the judgment shall operate retrospectively to the date of the filing of the judicial act introducing the cause upon which judgment is given.

(5) The creditors of either spouse or of the community of acquets may impeach the separation pronounced by the court, even though it may have been given effect to, if such separation has been obtained in fraud of their rights.

(6) The court may where in its opinion circumstances so warrant direct that the property comprised in the community of acquets be not partitioned before the lapse of such period after the cessation of the community of acquets as it may determine.

(7) Any direction given by the court in virtue of sub-article (6) of this article, may, on good cause being shown, be changed or revoked by the court.

(8) The demand for the judicial separation of property shall not stay any action enforcing any debt of the community of acquets.

(9) Where a demand for the judicial separation of property has been filed, a creditor of a particular spouse may proceed or

continue proceedings enforcing his claim against property of the community of acquests and in any such case the spouse of the debtor may demand that half the proceeds of the sale of any object belonging to the community of acquests shall remain deposited in court on account of the share in the community of acquests of the spouse of the debtor; so however that if such deposits exceed the share of such spouse in the community of acquests any sum so deposited in excess shall remain to the credit of the debtor spouse and be attachable by his creditors.

(10) Any judgment ordering the judicial separation of property shall not be operative against third parties except from the day on which such judgment shall have been registered in the Public Registry.

Partition of the community.

1333. The partition of the community of acquests shall be made by assigning one-half of the assets and liabilities comprised in the community to each of the spouses.

Provisions of this

Sub-title

substituted by:

XXI.1993.82.

*Sub-title IV**

OF PARAPHERNAL PROPERTY

Definition of paraphernal property.

1334. (1) Where the community of acquests or the community of residue under separate administration operates between the spouses, all property which is not included in paragraphs (a) to (f) of article 1320 or is not dotal is paraphernal. Where the property of the spouses is held under the system of separate property all property which is not dotal is paraphernal.

(2) The management of paraphernal property shall appertain exclusively to the spouse to whom such property belongs.

(3) For the support of the family, the spouses shall first use income deriving from common property before income belonging to one of them exclusively, and they shall first use capital which is their common property or belongs to the community of acquests before the capital belonging exclusively to one of the spouses.

Where a spouse appoints other spouse as agent.

1335. Where one of the spouses appoints the other spouse as his or her agent to manage his or her paraphernal property, the latter spouse shall be liable to the first spouse in the same manner as any other agent, so however that such spouse shall only be obliged to render an account for the fruits if this is expressly stated in the mandate.

Where a spouse enjoys property without authority or with authority but without condition of accounting for fruit.

1336. (1) Where a spouse has enjoyed the paraphernal property of the other spouse, without authority, but without opposition, that spouse or the heirs of that spouse, upon the dissolution of the marriage or upon the first demand of the spouse to whom the property belongs, shall only be bound to deliver the existing fruits, and shall not be accountable for fruits which shall have been consumed up to that time.

(2) The same rule shall apply where such spouse has enjoyed such property with authority but without the express condition of

accounting for the fruits.

Where spouse enjoys property in spite of opposition.

1337. Where a spouse has enjoyed the property of the other spouse in spite of opposition, he shall be answerable for all fruit existing and consumed.

Provisions of this

Sub-title

substituted by:

XXI.1993.82.

Sub-title V†

OF COMMUNITY OF RESIDUE UNDER SEPARATE ADMINISTRATION

* For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

†For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

Community of residue under separate administration.

1338. (1) Where the future spouses in a marriage contract stipulate that the property acquired by them during marriage shall be governed by the system of community of residue under separate administration the following provisions of this Sub-title shall apply.

(2) The assets which shall be governed by the system of community of residue under separate administration shall be all the assets falling under paragraphs (a) to (f) of article 1320.

How acquisitions are registered.

1339. (1) Under the system of community of residue under separate administration the acquisitions made by each of the spouses during the marriage shall be held and administered by the spouse by whom such acquisitions are made, and subject to any limitations contained in this Sub-title shall, in relation to third parties, be dealt with by such spouse as if such spouse were the exclusive owner thereof.

