COMMUNITY OF PROPERTY: A REGIME FOR ENGLAND AND WALES?

A research project conducted at the Universities of Reading and Exeter, funded by The Nuffield Foundation

The research project we are currently working on asks whether it would be desirable to introduce a community of property regime in England and Wales. We are interested in finding out how community of property operates in the Netherlands/France/ Sweden. All the questions refer to both spouses and registered partnerships unless otherwise stated.

1. How do people here in the Netherlands/France/ Sweden find out about community of property regimes?

   Examples which you may or may not find relevant:

   - Information in schools
   - Leaflets in public places
   - Family and friends
   - Websites
   - Information available before marriage/registered partnership
   - Others

2. (a) Approximately how many people seek your advice on community of property each year?

   (b) Of those who seek your advice on a community of property regime before marriage, approximately what percentage choose the default regime?

   (c) [The Netherlands and Sweden] Of those who seek your advice on a community of property regime before registered partnership approximately what percentage choose the default regime?

   (c) [France only] Do you also advise couples considering a PACs?

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1 This last sentence omitted in France, where the PACS takes the place of, but is not quite equivalent to, the registered partnership.
2 Intended to ascertain to what extent the interviewee was a specialist in this area of law.
3 The intention here was to discover to what extent people chose the default regime after taking advice. The responses indicated that those who seek advice do so with the intention of contracting out, and do so.
(d) [The Netherlands only, where reform is probable] Do you think these figures will change at all when the new legislation alters the default regime? Please give reasons for your view

3. What sort of people seek your advice on matrimonial property regimes
   
   (a) before marriage or registered partnership?
   (b) during marriage or registered partnership when thinking about/considering a change of regime?

Do any of the factors listed below make people more (or less) likely to seek advice?

- Wealth
- Age
- Children
- Second marriage/partnership
- Gender
- Sexual Orientation
- Religion
- Other

4. What sort of people do you advise to contract out of the default regime\(^4\)
   
   (a) before marriage or registered partnership?
   (b) during marriage or registered partnership when considering a change of regime?

Are any of the following factors relevant?

- Wealth
- Age
- Children
- Second marriage/partnership
- Gender
- Sexual Orientation
- Religion
- Other

5. (a) What regime would you advise such people to make in the light of the following life events?

- Birth of a child

\(^4\) Questions 3 and 4 are intended to demonstrate any contrast between those who should seek legal advice and contract out, and those who actually do so. Only in Sweden did anything significant emerge from that contrast: in a deferred community regime, people seek advice in the belief that running their own business puts the community property at risk, but of course it does not do so because there is no community property before dissolution.
• Stopping paid employment
• Becoming self-employed
• Retirement
• Death
• Divorce/separation

(b) In your experience do clients who come to seek advice normally complete the agreement you have advised them to make?

(c) Is it common for people to change regime more than once?

(d) Do you have any experience of discussion of regimes causing disagreement or unhappiness between couples?

In order for us to get an idea of how the community works in practice, we would like to know what type of advice would you give in the following situations:

6. For example:5

A married couple with four pre-school children own a house worth Euro 120,000 [SEK 1,500,000], subject to a mortgage of Euro 100,000 [SEK 1,300,000].6 They have adopted (by choice or by default!) the default community regime. They have no other assets. They are in the process of divorce. The father has recently lost his job, and although he may obtain another he is unskilled and will have little to spare after supporting and housing himself; mother looks after the children at home and has very little chance of obtaining a job. In this situation:

• Does the house have to be sold?
• Is it possible to change regimes immediately before divorce? Would there be a reason for doing so?
• What arrangements can be made to ensure an income for mother and the children?
• What arrangement might be made for the support of the wife if there were no children?
• What, if any, is the impact of social security on this situation?

7. Can you give us some examples of recent cases where you have advised on the divorce of a wealthy couple with substantial assets?

8. Can you give us some examples of recent cases where you have advised same-sex partners in low/middle/high asset brackets?

5 Our example is intended to illustrate a scenario where the parties are almost without means save for a small equity in the house. In England, receipt of half the equity would be disastrous for the wife, as it would deprive her of social security benefits.

6 Quite a small house.