

Abstract: Matrimonial Property Regimes

This rigorous thesis addresses marital property rights in the broadest sense as encompassed by Act 89/2012 Sb., Civil Code, as amended. Chapter One gives a historical background of marital property rights. From a historical point of view, however, community property comes to the forefront and it is its historical development that is paramount to our understanding joint ownership. I first discuss Roman law, as it created the legal basis for joint ownership. I then go on to discuss in more detail the individual civil codes and related laws that have been in force in the Czech Republic since the so-called Josephine Code, which came into effect in 1787. The Josephine Code was followed by Imperial Patent No. 946/1811 Sb., General Civil Code, which was in effect in the Czechoslovak Republic until it was replaced by Act No. 141/1950 Sb., Civil Code. New Family Act No. 265/1949 Sb. also came into effect. Act No. 40/1964 Sb., Civil Code was adopted together with new Family Act No. 94/1963 Sb. and was subsequently replaced in 2014 by Act No. 89/2012 Sb., Civil Code.

Based on the applicable Civil Code, community property can be viewed as a legal regime, contractual regime or a regime established by a decision of the court. The second chapter of this rigorous thesis addresses these regimes and delves on third party protection, settlement of community property and provisions regulating the housing of spouses and domestic violence.

In Chapter Three I focus on the Dutch and British legislation regulating marital property rights. In the Kingdom of the Netherlands, the rights and obligations of spouses are contained in the Dutch Civil Code, specifically in the first book titled Personal and Family Law, Parts 1.6 – 1.8. The system is quite different in Great Britain. It is divided into the legislation of England and Wales, and the legislation of Scotland and Northern Ireland, and is based on a number of laws and judicial decisions.

In the conclusion of my thesis I contemplate possible *de lege ferenda* issues. The main question that I ask is whether, based on historical development and compared to other European legal systems, existing legislative measures regulating the community property of spouses, that is couples preferring to opt for the matrimonial property regime as a regime determined by the law allowing them to accede to contractual modifications only, corresponds to the needs of today's couples, or more precisely couples who are engaged and who are seriously considering getting

married, or whether the time has come to deeper reflect on changing the legal regime in so as to replace the matrimonial property regime with the separate property regime.