

NATIONAL LEGISLATION: THE NETHERLANDS

1. Dutch Civil Code

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1. DUTCH CIVIL CODE

The translation is from: H. WARENDORFF, R. THOMANS and I. CURRY-SUMNER, *The Civil Code of the Netherlands*, Wolters Kluwer, 2013.

Art. 1:84

1. The cost of maintaining the household, including the cost of the care and upbringing of the children, shall be chargeable to the common income of the spouses and, insofar as this is insufficient, to their own income pro rata; insofar as their income is insufficient, such costs shall be chargeable to the common capital, and insofar this is also insufficient, to their own capital pro rata. This shall not apply insofar as special circumstances oppose this.
[...]

Art. 3:13

1. a holder of a right may not exercise it to the extent that its exercise constitutes an abuse.
[...]

Art. 3:33

A juridical act requires an intention to produce juridical effects manifested by a declaration.

Art. 3:37

1. Unless otherwise provided, declarations, including communications, can be made in any form; declarations may be inferred from conduct.
[...]

Art. 3:40

1. a juridical act which by its content or necessary implication is contrary to good morals or public policy shall be null and void.
[...]

Art. 3:60

1. 'Power of attorney' is the power which a person, called the principal, grants to another, the attorney, to perform juridical acts in his name.
[...]

Art. 3:61

Power of attorney can be granted expressly or tacitly.
[...]

Art. 3:84

1. Transfer or property requires delivery pursuant to a valid title by the person who has the right to dispose of the property.

[...]

Art. 3:109

A person is presumed to hold property for himself.

Art. 3:119

1. The possessor of property is presumed to be the person who has the title.

[...]

Art. 3:166

1. Community exists when property belongs to two or more participants together.

2. The shares of the participants are equal, unless their judicial relationship otherwise requires.

3. Art. 2 of Book 6 applies, *mutatis mutandis*, to the juridical relations between participants.

Art. 3:168

1. Participants may by contract regulate the enjoyment, use and management of common property.

2. To the extent there is no contract, the subdistrict court may so regulate upon the application of any interested party and, if necessary, order the fiduciary administration of the property. In doing so it must fairly take into account both the interests of the parties and the public interest.

[...]

Art. 3:169

Save if the provisions otherwise provide, any one participant is entitled to use the common property, provided that this is compatible with the rights of the other participants.

Art. 3:170

1. Acts for the purpose of ordinary maintenance or preservation of common property and, generally acts which cannot be delayed may be performed by any one of the participants, if necessary independently of the others. Any one participant has the right to interrupt prescription for the benefit of the community.

2. In all other cases the participants shall manage the property together, unless the provisions otherwise provide. Management includes all acts which may serve the normal exploitation of the property as well as the acceptance of obligations owed to the community.

3. Except for those acts referred to in the preceding paragraphs, only the participants acting together have the power to perform acts relating to the common property.

Art. 3:172

Save if the provisions otherwise provide, the participants participate in the fruits and other benefits which common property yields in proportion to their shares; they must contribute, in the same proportion, to the expenses which result from acts duly performed in the interest of the community.

Art. 3:175

1. Any one participant may dispose of his share in the common property, unless the juridical relationship between the participants otherwise requires.

2. If as a result of their juridical relationship, the participants do not have the power to dispose of their share except with the consent of all of them, paragraphs 3 and 4 of art. 3:168 apply, *mutatis mutandis*.

3. Creditors seize and levy execution against the share of a participant in common property. After seizure and execution against a share, limitations of power to dispose of the shares cannot be invoked between the acquirer of such a share and the remaining participants.

Art. 3:178

1. Any one participant, as well as the holder of a limited right to a share in the community, may at any time demand partition and division of common property, unless the nature of the community or the provisions of the following paragraphs otherwise require.

2. Upon the demand of a participant, the court seized of an action for partition and division may determine that all or some debts due that are for the account of the community must be settled before proceeding to the partition.

3. If the interest of one or more participants which are affected by an immediate partition are considerably greater than the interests served by the partition, the court seized of an action for partition may, upon the demand of such a participant, exclude a claim for partition, once or repeatedly, for no more than three years on each occasion.

Art. 3:185

1. To the extent that the participant and those whose co-operation is required cannot reach agreement on a partition and divisions, the court, upon demand of any interested party, shall order the manner of partition or decide upon the partition itself, fairly taking into account both the interests of parties and the general interest.

[...]

Art. 3:276

Save if otherwise provided by law or contract, a creditor can have recourse for his claim against all the property of his debtor.

