



UvA-DARE (Digital Academic Repository)

New Matrimonial Property Law in the Netherlands

Reinhartz, B.E.

Publication date
2017

[Link to publication](#)

Citation for published version (APA):

Reinhartz, B. E. (2017). *New Matrimonial Property Law in the Netherlands*. Paper presented at ISFL 2017, Amsterdam, Netherlands.

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

New Matrimonial Property Law in the Netherlands (ISFL Conference 2017, VU)

In this paper I will present the changes of the Matrimonial Property Law in the Netherlands which will enter into force in 2018. Generally speaking, the new rules will apply to all newlywed couples (which in the Netherlands may consist of either sex, as long as it is a couple of two people) and to all registered partnerships (which in the Netherlands may also consist of either sex, as long as it is a couple of two people).

I will start with a short outline of the current system. Then I will present the changes which the new system will bring, and at the end I will discuss some problems that we have now or will encounter under the new law.

The current law

As you perhaps know, the Netherlands now have community property as the legal system of matrimonial property law. The community property consists of the property that the spouses acquire during the marriage. But it also consists of gifts, inherited property and the property that the spouses already owned at the beginning of the marriage. The deceased may put a clause in his will that the goods that will be inherited by one of the spouses, must remain private property. This is also the case for gifts: the donor may require that in the contract of the gift. The spouses may not break through these clauses in a marriage contract. The same rules apply to their debts.

There are some exceptions, for example pension claims. These remain private at all times and they are divided according to a different set of rules.

The current system entails that creditors – whether they are community creditors or private creditors – may claim the goods from the community property and from the private property of their debtor. Only if both spouses are debtor, then the creditor may claim all the goods of both spouses. Otherwise the private property of the other spouse is safe.

If a debt is paid out of the “wrong” property, then that property may claim the loss against the property that the debt belonged to. If it is a debt that was paid, then the claim is for the amount paid. If the money was used to pay for an investment, then the claim is for the same share of the end value as the amount that was paid, was related to the price that was paid for the item. This is the case between private properties of the spouses but also between the private property of one spouse and the community property. For example this applies when one of the spouses has inherited some property under the clause that it will remain private property, and that spouse uses this property to pay for the house of the spouses that becomes part of the community property. If the house is only in the name of that spouse, and the house was paid for more than 50% out of his private property, then the house will become private property, too. The community property then gets a claim against the private property.

The spouses can make different arrangements in marriage contracts, either before or during the marriage. In current notarial practice we see that especially in cases where the spouses have been married before or in cases that they marry quite late in life, and in cases where a business is owned by one of the spouses, marriage contracts are made. In the Netherlands about 25% of the married couples have a marriage contract, which is quite a high percentage. As marriage contracts have to be concluded by a notary, this brings quite some extra costs for those people. Often these contracts contain division of property and the clause that either each year the spouses will balance the

proceeds that they gained in the last year, and/or that the spouses will balance their gains at the end of the marriage.

Reform

The last reform of matrimonial property law took place in 2012, and was based on a proposal which was published in 2003. This proposal went much further than the text that was adopted later and went into force in 2012.

In 2014 another proposal was launched, but this time not by the Ministry of Justice and Security, but by some members of the 2nd Chamber of Parliament. The proposal resembled the original proposal of 2003. This time the composition of the Cabinet and the Chambers of Parliament was more liberal than before and the proposal was adopted. It will enter into force on January 1st 2018 for those couples that will get married from that date on. The spouses can make different arrangements in marriage contracts, either before or during the marriage.

The main changes in the law are:

- the community property will only consist of the property and debts that the spouses acquire during the marriage. Therefore the property and debts of the spouses which stem from that time, will stay private. There is an exception for property and debts that the spouses had before the marriage as co-owners/joint debtors. These items and debts will become part of the new community property after marriage, irrespective whether they owned the property/were liable 50% for each or not.

This also is the case for gifts and inherited property. Whether they are acquired before or during the marriage, they remain private property, with the exception mentioned before in case they were co-owned.

- if one of the spouses is the owner of a business which belongs to his private property, the community property will receive a reasonable fee for the knowledge, skills and work that that spouse has invested in the business. How that is to be calculated, will be determined in case law. There is not a direct connection to the profits that the business makes. This rule is applicable in the case of a private company and in the case of a company of which the spouse is the shareholder. This rule applies to all married couples from January, 1, 2018.