(2) Where under the system of community of residue under separate administration property is acquired by the spouses jointly, it shall be administered jointly. The share of each spouse in such property may only be alienated *inter vivos*, with the consent of the other spouse, or where such consent is unreasonably withheld, with the authority of the court of voluntary jurisdiction, or in a judicial sale by auction at the instance of any creditor of such spouse.

Termination of community of residue under separate administration.

1340. (1) The community of residue under separate administration shall, unless terminated earlier by mutual consent by public deed with the authority of the court, terminate upon the dissolution of the marriage; under the same circumstances, *mutatis mutandis*, as apply for the community of acquests under paragraphs (b) and (c) of sub-article (1) of article 1332; and upon the legal separation of the spouses.

(2) Sub-articles (2), (4), (5), (9) and (10) of article 1332 shall apply *mutatis mutandis* where the dissolution of community of residue under separate administration is declared by judgment of the court.

Calculation of residue.

1341. (1) At the termination of the community of residue under separate administration, howsoever happening, the residue to be accounted for by each spouse shall include any expense made by that spouse solely in his or her interest out of assets governed by the community and held by that spouse, and shall be subject to the deduction of any amount paid out with paraphernal property of that spouse for debts of that spouse relating to assets held by that spouse and governed by the system of community of residue with separate administration, as well as liabilities still outstanding by that spouse incurred in respect of such assets.

(2) From the residue as determined in sub-article (1) there shall be deducted any paraphernal debts of the spouse which are in excess of that spouse's paraphernal assets.

(3) The result as determined in sub-article (2) shall if it is not a debit constitute the final residue of that spouse. If the result is in debit there shall be considered to be no final residue for that spouse.

(4) Where the final residue of one spouse is greater than the final residue of the other spouse or where only one spouse has a final residue, there shall be assigned to the spouse with the lesser final residue or with no final residue, as the case may be, as much of the final residue of the spouse with the greater final residue or with the only final residue as is necessary so that each spouse may have an equal share of assets forming the final residue of both spouses.

Where debt is not paraphernal.

1342. (1) For the purpose of article 1341(2) any debt which is not one mentioned hereunder is a paraphernal debt:

(a) the burthens and obligations which encumber the assets under the act of their acquisition;

(b) the expenses and obligations incurred in the administration of the acquests;

(c) the expenses and obligations even if incurred separately for the needs of the family including those for the education and upbringing of the children;

(d) debts relating to the ordinary repairs of paraphernal property of the spouse the fruits of which are included in the assets governed by the community of residue under separate administration;

(e) any debt or indemnity due as a civil remedy by a spouse where such indemnity is not due as a civil remedy in respect of any offence wilfully committed.

Rights of third parties.

1343. (1) Third parties may only exercise their rights against the spouse who has contracted with, or incurred the debt towards, them.

(2) At the termination of the community of the residue under separate administration and after the assignment of any final residue, the creditors of one spouse may however in relation to any debt due to them arising before the termination of the community of residue under separate administration, claim *in subsidium* against the other spouse up to the amount if any of the assets of the final residue of the debtor spouse assigned to the other.

Gratuitous alienations.

1344. (1) Where the system of community of residue under separate administration operates between the spouses, a spouse may not transfer *inter vivos* any of his assets under gratuitous title except with the consent of the other spouse.

(2) Sub-article (1) of this article shall not apply to donations of moderate value regard being had to the condition of the parties and all other circumstances.

(3) An action for annulment of an act of alienation under gratuitous title may only be instituted by the spouse whose consent was required and within the peremptory term of three years from -

(a) the date when such spouse became aware of the act, or

(b) the date of registration, when such act is registerable,
or

(c) the date of termination of the community of residue under separate administration,
whichever is the earliest.

Acts performed with intention to defraud.

1345. (1) Where a spouse performs an act with the intention to defraud the other spouse of the potential rights competent on the termination of the community of residue under separate administration such other spouse may exercise the action contemplated in article 1144 as if he or she were a creditor. Such right shall be personal to the latter spouse or his or her heirs and is not exercisable by the creditors of the spouse.

(2) An action under this article shall be prescribed by the lapse of five years from -

(a) the date when such spouse became aware of the act, or

(b) the date of registration, where such act is registerable,
or

(c) the date of termination of the community of residue under separate administration,
whichever is the earliest.