Art. 4:10

1. Heirs who are called personally by the law to inherit a deceased's estate are, in the following order:

- a. the deceased's spouse who is not judicially separated, together with the deceased's children;
- b. the deceased's parents together with the deceased's brothers and sisters;
- c. the deceased's grandparents
- d. the deceased's great-grandparents [...]

Art. 4:28

1. When a dwelling in which the spouse of the deceased is living at the latter's death constitutes part of the deceased's estate or of the dissolved matrimonial community of property or the deceased had a right to its use otherwise than pursuant to a tenancy, the spouse shall have a right as against the heirs to continue to live there for a period of six months on the same terms as were previously applicable. The spouse may continue to use the household effects in the same manner and for an equal duration to the extent that these form part of the deceased's estate or of the dissolved matrimonial community of property or when the deceased had a right to their use.

2. A person who, until the deceased's death, had a long-term joint household with the deceased shall have corresponding rights as against the heirs and the deceased's spouse, with regard to use the dwelling and the household effects which form part of the deceased's estate or the dissolved matrimonial community of property.

Art. 4:82

A testator may make a testamentary disposition for the benefit of his or her spouse, where they are not judicially separated, subject to the condition that the claim of a forced heir, to the extent that it would be payable by the

spouse, will only become eligible after the spouse's death. A testamentary disposition for the benefit of another life-companion, if the latter has a joint household with the testator and a cohabitation agreement was entered into by a notarial instrument, may be made subject, *mutatis mutandis*, to a condition as referred to in the preceding sentence.

Art. 4:93

A last will made by two persons by the same instrument shall be null and void.

Art. 5:1

1. Ownership is the most comprehensive right that a person can have in a thing.
2. To the exclusion of everybody else, the owner is free to use the thing, provided that its use does not breach the rights of others and that the limitations based upon statutory rules and rules of unwritten law are observed.

[...]

Art. 6:2

1. An obligee and obligor must, as between themselves, act in accordance with the requirements of reasonableness and fairness.
2. A rule binding them by virtue of law, usage of juridical act does not apply to the extent that, in the given circumstances, this would be unacceptable according to standards of reasonableness and fairness.

Art. 6:3

1. A natural obligation is one which cannot be enforced at law.
2. A natural obligation exist; a. where the law or juridical act deprives an obligation of its enforceability;
b. where a person has, regards another person, a compelling moral duty of such a nature that its performance, although unenforceable at law, must, in common opinion, be considered as the performance of an obligation owed to that person.

Art. 6:6

1. Where two or more obligors owe one and the same obligation, they are liable for equal shares, unless by law, usage or a juridical act, they are liable for unequal shares or are jointly and severally liable.

[...]

Art. 6:10

1. Jointly and severally liable obligors shall contribute towards the performance of the obligation and to the payment of expenses in accordance with the following paragraphs, each for such part of the obligation as concerns him in their mutual relationship.

2. Where liability to contribute towards an obligation is discharged for the account of one of the jointly and severally liable obligors to an extent which exceeds his share thereof, each of his co-obligors must contribute to the excess up to such part of the co-obligors obligation as concerns him.

[...]

Art. 6:203

1 A person who has given an item of property to another without legal basis is entitled to reclaim it from the recipient as a performance not due.

2. If the performance not due was a payment of a sum of money, the claim is for the restitution of the same amount of money.

3. A person who, without any legal obligation, has performed an act of a non-pecuniary nature, may claim from the recipient that this performance be reversed.

Art. 6:212

1. a person who has been unjustifiably enriched at the expense of another is obliged, insofar as reasonable, to make good the other's loss up to the amount of his enrichment.

[...]

Art. 6:228

1. a contract which has been entered into under the influence of an error and which would not have been concluded had there been a correct assessment of the facts, may be avoided:

a. if the error is due to information given by the other party, unless the other party could assume that the contract would have been entered into irrespective of such information;

b. if the other party, in view of what he knew or ought to know regarding the error, should have informed the party in error;

c. if the other party in entering into the contract made the same error , unless the other party, even if there had been a correct assessment of the facts, need not have understood that the party in error would therefore be prevented from entering into the contract.

[...]

Art. 6:248

Informal relationships – THE NETHERLANDS

1. A contract not only has the juridical effects agreed upon by the parties, but also those which, according to the nature of the contract, apply by virtue of law, usage or the requirements of reasonableness and fairness.
2. A rule binding upon the parties as a result of the contract does not apply to the extent that, in the given circumstances, this would be unacceptable according to the standards of reasonableness and fairness.