- if a private creditor wants to recover his money from one of the spouses, he may claim the private property of his debtor, but he may also claim half of the community property items. The other spouse may choose to either take over those items and pay half of their value to the creditor, or the items may be sold. Half of the proceeds then go to the creditor and the other half goes to the other spouse.

Problems solved?

It is expected that this new law may or may not solve some problems that we have with the current law. This applies in particular to

- pre-nuptial debts that the other spouse knows nothing about. This may be private debts but also study loans. It is not quite fair that these loans remain private while the proceeds that are gained during the marriage because the spouse can get a better job because of his education, become community property.

- gifts and inherited property from abroad where the donor or the deceased expected that the property that is transferred to the spouse, becomes private property of that spouse. According to current law these gifts and inherited property become part of the community property unless stated differently by the donor or the deceased. If that person is not familiar with the current Dutch legislation, he will forget to state that the property must become private property and then the property will not become private property like he – probably – intended.

- the problem that this system only works if the spouses keep close records of their private property. If they do not do that and funds from their private property are used to pay for debts which belong to the community property, then the case law is divided on the question whether the spouse may reclaim that money from the community property. The problem arises in particular if the private property – for example an inheritance – was used to pay for services that the spouses would otherwise not have bought, for example an expensive cruise.

If they use private funds to pay for goods, then these goods will only become private property if the amount that is paid for them, stems from the private property for more than 50%. If there are no records left to show how the goods were paid for, then the goods are considered to be part of the community property. It is very important that the spouses are well informed about this and act accordingly. Otherwise they remain in perfect bliss that all the ante-nuptial property, the inherited property and the gifts remain private, but if they cannot prove this, then it will all fall in the community property. It still remains a question who will tell the spouses that they have to make a list of their private property and what they do with it, as they will not see a notary before their marriage. The person from the council who comes along for a cup of coffee before the marriage, mostly talks about family matters to get some nice stories that he can mention during the wedding ceremony. Usually he is not a trained lawyer, so you cannot blame him for not informing the spouses in depth on these legal matters.

If immovables are acquired by one of the spouses, then the notary should mention in the deed who becomes owner of that property. The question is how much research a notary must do in order to ascertain the claim of the spouses concerning the source of the money that they use to pay for the property. He may not just write down what the spouses tell him. The problem is not new but it will become bigger because the spouses will have much more private property than before.

Final remarks

The idea behind the new law is a sound one: only the property which the spouses have acquired during the marriage, must become community property. But some of us are somewhat concerned about the practical consequences of the new legislation.

Prof. Dr. B.E. Reinhartz b.e.reinhartz@uva.nl

New Matrimonial Property Law in the Netherlands (Handout)

2012: current law (proposal 28 867): community property as the legal system of matrimonial property law

2018: new law for new marriages (proposal 33 987)

The main changes in the law per 2018 are:

- community property will only consist of the property and debts that the spouses acquire during the marriage;
- property and debts of the spouses which stem from the time before the marriage, will stay private.
- special rules for gifts and inherited property
- exception for property and debts that the spouses owned before the marriage as co-owners/joint debtors. These items and debts will become part of the new community property after marriage;
- if one of the spouses is the owner of a business which belongs to his private property, the community property will receive a reasonable fee for the knowledge, skills and work that that spouse has invested in the business;
- if a private creditor wants to recover his money from one of the spouses, he may claim the private property of his debtor, but he may also claim half of the community property items. The other spouse may choose to either take over those items and pay half of their value to the creditor, or the item may be sold. Half of the proceeds then go to the creditor and the other half goes to the other spouse.

Problems solved?

@ pre-nuptial debts that the other spouse knows nothing about. This may be private debts but also study loans. It is not quite fair that these loans remain private while the proceeds that are gained because the spouse can get a better job because of his education, become common property.

@ gifts and inherited property from abroad where the donor or the deceased expected that the property that is transferred to the spouse, becomes private property of that spouse. According to current law these gifts and inherited property become part of the community property of the spouses unless stated differently by the donor or the deceased. If that person is not familiar with the current Dutch legislation, he will forget to state that the property must become private property and then the property will not become private property like he – probably – intended.

@ that this system only works if the spouses keep close records of their private property/private debts. Otherwise the property will be deemed community property and the debts will be assumed to belong to the community property.

Prof. Dr. B.E. Reinhartz, University of Amsterdam, b.e.reinhartz@uva.nl